

Abstract of Ph.D. dissertation

titled Legal position of prior users and subsequent users in patent law

Patent law provides for regulations defining the legal situation of the so-called users, i.e. the prior user and the subsequent user. The rights granted to users constitute patent limitations, i.e. cases stipulated by law in which it is possible for a third party to use a patented invention without infringing the patent.

A prior user is a person who, in good faith, exploited an invention already on the priority date for someone else's patent application relating to such an invention (Article 71 of the Industrial Property Law Act, "IPL"). In turn, a subsequent user is a person who, in good faith, obtained the right to use an invention covered by someone else's right to obtain a patent (stemming from a patent or a license obtained from an unauthorized person), and then lost it due to the fact that the granted patent was transferred to the actually entitled person (Article 75 of the IPL).

Regulations contained in art. 71 and 75 of the IPL ensure that users can continue to use the invention in their enterprise to the extent that they have used it so far; in case of the previous user - free of charge, and in case of the subsequent user, subject to the obligation to pay the rightholder the agreed remuneration. The rights of prior and subsequent users may be transferred to another person only together with the enterprise. Prior and subsequent users are protected due to similar axiological assumptions, i.e. the need to secure investments made by them in good faith. The very term "user" is a statutory term used since 1924 in literature and jurisprudence. The issue of the legal situation of users has not been extensively studied so far.

It has been concluded in the dissertation that against the background of other patent limitations, the rights of users are distinguished by the fact that they are considered subjective rights in jurisprudence and doctrine. This circumstance justified making an in-depth civil law characterization of the situation of users, which was the main scientific problem addressed in the dissertation. The analysis presented in the dissertation, based on the dogmatic-legal, historical and comparative law method, allowed to characterize the legal situation of users in the context of the definition of a subjective right, and above all to establish that they were

granted subjective rights of a relative nature, not constituting a claim, and at the same time characterized by an extended effectiveness.

In order to establish the conditions for the emergence of users' rights as well as the content and scope of the rights granted to them, an analysis of a number of intellectual property law institutions was made, including the scope of the patent, the concept of using an invention or the concept of patent limitations.

The protection of users is also provided for in the vast majority of foreign patent legislation. The essential conditions for granting protection to users and the scope of the rights conferred on them in the different legal orders of other countries are highly similar, even if the compared regulations on the protection of users differ in the degree of detail.

The dissertation also includes analysis of procedural issues regarding the protection of users. It was established that the proceedings for the determination of the right to use an invention in the situations specified in Art. 71 and 75 of the IPL (listed in Art. 284 point 7 of the IPL) belong to the category of declaratory actions. Its substantive legal basis should be Art. 189 of the Code of Civil Procedure. The basis for entering the rights of users in the patent register may be not only a judgment establishing the rights of users, but also any decision in which it was found that the conditions for acquiring the rights of users were met.