

On the way to the European Union Current development in the Polish Industrial Property Law

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Main topics

1. Enlargement
2. Polish Act on IP Law
3. Accession Treaty provisions

Introduction

EU membership

- level of harmonisation of Polish law to the Acquis
- negotiations
- Accession Treaty

Introduction

- **Europe Agreement (5 years from 1992)**
 - not much time
- **TRIPS (2000)**
- **EPC**

Act on Industrial Property Law

**Act of 30 June 2000 on Industrial Property Law
- came into force on 22 August 2001**

The Law regulates:

- **patents,**
- **trade marks,**
- **utility models,**
- **industrial designs,**
- **geographical indications,**
- **topographies of integrated circuits**
- **organisation of Patent Office**

Act on Industrial Property Law

Already amended twice:

- biotechnological inventions**
 - designs**
 - SPC**
 - Sublicenses**
- Another amendment is being discussed**

Act on Industrial Property Law

Patents

- **European Patent Convention (Czech Republic, Hungary - since 1.07.02, Poland still waiting - probably March/April of 2003)**
- **Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions**

Act on Industrial Property Law

Directive 98/44/EC

- **Implemented to the Polish IP law with effect from 1.1.2003**
- **Achievement in comparison with most of the UE members**
- **Only Denmark did it on time**
- **many EU members still have not implemented, including France and Germany**

Act on Industrial Property Law

Directive 98/44/EC

- **Art. 6 - Inventions shall be considered unpatentable where their commercial exploitation would be contrary to ordre public or morality**
- **similar to the art. 53 EPC**
- **The human body and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.**

Act on Industrial Property Law

Bolar provision

- ahead of the EU, in the interests of the generic pharmaceutical companies
- WTO panel
- amendments to the pharmaceutical Directive 2001/83/EC

Act on Industrial Property Law

Bolar provision

- **Art. 69**

The following shall not be considered an infringement of a patent:

the exploitation of an invention to a necessary extent, for the purpose of performing the acts as required under the provisions of law for obtaining registration or authorisation, being, due to intended use thereof, requisite for certain products to be allowed for putting them on the market, in particular those being pharmaceutical products

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Trade Marks

-Paris Convention

-TRIPS

-Directive 89/104/EEC

- exhaustion of trade mark rights



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Trade Marks

- **well-known and renown marks achieve stronger protection**
- **against similar marks for any kind of goods, if it could be detrimental to the character or the reputation of renown or well-known marks**

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Designs

- **Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs**
- **Has been implemented to the Polish law with an effect from 1.1.2003**
- **1 July 2002 - Commission asks ten Member States to implement Directive**

Act on Industrial Property Law

Designs

- **Little discussion, because of rather small number of registrations**
- **uncertainty about the future - Regulation 6/2002 and 3 years protection without registration, Community design**

Act on Industrial Property Law

SPC

- **supplementary protection right in Poland**
- **New mechanism in Polish law with an affect from the accession**
- **Amendments to the Act on IP Law provide the procedural provisions for granting SPC, the substance will be directly applicable from the Regulation**
- **Transitional provisions**

Act on Industrial Property Law

SPC

Transitional provisions

- **any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000 may be granted a certificate, provided that the application for a certificate is lodged within six months starting no later than the date of accession**
- **question of the place of the first market authorisation**

Accession Treaty

Automatic extension

As from the date of accession a Community trade mark registered or applied for pursuant to the Regulation 40/94 before the date of accession shall be extended to the territory of those Member States in order to have equal effect throughout the Community

Accession Treaty

What about bad faith registrations?

- **The use of a Community trade mark as referred to in paragraph 1 may be prohibited pursuant to Articles 106 and 107, if the earlier trade mark or other earlier right was registered, applied for or acquired in good faith.**

Missing in the Polish Act

- **art. 66 covers prohibition of direct use of the invention**
- **The patent holder is not equipped with a right to prevent stocking of the product.**
- **Particularly important provision in relation with the Bolar provision**
- **missing exemption for acts done privately and for non-commercial purposes**

Missing in the Act

- **art. 89 - obligation to prove an legitimate interest in order to challenge patent**
- **utility models will have to be harmonised with the Directive provisions when it comes into force**
- **art. 120 Trade mark definition:**
 - **sign capable of distinguishing the goods of the same kind of one undertaking from those of another undertakings**

Particularities

- **Low level of IP consciousness among business: relatively small number of patents and trade marks, even worse with designs, geographical indications have not taken off yet, 6 topographies all together, surprisingly few Community trade marks, the same with European patents**
- **Workload of the Polish Patent Office**
- **Lack of cases on domain names**

New challenges for the Polish IP law

Regulations on:

- **Community Trade mark**
- **Community Designs**
- **SPC**

possibly Directives on:

- **utility models**
- **patentability of software,**
- **enforcement of IP**
- ...

Thank you

- pakiet ustaw farmaceutycznych – wejście w życie 1.10.2002
- rewolucja w zakresie dopuszczanie produktów leczniczych do obrotu
- istotne zmiany w reklamie leków
- centralna procedura dopuszczenia
- unijne przepisy

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