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EVOLUTION OF PATENT LEGISLATION IN THE EUROPE

Abstract

An invention may be patented through a national route, a European route, or an international route using the international patent system. If an applicant seeks protection in only one or two states, he usually takes the national route and files with the national patent office of the state in which he seeks patent protection. If the applicant seeks protection in three or more European countries, he usually chooses a European patent. In this context, it is important to look profoundly the historical evolution of national and regional patent systems within the Europe.

Key words: *patent law, legislation, invention, national system, harmonizing, convention, protection*

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Avropa məkanında patent qanunvericiliyinin təkamülü

Xülasə

İxtira milli, Avropa və ya beynəlxalq patent sistemi vasitəsilə patentləşdirilə bilər. Əgər ərizəçi yalnız bir və ya iki dövlətdə patent hüququ üçün müraciət edərsə, milli yolu seçir və patent mühafizəsini istədiyi dövlətin milli patent idarəsinə ərizə ilə müraciət edir. Əgər ərizəçi üç və ya daha çox Avropa ölkəsində mühafizə istəyirsə, həmin şəxs adətən Avropa patent sisteminə müraciət edir. Bu kontekstdə Avropa məkanında milli və regional patent sistemlərinin tarixi təkamülünü ətraflı şəkildə araşdırmaq xüsusi əhəmiyyət kəsb edir.

Açar sözlər: *patent hüququ, qanunvericilik, ixtira, milli sistem, harmonizasiya, konvensiya, müdafiə*

Introduction

An invention may be patented through a national route, a European route, or an international route using the international patent system. If an applicant seeks protection in only one or two states, he usually takes the national route and files with the national patent office of the state in which he seeks patent protection. If the applicant seeks protection in three or more European countries, he usually chooses a European patent. In this context, it is important to look profoundly the historical evolution of national and regional patent systems within the Europe.

Analysis

The history of patent rights has deep roots in Europe. The system of granting exclusive privileges to inventors is not so long ago. For example, Philarchus, the great historian of the 3rd century B.C., writing about Sybaris, a Greek colony famous for its luxurious life and self-indulgence, says that around 500 B.C. there was a law that "if any confectioner or cook invented any unusual and exclusive dish, no other artist was allowed to do so for a year; but only he who invented it was entitled to all the profits received from its manufacture during that time, that others may be induced to work, to excel in such pursuits." Thus, early traces of state-sponsored, albeit nascent, patent law are indeed visible in the deep sands of time. In 600 BC, several culinary dishes were patented in the Greek colony of Sybaris in southern Italy. It must have been delicious food, of course. In the post-Christian period, the first known patent for an invention was issued in 1421 by the Italian city-states of Florence and Venice. The Venice Patent Law included in its preamble the purpose of granting patents as "increasing the honor of inventors". He also called "patents" "a means to a social end." The emphasis on promoting the public interest in Venetian law gave the impression that the object of the Venetian patent grants had all the ingredients of a modern patent system. However, unlike the modern patent system, the Venice Patent Law did not claim to create an exclusive

monopoly right to help increase the profits of inventors. Its limited purpose was to "honor" inventors in the field of artifacts and crafts (Fisher, 2007: 25-27). During the era of the pre-industrial revolution in Europe, patent law served a useful purpose, promoting its cultural progress. It takes quite a while before we hear about patents again. In 1474, a farewell law was passed in Venice, which promised a 10-year license "To all inventors of new arts and machines."

The origin of the patent system, insofar as it is based on a reorganization of the economic aspect of patent grants, can be traced back to the monopoly grants given in England and in some European countries during the Middle Ages in the exercise of the prerogative powers of the Crown. While these powers were commonly used to grant monopoly rights to artisans and artisans to encourage them to introduce new industries, but very often they were also used to provide subsidies to royal favourites. In addition, this system was twisted to replenish the royal treasury by granting repressive monopolies on the production or sale of necessities, often in exchange for large payments to the crown. This led to strong condemnation of the Crown's system for granting such monopoly privileges, and led to the passage of laws limiting the powers of the Crown and establishing specific conditions under which the Crown could grant patents for inventions (Guellec, van Pottelsberghe, 2007: 16).

Beginning in 1589, "patents for inventions" were issued and registered in the registers of the States General of the United Provinces of the Netherlands. There were also "Patents for Trademarks and Trade-marks of Manufacturers". In order to patent an invention, the invention had to be new and practical. The invention became public knowledge a year later. This concept still applies to "invention patents". Forgery or abuse of the right is a punishable offence. In this case, the patent may be invalidated. The duration of a patent was arbitrary: it could be 2 years, 15 years, and sometimes even 50 years. Expired patents could be extended.

The Statute of Monopolies, passed in England in 1624 AD, is the earliest known legislation for this purpose. This statute provided, inter alia, that:

- patents can only be granted in respect of new productions that were not used in the field at the time of issue;
- patents can only be granted to the true and first inventors of such industries;
- the duration of patent privileges is limited to 14 years;
- and the patent privileges so granted must not be contrary to law, prejudicial to the State by raising the price of goods within the country, or prejudicial to trade or generally inconvenient.

The origin of the modern patent institution is usually traced back to the aforementioned provisions of the Monopoly Law. According to one view, this law was called the Magna Carta of Inventors' Rights, not because it initiated patent protection for inventors, but because it was the first general law of the modern state, which established the principle that only the "first and true" inventor of a new production must be granted a monopoly patent. Others felt that it was not a patent law in the sense that it did not represent a new regulatory system. This, however, abolished the royal prerogative to grant monopoly privileges, except only for privileges granted for a period of fourteen years for the sole processing or manufacture of any new mode of production. The system of granting monopoly privileges spread From England to the European continent and to the United States.

The US, which was the second country in the world to enact a patent law, passed its first legislation on the subject in 1790, nearly 166 years after the Monopoly Act (Choudhary, 2006: 9-12) went into effect. The most important difference in US law was that while English law recognized the prerogative of the crown to grant monopolies and grant patents for reasons of expediency, American law was based on the recognition of the inventor's inalienable right to the fruits of his genius and labor. Recognizing such a right, its law provides for a grace period of one year in favor of the inventor, so that even after his invention became known, but he applied for a patent during the grace period, his rights were not infringed. There was no corresponding grace period in English law.

Among continental European countries, France was the first to adopt a law on patents, where such a law was passed in 1791. French law was closely related to American law. In 1817, the first Patents Act came into force in the Netherlands. This Patent Act stated that patents could be valid for 5, 10 or 15 years. Inventors were required to submit full descriptions of the invention. Fees could rise to 750 guilders. After paying the fee, the patent owner received a certified copy of the patent. In 1869 the Act was repealed and

the Netherlands became a freer nation. The end of the 19th century was marked by rapid industrialization and international cooperation.

The influence of French and Dutch patent law in Europe was severely rebuffed when the first German law came into force in 1877, covering the entire territory of the German Empire. This law had a decisive influence on the further development of patent law throughout the world and thus created a new system of procedures commonly referred to as the German system. The main provisions of this law were as follows:

1. Food, medicine and chemicals (Pogge, Rimmer, Rubenstein, 2010: 102-103) have been excluded from patent protection; their manufacturing methods were patentable.
2. The novelty was destroyed as a result of prior publication in the country or abroad, or as a result of prior use at home.
3. Applications were open for objection for eight weeks prior to award.
4. The term of the patent was 15 years from the day following the date of its filing.
5. A patent may be revoked for lack of novelty or general patentability or for fraud and revoked after three years if the patentee has not used the invention or refused to grant licenses on reasonable terms.
6. Violation can be prosecuted both criminally (fine or imprisonment) and civilly, in the course of which a claim for damages can be brought.

This patent law gave a huge impetus to the development of German industry. The limitation of patentability to chemical processes (excluding chemical products) opened the field for research into new methods for the production of known chemicals. This proved to be a boon for the German chemical industry.

Another European country that had its own national patent system was Russia. Privileges that were granted in Russia, as in other European countries, as a reward for public service or as a sign of personal favor, can be traced back to 1752, but the first Russian patent law dates from 1896. The law as it existed before the First World War resembled German law.

Thus, it can be seen that from the end of the 18th century to the end of the 19th century, the tentacles of modern patent law had fully extended to the US as well as to the European continent. This development came about both out of imitation and out of a clear need to quickly adapt to the fruits of the then-nascent Industrial Revolution.

The economic growth and prosperity resulting from the commercialization of new inventions provided the necessary justification for the adoption of the patent system.

At this stage, in order to overcome the complexities of protecting technological innovations and the resulting different definitions of patents along with their regulation under different legal systems, efforts were made to develop uniform criteria internationally at the end of the 19th century. These efforts were essentially a Eurocentric approach, inspired by the aftermath of the Industrial Revolution. Technology, as a tool, appeared during this period and changed the whole way of production. This process of evolution continues today. The technology also created certain specific problems. It can be copied fairly easily by a skilled person working in the same field, or it can be reverse engineered (Dutfield, Suthersanen, 2008: 117). This may nullify the efforts of the original inventor. So, at that time, many of the European countries that played a leading role in the industrial revolution advocated international patent protection so that these technologies could be safely transferred to other countries or "work" without copying and redesigning them locally. This is how the Paris Convention for the Protection of Industrial Property of 1886 developed, and it was the first international patent convention to provide uniform rules.

So, in 1883 representatives from more than 140 countries met in Paris. In order to achieve uniformity between them, they sought to compare national industrial property acts such as patents, trademarks, and designs. In the famous Paris Convention of that year, they agreed that all countries should recognize the priority right.

The Netherlands was one of the countries participating in the Paris Union and the Berne Convention (1886). However, the new patent law did not come into force until 1910. After the first patents were issued in 1912, the number of patent applications gradually increased. Between 14,000 and 18,000 applications were received in the 1960s and 1970s. In 1973, 15 countries signed the European Patent Convention. Two years later, an inventor or manufacturer could file a single application and receive a patent for 17 countries (14).

Nowadays, in Europe, the judicial protection of patent rights should be analyzed at the national and European levels. International jurisdiction, and to a certain extent territorial jurisdiction in cross-border cases, is defined by Brussels Regulation I (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 11 December 2012 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters (Ilardi, 2015: 37) and Regulation No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation No 1215/2012 with regard to the rules to be applied in relation to the Unified Patent Court and the Benelux Court) and the Lugano Convention (Convention on jurisdiction, recognition and enforcement of judgments in civil and commercial matters of October 30, 2007). The Brussels Regulation I defines jurisdiction within the EU (excluding Denmark), while the Lugano Convention concerns jurisdiction between EU member states and the territories of Denmark, Iceland, Norway and Switzerland.

One of the most important principles contained in these documents is the underlying general jurisdiction of the defendant's domicile (Article 4 (1) of the Brussels Rule I, Article 2 (1) of the Lugano Convention): representation in the sovereign territory of an EU member. A state or state party to the Lugano Convention must be sued, regardless of their citizenship, in the courts of that state. In practice, this means that the alleged infringer of a European patent must be prosecuted in the courts of his place of residence (Pila, 2020: 555). When using this jurisdiction, the patentee may seek a Europe-wide injunction or damages for infringement of all parts of the European patent, i.e. he may also bring an action in respect of those parts which do not take effect at the seat of the court. Under these conditions, the court will also determine whether the foreign parts of the European patent have been infringed.

Alternatively, the patentee may file an infringement claim with the competent court of the place of infringement (Article 7(2) of Brussels Regulation I, Article 5(3) of Lugano Convention). In other words, it is the national courts of the place where the infringement or damage occurs that have jurisdiction to hear patent infringement claims. If the patentee files a claim in the place of the alleged infringement, he may seek injunctive relief or damages for the patent infringement effective in the territory of the court.

With regard to an action for revocation of a European patent, the Brussels Regulation I and the Lugano Convention determine that the courts of the state have exclusive jurisdiction over the enforcement of the relevant part of the European patent (Article 24 (4) of the Brussels Regulation I and Article 22 (4) of the Lugano Convention). Thus, the court can never decide on the validity of the foreign part of a European patent if the question of validity arises as a result of a revocation or a counterclaim for revocation. Thus, a European patent infringement court will generally stay proceedings in respect of a foreign patent or a foreign part of a European patent if the alleged infringer files a counterclaim for revocation in respect of that part of the patent.

Statistics show that between 1,500 and 2,000 European patents are disputed annually in Europe (Kur, Dreier, Luginbuehl, 2019: 136). The civil courts in Germany, France and the Netherlands are highly specialized in patent litigation and therefore account for a large proportion of all patent infringement and revocation cases. It should be noted that in Italy, the Scandinavian countries and Switzerland there are also courts with experience in handling patent disputes. However, most courts and other bodies with jurisdiction over patent infringement and revocation claims in Europe rarely hear such disputes.

As noted above, the rights of a European patent are the same as those of a national patent for which a European patent has been granted, and any infringement of a European patent is dealt with under national law. This makes it clear that with respect to: the right to prevent any third party from doing the acts against which the patent provides protection; limitations and exceptions to patent law, as well as the legal consequences of infringement, the applicable law and procedural law will be determined by national law.

Based on the results of stakeholder consultations in 2006, the European Commission has launched a new effort to implement European patent litigation. However, France in particular blocked this approach as it wanted to create a common patent court that would be stronger through integration into the EU legal architecture. Therefore, in 2008, the Slovenian Presidency of the EU put on the agenda a draft "agreement on a European Union Patent Court", including a draft Statute of the Court (5) with more detailed rules regarding the powers of the European Union in relation to the new patent court. In subsequent years, several proposals for a patent litigation agreement were discussed between the EU member states and the European Commission. In March 2011, the CJEU issued a negative opinion on the compatibility of the

proposed agreement with Union law. The European Commission has analyzed this opinion and presented a non-paper with possible solutions to move forward (4). In particular, it proposed an attempt to further clarify the provisions of the draft agreement regarding the institutional position of the patent court in the EU legal architecture and to better guarantee that the patent court would respect Union law. He also proposed to rule out the possibility of non-EU states participating in the court agreement. These proposals were approved by the Council of the EU and led to a new revised version of the draft agreement, which eventually led to the Unified Patent Court Agreement (UPC Agreement) (1), which was signed by 24 EU member states on February 19, 2013, with the exception of Croatia, Poland and Spain. The UPC Agreement will enter into force once it has been ratified by 13 contracting states, including France and Germany (15). Due to the lack of ratification by Germany, the UPC Agreement has not yet entered into force. Delays in the ratification procedures in Germany have also made it impossible so far to start the period of provisional application of the UPC Agreement, which is a necessary condition for the completion of the court-related implementation work. During this period, the responsible committees will adopt the by-laws of the UPC Agreement and the first budget of the UPC. In addition, interviews with candidate judges and appointments of judges will take place during the pre-application period. The provisional application period begins as soon as 13 states complete the necessary steps to accede to the Protocol to the Agreement on a Unified Patent Court on provisional application (13). However, to enter into force, the protocol must be ratified by Germany, which is currently not possible due to a pending constitutional complaint in the German Federal Constitutional Court. In addition, it is currently unclear whether the UK will continue to participate in the UPC Agreement after it leaves the EU (Alberti, 2017: 9).

Starting in autumn 2022, a single patent is the new choice after your European patent is granted. The new single patent is a single patent for 17 European Member States. A new court will be set up in 17 European Member States to deal with patent disputes. The UPC will rule on infringement and revocation of classical European patents as well as unitary patents.

Conclusion

Summarizing analysis on the Evolution of patent legislation in the Europe, some results can be achieved. Firstly, the first patent statute was issued in Venice in 1474. Patents diffused over Europe after the Renaissance. They were initially conceived as ‘royal privileges’, managed under the discretion of the ruler who would grant such monopolies to inventions or inventors serving his interests or those of the State. A patented invention had to be locally new and effectively put in use. The nineteenth century experienced the birth of national patent offices, examining patents prior to grant, and implementing well specified criteria.

Secondly, it should be noted that the enlargement of the legal and administrative scope of the European Patent Convention confirms the ‘vitality’ of the Convention adopted in Munich in 1973 and its harmonizing function of the European patent legislations.

Finally, the involvement of the European Patent Organization in the functioning of the unitary patent system is further substantiated by the creation of the Select Committee of the Administrative Council of the European Patent Organization, which has the task of ensuring the governance and supervision of activities related to the tasks of the Organization.

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