

GROWING IMPORTANCE OF LEGAL PATENT PROTECTION

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***Abstract:** Innovation has become one of the most important vectors of sustainable enterprise development and economic prosperity of the whole society. Companies must constantly improve or renew their products and services, if they want to keep or capture market share and remain competitive. Legal protection of patents leads to economic, cultural and social progress. Serbia has a very weak position in terms of patenting, partly due to low investments in research and development, and partly because of the enormous costs for international protection.*

***Keywords:** intellectual property, innovation, patents, legal protection, management*

1. INTRODUCTION

Intellectual property protection is an important factor in economic growth as it encourages innovation, cultural diversity and technical development as part of a broader policy framework. Intellectual property is unique and is the result of personal creativity and innovation. It can be any activity from any area of life: an invention in any field of technology, the name under which the sale of products or services are offered, song, painting, film, etc. In the developed world, with the increasing number of scientists and technical intelligence, the number of patents increases as well. The greater the number of research personnel is, it is natural to expect a greater number and quality of patents. However, the number of patents in Serbia declines from year to year.

Disputes in the business world are often based on the lawsuit for copying technology, or because of claims that a company uses another company's patents. One can say that all in some way, abusing patents of other companies. Today, companies are forced to pay large sums of money for the protection of technologies that were developed in order to protect its patent so they would not have later to claim its rights in court. Legal protection against infringement of patent rights (violation) is not given automatically but only when the patent owner wants that. Therefore, patent holders should regularly monitor the business activities of others if they want to implement their patent rights. It is obvious that, when a problem exists, it should be resolved, because the resolution of multiple issues is important for the theory and practice of management.¹ The ability of management to solve certain problems, in this case, the problems related to patents, largely depends on the effective functioning of the whole organization.

2. INNOVATION AND THEIR LEGAL PROTECTION

There are different understandings of innovation. Peter Drucker under the innovations include,

¹ Radosavljević Ž., Tomić R. 2007., *Menadžment u modernom biznisu*, Novi Sad, Privredna Akademija, 138

"A specific function of entrepreneurship ... by which the contractor create new sources of wealth creation or process existing resources with high potential for wealth creation."² Peter J. Dining and Robert P. Dunham define innovation as an art, getting people to adopt change.³

Innovation consists of the first commercial application of a particular product, so the post-adaptation (the way organizations develop new key advantages in response to environmental changes) by other companies is secondary and less important. The effectiveness of technology is the primary goal of following innovations in the organization. The complexity of the technology - organization relationship causes the classic model of innovation: invention - innovation. Invention means the original idea and a prototype implementation of innovation and commercial sales of the new technology on the market.⁴ Structural differentiation invention of innovation leads to certain conclusions regarding the organization's policies. In case of, for example, discovery of penicillin, a scientific breakthrough led to the discovery, market forces were enough to translate the invention into innovation, and eventually the government funded basic research.

Companies often invest large sums in research and development especially in advertising and marketing their products or services. These investments will not occur if companies are not in a position to recoup their costs. Therefore, adequate and effective protection of intellectual property gives innovative companies a powerful incentive to invest and contribute to economic progress.

Protection of intellectual property, through a system of national and international rules (so-called intellectual property rights), is necessary for the acquisition and financing of innovation and creativity, which in turn lead to economic, cultural and social progress.⁵ Intellectual property protection also encourages the production and dissemination of knowledge and wide range of high quality products and services. Intellectual property rights add value for consumers and can provide a guarantee of origin and quality. Society provides the right to intellectual property to encourage inventions and creative works of which companies and the individual has benefits, and to help creators make a living from their work. These rights, which may be exercised by individuals or organizations (universities or scientific research), are recognized by the government and the courts. The system is designed to maintain a balance to ensure the needs of both creators and users. Depending on the nature of intangible assets (which include human capital, know-how, ideas, strategies, business plans, brands, design and other creative and innovative talents of the company), the law offers different legal instruments to protect them, and one of them is that the innovative products and procedures can be protected by patents.⁶

² Drucker P. 1996., *Inovacije i preduzetništvo*, Grmeč, Beograd, str. 52

³ Denning J. Peter, Dunham P. Robert 2010., *The Innovator's Way: Essential Practices for Successful Innovation*, USA, Cambridge, The MIT Press

⁴ Radosavljević Života 2008., *Menadžment znanja i (li) znanje u menadžmentu*, Beograd, FORKUP, 95-96.

⁵ Besarović Vesna 2011., *Intelektualna svojina, Industrijska svojina i autorsko pravo*, Beograd, Pravni fakultet Univerziteta u Beogradu, 30 - 34

⁶ World Intellectual Property Organization, International Trade Centre 2010., *Tajne intelektualne svojine : vodič za male i srednje izvoznike*, Beograd, Zavod za intelektualnu svojinu, 5

3. COMMERCIAL IMPORTANCE OF PATENTS

The patent is exclusively right for patent protection.⁷ A patent provides its owner the exclusively right to prevent other to commercially use invention in a limited period of time in exchange for disclosure of the invention. Thus, the patent owners (owner of the patent) can prevent others from making, using, offering for sale, selling or importing the patented invention without a license and may seek court protection from anyone who use patented invention without appropriate protection.

The financial reward that arise from using the patent and invention disclosure for public dissemination and usage can encourage innovation and raise the technological level of the national economy, which brings obvious benefits to the trade. While it is true that not all companies develop patentable inventions, it is also wrong to believe that patents apply only to the complex physical and chemical processes and products, or that they are only useful to large corporations. Patents can be obtained for any area of technology - from paper clips to computer paper. Already there are thousands of patents for simple, everyday products such as pens, glass bottles, textile fabrics, or bicycles.

In December 2010, four companies, including "Microsoft" and "Apple", paid \$ 450 million for about 880 patents and applications owned by "Novell", a leading software company.⁸ In July, the two companies and four other companies, including "Research in Motion," the producer of "Black Berry's," spent \$ 4.5 billion on a 6000 patents owned by the company "Nortel", a failed Canadian manufacturer of telecommunications equipment. Before the last deal, "Google" has acquired 1,000 patents from the company "IBM", whit which it has a dispute. "Apple" claims "Samsung" and "Motorola" are copying their technology in its "Android" phones. "Oracle" is in the proceedings with "Google," for about \$6 billion, arguing that "Android" is using their patents. "Microsoft" is also in litigation with the "Android." "Nokia" recently completed trial with the "Apple." Often, companies that are majority owners of patents share prices on stock exchanges rising (E.g. "Google").

Today, innovations in IT mainly rely on a small number of technology improvements and technological advances, which means it does not specify what inventions patent law covers. It is an open secret that, in some way, all abuse patents of other companies. This creates an incentive for companies to build their patent portfolios in order to strengthen its position in the negotiations, which led to this whole issue is compared to the arms race. Such cases are, with a minimum fee are legally regulate through "cross-licensed" agreements. Payment of fees is considered a better solution than the destructive exchange of endless lawsuits.

Those who establish and "pack" the standard to be used around the world will be successful instead of those who "invent" the patent. Synchronization of "American rules" with those in other countries will be a step towards greater cooperation and efficiency in patent examination at the global level. Large companies support the proposal because it gives them more legal certainty that will not appear someone claiming to be the first to come to an idea. However, inventors, like Steve Perlman, WEBTV founder and other companies argue that the power of companies is in the fact that it applies for patents of inventions before they are fully developed. This, says Perlman, lead to even higher incremental improvements instead of big innovative step, and put a toll on America's competitiveness.

⁷ World Intellectual Property Organization, International Trade Centre 2010., *Tajne intelektualne svojine : vodič za*

male i srednje izvoznike, Beograd, Zavod za intelektualnu svojinu, 17

⁸ The Economist, „Intellectual property“ *The Economist*, 20. 08. 2011., USA, New York, The Economist Group

4. PATENT PROTECTION IN SERBIA

In the past rarely happened that our great innovators become rich. The example of Nikola Tesla is the best. While Tesla lived for science, world famous inventor Edison was living from science.⁹ The Edison bought Tesla's action form "General Electric" company, which was based on the invention, which has made a huge fortune. In addition, the fact is that the various "inventors" have appropriated many of Tesla's patents.

The first Serbian patent was registered in 1921, and was entitled "Brandy still."¹⁰ Among other inventions of that period there are "the procedure for destruction or suppression of pests," "device for showering", "Pocket typewriter," etc. That same year, the first trademark was registered. Since then it has been registered over 50,000 patents and more than 55,000 marks.

According to the Law on Patents of the Republic of Serbia patent is "the right granted for an invention in any field of technology that is new, involves an inventive step and is industrially applicable."¹¹ Currently, Serbia is at very weak position in terms of patenting and partly due to low investments in research and development, and partly because of the enormous costs for international protection, which range of 14,000 to 50,000 Euros or more. The structure of patent applicants in Serbia - Statistical data for the period 2007-2010:¹²

1) Patent applications:

Year		2007	2008	2009	2010
National applications ¹	Application by domestic applicants	388	386	299	290
	Applications of foreign applicants	20	16	21	23
International applications ²	PCT application in national phase	55	73	40	16
	Expanded European patent applications	5.372	5.625	4.258	3.559
TOTAL		5.835	6.100	4.618	3.888

¹ submitted directly to the Office

² filed through PCT contract and the Agreement on the cooperation and extension

2) Applications of small patents:

Year	2007	2008	2009	2010
Domestic applicants	155	136	101	97
Foreign applicants	3	1	4	4
TOTAL	158	137	105	101

3) Registered patents:

Year	2007	2008	2009	2010
Domestic applicants	71	70	103	98
Foreign applicants	207	224	300	854
TOTAL	278	294	403	952

⁹ Radosavljević Života 1996., *Savremeni menadžment*, Beograd, DP Pronalazaštvo, 224

¹⁰ www.discoverserbia.org/sr/tradicija-srbije/prvi-patenti

¹¹ *Zakon o patentima*, "Sl. list SCG", br. 32/2004 i 35/2004 - ispr. i "Sl. glasnik RS" br. 115/2006.

¹² www.zis.gov.rs/prava-intelektualne-svojine/patenti/statistika.7

4) Registered small patents:

Year	2007	2008	2009	2010
Domestic applicants	93	81	86	74
Foreign applicants	3	3	0	4
TOTAL	96	84	86	78

5) The number of requests for registration of an extended European patent in the register of patents:

Year	2007	2008	2009	2010
Requests for registration of an extended European patent in the register of patents	53	148	218	250

National Assembly of the Republic of Serbia in 26.12.2011 adopted a new **law on patents**. Compared to current law, the bill introduces a number of new things.¹³ The important change relate to the grant of the patent process. An obligation for the Intellectual Property Office that the patent applicant to submit a report on searches of national and international databases is introduced. This allows the applicant to assess the chances of obtaining a patent before paying fees. In addition, this report will depend on his decision to patent abroad, and a decision on a possible correction of the patent claims in order to maximize the chance of obtaining a patent. Search report of national and international databases, which are state of the art also will provide information to potential investors about the prospects of obtaining a patent, thus contributing to the industrial application of the invention. New law, as the old, in addition to the protection of inventions by patent, offer protection and the ability to provide certain types of small inventions patented. This protection is provided for inventions that typically have a shorter market life, and relating to product design or layout of its components. The old law was not caused entitle to sue for patent infringement proving that a small patent meets the requirements in terms of news, inventive step and industrial applicability. This practice could lead to abuse of rights, of which the most drastic ban on the production of products that were known before the filing of a small patent. In order to eliminate the perceived lack, new law provided testing of the suitability of a small patent for protection and issuing of an appropriate certificate of compliance with these conditions. Only if the holder of a small patent protect certificate stated he is entitled to civil protection or apply for a compulsory license. This solution will contribute to the lawful behavior and reducing the number of lawsuits in this area.

An important innovation is the prescription of obligations for the court that in the lawsuit for infringement of a patent application cease the proceedings until the decision of the Institute on the application, which prevents making a judgment on the violation of the right that is still not recognized (published patent application - the unexplored right). Institute for intellectual property in such case is entitled to examine a patent application in an expedited procedure. In addition, the patent will be examined urgently and on-demand of market inspection and customs when the procedure for customs inspection or for infringement of a patent application is started.

¹³ Passed Law on patents, Institute for intellectual property, available on Web site: www.zis.gov.rs/pocetna.281.html?newsId=360

As with other laws on industrial property, this law introduces the right to appeal the decision of the intellectual property relating to patents and small patents. A new legal solution will enable efficient protection of the rights. Introducing review in civil proceedings for patent protection will be solved a legal gap created by the entry into force of amendments to the Code of Civil Procedure in 2009.

5. RESUME

Creativity is the ability to create something new, whether it is about a new solution of the problem, or finding a new method, a new idea. This term refers to the originality of thinking, the richness of ideas and practical work. New inventions, products cannot be like existing inventions because their significantly different. They should be more successful and more efficient to meet the needs of both individuals and entire societies.

Intellectual property rights enable people to benefit from their innovation and creativity and to prevent others from copying or unfairly profit from the creativity and investment of inventors. Only protected intellectual property can be verified by the court. This encourages the production of a wide range of products and services and helps to maintain healthy competition. Moreover, these rights allow innovators, creators and producers to finance their work through the market. There are other models of financing, such as government funding or private patronage, but the intellectual property rights remain the basic and most common type of financing used by individuals and organizations for their work and spread. Intellectual property rights give the freedom to creativity and encourage innovators and creators to respond to the expressed needs of customers. In the largest number, patents derive from organized systems, research institutions, development and innovation centers, and the minimal number of individuals and private entities. Serbia is different in this respect, because the smallest number of patents comes from institutes as organized scientific institutions, and the greatest number comes by private individuals.

It is necessary to change patent system at the global level, particularly in information and communication technologies, because they are the fastest growing. In addition, we should not ignore the fact that today many inventors increasingly face with the theft of their patents, so it is difficult, usually in court, to prove to be the owners of a patent. In order to solve the problem, companies need to harmonize their approaches to solving this complex and important issue.

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