The Approach of Albanian Industrial Law as a Task of Joining Europian Union.

Author Details: MSC. SILVANA CALA[1]

Abstract:
Under conditions where the aim of globalization of services and integration into international structures, protection of property rights and trade right is playing an important role in national and international legislation. Intellectual Property itself includes two categories of rights: The Copyright and Industrial Property. Through this paper, we are going to present the Industrial Property.
Initially, the focus will be the development of Industrial Property right to see the origin and grounds of defense of this right back to the earliest times. To proceed further with provisions of Albanian legislation to accomplish the protection of industrial property rights, in order to bring the standards set by European Union countries. Although Albania has a complete legal protection of Industrial Property right, the problem consists in the practical implementation of this legal framework. Issues of applicability of this legal framework in practice are going to be the core of this paper, pointing the shortcomings and the legal vacuums. The international agreements aimed at establishing international standards for the defense of industrial property will also be the focus of this working paper especially those who have been ratified by our country. Also through this paper, we are going to do a description of the objects of Industrial Property, of course mentioning the efficiency of Trademarks and Patents in the national and international economy.
Keywords*: Industrial Property, consumer, legal framework, WIPO, EPO, DGPT, Trademarks.*

The Innovations of the Law for Industrial Property, Patents and Trade Marks

Within the signing of the TRIPS Agreement (Agreement on Trade Aspects of Intellectual Property Rights), Albania needs to change the legal framework related to industrial property, adapting to European standards. In this regard, some of the innovations that are evidenced by the adoption of the law no.55 / 2014 are now protected and easier to be under control of GDPT.

The new law provides a new legal power of the European patent, related to the fact of ratification of the European Patent Convention, in May 2010. Thus, a European patent will have priority over the national one if both are required for the same invention, regardless of which of them has been deposited before. Even if there is a clash between the provisions of this law and the European Patent Convention, what will prevail will be the Convention.

This hierarchy is related to the position that our Constitution (Article 116 of the Constitution) has given to international agreements, raising them to the level of laws.

Due to the practical importance of patents, the new law will bring a new concept of public morality, which will be more resilient than the one stipulated in the old law. According to this law, an invention will contradict public morality only in the case of a violation of a normative norm, so the range of assessment is wider, setting barriers only to normative norms. This change is logical because the normative norms always conform to morality, which means that their violation constitutes a violation of public morality.

The range of rights enjoyed by holders of a patent is widened, which means that the patent does not enjoy rights only in the patented material but will extend this framework to the materials derived from this material through reproduction, multiplication in the same or different form of same and has the same characteristics. This is seen as indispensable to the importance of patents in promoting technical progress.

With the new law, the court also has the right to unvoluntary licenses. The latter enjoys this right when the invention will bring about a technical development of economic importance than the first invention and when it could not sign a licensing contract with the first patent. So we see that we are ahead of the cumulative conditions, which means that a license will only be granted if both conditions are met because it is important to guarantee the protection of patent rights. While under the old law the granting of unvoluntary licenses was related to the resolution of public health problems, thus limiting the scope of this provision.

[1] European University of Tirana, Faculty of Law, Profile – Private Law, E-mail: silvana.cala@uet.edu.al

The law has brought about brand and patents registration, giving great priority to the detailed examination of the elements needed to register a patent or a trademark. It is also charged with the competent bodies to analyze in detail each of the elements examined, in order to prevent cases related to illegal registrations. Elements that should be considered at the time of registration should be no longer in accordance with a sub-legal act, but in accordance with a higher act that is exactly this law and as the depositing date will be called the date that DGPT accepts the application with all the indispensable elements. Due to the legal consequences that bring about the absolute causes of refusal to register a trademark, the new law foresees a specific article regarding how these causes will be examined, leaving no room for interpretation of the previous article.

Another novelty of this law is related to authorized representatives of brands and patents, whose service is highly necessary for applicants applying for a patent due to the complexity and technical details associated with patent applications and claims. In this context, the new entity to be added to the list of authorized representatives of patents and brands will be former employees of DGPT, who have not less than 3 years experience with it. It is therefore clear from this provision that the professionalism of authorized representatives is always higher, by selecting people who have been employees of GDPT, which is the institution responsible for guaranteeing and protecting the rights of people who possess a patent or brand .

All the above-mentioned changes were considered necessary in the context of approximation of our legislation with that of the EU. However, even though we are dealing with a broad legal framework, it is important to undertake measures for a correct implementation of this legal framework in practice. Thus, courts should be well-informed about their competence to resolve issues related to violation of patent and trademark rights and stricter, in analyzing their characterization elements.

In the context of these changes, I want to make a difference between the two types of patents that are envisioned in it. Then, it is about European patents and extended European patents. European patents are those applications made in accordance with the European Patent Convention and the Co-operation Treaties, where the European Patent Office is the selected office, while European patents are extended by those granted by the EPO, whereby the applicant requests its extension even in Albania. From the content of the articles that envisage these two types of patents, we conclude that a European patent is only recognized by member states while making it usable in our country should be expressly requested in the application. In this way, extended European patents extend the effects of the European patent even outside member states, giving it a wider protection. This kind of protection serves the patent purpose, which is the widest use of different inventions, to improve the social, economic conditions in a country.

Trademarks are a valuable form of intellectual property as they associate the quality and the taste of consumers with a product or service. Often the brands become synonymous with the goods. Through advertising campaigns, the use of trademarks by their owners serves as a commercial weapon, which is easily recognizable, confirming to them the protection that is reserved to the existence of a trademark. The use of the brand creates a link between the owner and the goods or services, turning to the main principle of the brand. Its absence would make this kind of inexistent connection. The fact that a symbol is characterized as a brand must have the distinctiveness of the feature, which affects the limitation of signs and symbols that can be used as a trademark.

Like other industrial property objects, the trademark is registered in the same way starting with the filing of the trademark application at DGPT, which then does a formal review. Unlike others, the trademark is also subject to distinctive scrutiny, which consists of extracting the distinctive character of the sign that will be registered as a trademark. Regarding brand registration, the new law 55/2014 has foreseen a change that consists in the fact that the elements that should contain a trademark application will not be referred to in a sub-legal act but in a legal action such as the law in question. Thus, the filing date of a trademark application will serve the date when DGPT takes over the application with all the necessary elements. Once acquainted with the application, DGPT makes a detailed review of it, passing through several phases

Depending on the phases in which the person is in possession of the trademark, the rights he enjoys being different. Thus at the time of filing a trademark application, when this application is the same as another one made later, the person is entitled to claim priority. The right and the priority is provided in Article 147 of

Law 9947, where this right is also granted when the goods or services are exhibited at an international exhibition which must be accompanied by a certificate issued by the state authority member of the Paris Convention, which determines the type of exhibition, fair, country etc. While after the trademark registration with DGPT, its owner enjoys the exclusive right to use the mark as well as to exclude others from using it without his authorization. A brand is considered to be affected when an identical or similar sign is used in the market for services or goods for which this brand is registered, whether or not this mark is registered as a trademark. One of the main criteria that need to fill up a sign to affect a trademark is to cause confusion to the public. We can say that in the legislation of all states this theory serves as the basis for legal protection of brands. According to the jurisprudence of the European Court, the possibility of confusion is the risk that the public might believe that the goods or services in question come from the same undertaking. Precisely the study of this violation is of great importance because it protects the public from misleading information on the market, defends the brand owner's reputation, forbids the prosperity without cause of the offender. Despite the theoretical aspects public confusion in practice is easily manipulable.

CONCLUSIONS AND RECOMMENDATIONS

The implementation of patent and trademark protection law is one of the main pillars of fair competition development, affecting in every aspect the social and economic life of a country. Our country is well aware that the effective implementation of these rights in practice is essential for further social, economic progress, increasing the level of our country's competitiveness in the international market and guaranteeing a national fair market. Also, this protection guarantees the creation of optimal conditions for attracting foreign investment, which serves as a cornerstone in the process of integration of our country into the European Union. In this context, after the analysis made in this paper, we think that further policies should aim to consolidate the integrated legal framework in order to enable the best possible functioning of the institutions responsible for the protection of patents rights. Referring to the practical, theoretical analysis of our country regarding industrial property, we think we have a full legal framework that serves as a guarantee of the protection of these rights in practice. But the vague jurisprudence of the Albanian courts regarding these rights is not related to legal vacuum, but it is rather related to the lack of information or interest of their authors. This means that the people who carry these rights are often unaware that there are laws in our country that guarantee respect for their work in practice by not allowing any other person to overwhelm them. Although the legal changes made in 2014 brought a positive change to the patent and trademark protection system, our country should also consider a number of strategic priorities that come as a result of the obligations stemming from the SAA signing (Stabilization and Association Agreement, TRIPS Agreement and EU Acquis), Council of Europe Progress Report and European Partnership Document. These priorities can be formulated in the form of the following recommendations:

- Reducing the level of counterfeiting and informality in the field of industrial property rights through: improving the mechanisms that ensure the protection of industrial property rights in the framework of improving the legal framework; Increasing inspections to reduce violations and to improve enforcement of legislation in the field of industrial property rights and finally improving the information management system for industrial property rights.

- Protection of industrial property through strengthening and consolidation of cooperation between relevant institutions for the protection of industrial property rights both at central and regional level.

From the combined reading of each of these recommendations, we can say that the cooperation between the responsible institutions in guaranteeing these rights is the cornerstone of their defense system. The detailed analysis of each of the institutions highlights the competencies that they should consider when registering these rights and control their practice within the legal framework. An important role in protecting the rights of patents and trademarks would also play the public awareness. The key point of citizen awareness raising is the use of the media because it alone can have a considerable public influence. In this context, the media can accomplish this objective through the promotion of activities of various interest groups regarding the protection of patents and trademarks and by promoting public debate about national and international perspectives for the protection of these rights. This can only be achieved by giving the public access to the consequences of their violation, seeing and understanding the impact of these consequences on their lives. So in this context, the public should be aware that buying counterfeit goods is not good for their health and

economy, consuming unsecured products. In conclusion, we can say that the issue of respecting industrial property rights in general and the rights of patents and brands, in particular, is highly dimensional because it plays a central role in the country's socio-economic development. The protection of these rights is related to fair competition, which is considered the engine of the economic development of each nation. It is also considered as an issue that goes beyond institutions, law because it involves society and consumers. Although the system of patents and trademarks as a backlash against advanced technology has developed rapidly, we can say that its future cannot be predicted.

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