PATENT AS AN INDUSTRIAL PROPERTY RIGHT

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Abstract

One of the oldest and fundamental rights of the industrial property is the patent. The beginnings of its protection are traced as backas to the Middle Ages, to the time when the city authorities tried to attract to their environments competent inventive individuals able to contribute with their inventions to improving the development of commodity production. The subject matter of protection by patent as the right to industrial property is an invention. The invention is a significant factor for the general economic progress. Pursuant to the Law on Industrial Property, patent is defined as the right to industrial property that protects an invention in a procedure specified by law. There are a few types of inventions, invention of a product, invention of a procedure, and invention of matter. Patent is an exclusive right recognised for protection of an invention. Patenting an invention is of great use for a business in terms that it can give exclusive rights to that specific business or company to use the invention up to 20 years from the date of submission of an application for the patent. A procedure for recognition of patent is initiated by the submission of an application for patent to the State Office of the Industrial Property as the competent state authority. Patent gives the owner the exclusive right to make, use, place on the market or sell a patent-protected invention, for a limited period of time which, as a rule, may not exceed 20 years. Protection by patent ensures a favourable position to the patent holder in the market of products and technologies.

Keywords: patent, invention, protection, industrial property, intellectual property

Introduction

The intellectual property features two main forms:
1. Industrial property, which mainly includes inventions, trademarks and industrial design.
2. Copyright, mainly contained in literary, music, artistic, photographic, and audio and visual works.

One of the oldest and fundamental rights of the industrial property is the patent. The beginnings of its protection are traced as back as to the Middle Ages, to the time when the city authorities tried to attract to their environments competent inventive individuals able to contribute with their inventions to improving the development of commodity production. At that time, inventors were privileged in a manner that they had the right to exclusive use of their invention. The first case where privilege was given to an inventor dated back to 1315, in Czechia. The first patent law was enacted in the United States in 1790. However, laws governing this issue quite often do not define the term patent, which is also noticeable in our Law on Industrial Property. Patents are most often used in the area of industry, i.e. they are related to the very process of production of goods; thus, patent differs from the legal protection of trademarks or industrial designs where the emphasis is most often on commerce, not production.

Still, this does not mean that patent cannot find its use in other sectors, e.g. in the agricultural

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sector.

Subject matter of protection by patent

The subject matter of protection by patent as the right to industrial property is an invention. The invention is a significant factor for the general economic progress. Pursuant to the Law on Industrial Property, patent is defined as the right to industrial property that protects an invention in a procedure specified by law. The invention is defined as a solution of a technical problem related to a product, a procedure or matter per se that is a result of a certain procedure.
Actually, any solution of a technical problem (invention of a medicine, a product containing biological material, a procedure for obtaining biological material, its processing, a computer program, a device, machine, tool, etc.) can be ranked as an invention.
However, for a certain invention to be protected with patent, it should necessarily meet the requirements for its patentability, i.e. not every product of the human mind is an invention.
Pursuant to the Law on Industrial Property, there are a few categories that are considered to be inventions.
The first category includes invention, scientific theory and mathematical method. The second category comprises of aesthetic works, and the third category relates to plans, rules and procedures for the performance of an intellectual activity, for games or performance of business activities, as well as computer programs; the fourth category includes display of information, and the fifth one relates to the human body in different phases of its formation and development or simply revealing one of its elements, including gene sequence or partial sequence.
An exemption from the above is only possible if an application for patent does not relate to any of those subject matters, per se.

Types of inventions

There are a few types of inventions, invention of a product, invention of a procedure, and invention of matter.
Thus, a product invention relates to the outside form or structure of a product, a procedure invention relates to a certain schedule of man's actions, and an invention of matter to matter per se, which is a result of a certain procedure.
Still, it is important to emphasise that not every invention can be patented. An invention can be only patented if certain features of the invention are met, or if exactly specified requirements are met.
Based on the Law on Industrial Property, patent protects an invention in all the areas of technology if it is new, if it contains inventive contribution, and if it can be used in the industry.
An invention is a result of creative work when in experts' opinion, a solution of a certain problem obviously does not arise from the known conditions in the technology.

- Novelty of an invention

An invention is new if it is not covered by the state-of-the-art. The state-of-the-art means

anything available to the world's public, with the description of the invention in writing or orally, with its use or in any other way before the date of filing an application for patent, in a manner that enables an expert in the respective field to use it. In this regard, a novelty should be evaluated from the objectivity aspect, not through the prism of the inventor concerning whether they were familiar with that solution or not. It is also essential to implement thorough search of patents before filing an application, for a reason that this will give indication of whether an invention is new and would thus be patentable. The search can be made independently or entrusted to a professional IP representative. It is worth mentioning that some national patent institutes in the world offer free online patent databases, and using them one can make the search more easily and cost-effectively.

- Inventive contribution

An invention contains inventive contribution if for an expert in the field, the subject matter of invention obviously does not arise from the state-of-the-art.

- Industrial usability

An invention is considered to be industry usable if the subject matter of protection can be produced or used in any industry branch including agriculture. The objective of patent is protection of an invention that can be used for practical purposes thus contributing to development of the industry or another activity. Hence, logically, usability of an invention in industry and another economic activity is considered as a criterion for patentability of the invention.

Patent properties

Patent is an exclusive right recognised for protection of an invention. Patent gives its holder the exclusive right to prevent others from using the invention commercially for a limited period of time in exchange for disclosing the invention to the public. Therefore, the holder of patent can prevent other persons from producing, using, offering the patent for sale, selling or importing the patented invention if they do not have approval, and the former can sue everybody exploiting the patented invention without their permit.

Patenting an invention is of great use for a business in terms that it can give exclusive rights to that specific business or company to use the invention up to 20 years from the date of submission of an application for the patent. Additionally, patented protection has certain benefits it ensures for the inventor: with patent, a company can acquire a stronger position in the market. This is because the exclusive rights granted by patent entitle the inventor to ban others from using the patented invention commercially, which will reduce competition and place it in the market as the main figure.

Furthermore, return of investment is enabled through the patent. Having directed resources and time in the development of an innovative product, the inventor is enabled by the exclusive rights to commercialise the invention, and this ensures higher return of investment.

Patent opens further possibility for a company to sell or license the invention.

Patent ensures greater negotiation power. If a company is in a procedure to be granted the rights to use patent of another company through a license contract, the patent portfolio of the company that is in the procedure to be granted those rights will increase its negotiation power.

Patents can be of concern for the company negotiated with, and consequently, the two companies can sign a cross-licensing contract that will allow exchange of the patent rights of the two

companies.
Eventually, patents can ensure a positive image to a company. Business partners, investors and shareholders can look at patent portfolios as demonstration of a high level of expertise, specialty, and technological capacity of a given company. This can prove to be successful for fund raising, finding new business partners and raising the market value of the respective company.

Procedure for patent protection of an invention

A procedure for recognition of patent is initiated by the submission of an application for patent to the State Office of the Industrial Property as the competent state authority.
The contents of the application for patent is regulated by law, and it shall contain: an application for recognition of patent; description of the invention; one or more patent claims; short content of the essence of the invention (abstract); design (if required) which the description and the patent claim refer to; evidence that the filing fee for the application has been paid; and translation to Macedonian if the application is submitted in a foreign language.
At the same time, the application for patent should also have enclosures in writing: information on other applicants and statement about a joint representative if the application is submitted by more than one applicants; information on other inventors; statement by the inventor that they do not want to be identified in the application, if that has been requested; translation to Macedonian if the application is submitted in a foreign language; evidence of deposit of live biological or microbiological material if it is necessary for the description of the invention in line with the Law on Industrial Property; a list of nucleotide and / or amino acid sequences if the application contains the disclosure of one or more nucleotide and / or amino acid sequences; evidence of the right to priority in accordance with the Law on Industrial Property, if requested; power of attorney if the application is submitted by a representative; and evidence that an appropriate administrative fee has been paid, and evidence which reduction of the fee is based on, if there is a basis for that.
After the application is submitted, the State Office of the Industrial Property determines the date of its submission, which is a significant point because with the submission of the application on a certain date, its applicant acquires the so called right to priority. The date of receipt of a duly made application will be considered to be the date of submission of the application, and the applicant for patent will be considered to have the right to priority against any other person that might submit an application for the same invention later on.
It should be emphasised that a patent application based on which the filing date has been set cannot be altered by extending the subject matter for which protection is sought.
The patent application is entered in the Patent Application Register and then the State Office for the Industrial Property performs the so-called formal examination of the application.
The formal examination of the application differs from determination of the fact whether an application is duly made or not. The formal examination includes determination of whether the following requirements are met: the required fee has been paid; translation of the application to Macedonian has been submitted, if the application is submitted in a foreign language; the applicant for patent has given a statement concerning the examination procedure; designs to which description of the invention and the patent claim refer to have been submitted and, a duly

made power of attorney has been submitted, if the application is filed by a representative. When the submitted application is formally examined, it is determined whether the applicant has given a statement in favour of the examination procedure.
The Law on Industrial Property provides for three possible ways of examining an application for patent, as follows: the first method of examination of the application is conducting complete examination in one of selected institutions (state and interstate institutes that have the status of authorised institutions for international search); the second method is conducting complete examination in one of the institutions with which a special contract for search and complete examination has been signed; and the third method means examination conduced at the State Office of the Industrial Property. The above stated situations of examination of a filed application for patent relate to whether the requirements for patentability of an invention have been met and it comes to material examination of the application. In case the examination is made by the State Office of the Industrial Property, it is only established if the subject matter of the application is an invention that can be protected by patent at first sight, whereas examination of the novelty and inventiveness of an invention is made in the so called procedure of complete examination, which can be performed by selected institutions that have a status of authorised institutions for international search under a cooperation agreement in the area of patents, i.e. international prior examination of applications for patents or institutions with which a special agreement for search and complete examination has been signed.
When examining a patent application, the State Office of the Industrial Property may adopt three types of solutions. The first type of solution means that the invention requested to be patented meets all the requirements for patentability and that the patent application or patent applications meet in full those requirements. The second solution means that the invention only partially meets the requirements for patentability and gives only limited further validity to the patent application or patent applications in scope that meets the requirements, and the third solution the Office can adopt is decision proclaiming nullity when from the date of filing a patent application, the invention does not meet the conditions for patentability.

Duration of validity of patent

The term for legal protection that a patented invention can enjoy varies depending on who has made material examination, i.e. whether the examination of the application has been made by the State Office of the Industrial Property or another institution for full examination.
In the first case, if the examination is made by the State Office for the Industrial Property, the patent has duration of 10 years since the date of the filing of the application, whereas if the State Office for the Industrial Property has issued decision for recognition based on evidence for full examination, then the patent will last for 20 years counting the date of filing the application.
In the second case, the validity of the patent may be extended, though not more than 5 years, and this is done in case the patent is a product for protection of plants, a medical product etc.

Termination of validity of patent

When termination of validity of patent is involved, there are two ways in which patent can be

terminated. The first one relates to situations where the deadline for legal protection of an invention has expired, whereas the second one relates to situations when the patent ceases before the expiry of the term for its validity. The first way of termination of patent implies expiry of the time of protection, i.e. elapse of 10, 20 or 25 years depending on who has made material examination of the submitted application for patent. The second way of termination of patent includes four situations, in which case the State Office of the Industrial Property issues decision for termination of validity of the patent:

- The first situation of termination of patent occurs in case fees stipulated by the Law on Administrative Fees have not been paid.
- The second situation occurs if the holder has given up the patent.
- The third situation emerges if termination of the patent occurs due to a court decision, an act of the State Office of the Industrial Property, and in cases provided for with the Law on Enforcement.
- The fourth situation that includes several special cases (if a legal entity that holds the right to patent has become defunct, and the patent has not been passed on the legal successors or if a natural person as the holder of a patent dies, and the patent has not passed on that person's heirs).

Conclusion

Patent is a sum of exclusive rights that the state or another kind of authority guarantees to the inventor, protects the latter's invention against use, exploitation and sale by other natural persons or legal entities. Protection by patent ensures a favorable position to the patent holder in the market of products and technologies.

Patent gives the owner the exclusive right to make, use, place on the market or sell a patent-protected invention, for a limited period of time which, as a rule, may not exceed 20 years. The essential requirements an invention should meet for patent to be recognized are: novelty in relation to the current technology, innovation and industrial usability, i.e. practical use.

As an adequate type for protection of an invention, patent provides rights only in the country where it is issued. Furthermore, revoking of patent is enabled, for several reasons: the invention was not new at the time of the application, the invention cannot be used or has been excluded from patent protection.

Patent rights are limited in time. Each country determines maximum time for duration of patent in its national legislation, so under our legislation, that term is 20 years since the submission of an application for patent.

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