

## Revolution in Enforcement of Intellectual Property Rights in Poland – Introduction of Specialised IP Courts

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The new law of 13 February 2020 on the amendment of the Act of 17 November 1964 - Code of Civil Procedure and certain other acts ("**Act**") was signed by the Polish President on 19 February 2020. The Act provides for crucial changes in the enforcement of intellectual property rights in Poland, which we have briefly outlined below, the most important of which is the long-awaited introduction of specialised IP courts.

### ***Broad definition of "IP case"***

Firstly, Poland will finally have its own, broad definition of an '*intellectual property case*', which will be subject to the competence of the specialised courts. It covers not only cases concerning protection of copyrights and industrial property rights, but also, among others, matters concerning combating and preventing unfair competition and protection of personal rights in certain cases, e.g. relating to advertising or promotion of goods and services, or scientific and inventive activities. In our view, defining IP cases in such a way should be assessed positively as it corresponds to the practice of adjudicating courts which successfully find legal grounds for the above claims in various regulations including the Act on Copyright and Related Rights, the Act on Combating Unfair Competition, and the Industrial Property Law.

### ***IP courts in Poland***

More importantly, the already mentioned specialised IP courts will become a reality in Poland. Now IP cases will be judged by judges who are specialised in this particular field of law.

At this stage, it is said that there will be four first instance IP courts located in Warsaw, Gdansk, Poznan, and Lublin and two appeal courts. However, the exact destination of those courts will be a subject of further confirmation. The new courts will be competent in all IP matters (within the broad meaning discussed above), including cases concerning trademarks of the European Union and Community Designs.

It is worth noting that the IP court in Warsaw will have a special role. This is because it will have an exclusive jurisdiction in the most complicated matters concerning computer programmes, inventions and utility models, topographies of integrated circuits, plant varieties, and technical business secrets.

Allocating cases with such an advanced complexity to the exclusive competence of the court in Warsaw might be a deliberate idea of having one IP court in Poland for the most complex matters.

### ***Obligatory representations***

Interestingly, the Act also introduces mandatory representations of attorneys, attorneys-at-law or patent attorneys if the value of the dispute exceeds PLN 20,000 (approx. EUR 4,700). Therefore, IP owners can expect professional legal assistance that is familiar with this type of cases. Nonetheless, at the request of a party or *ex officio*, the court may release a party from the obligation to be represented by a professional proxy, e.g. in cases with a lower degree of complexity.

### ***New shape of evidence and information disclosure proceedings in IP cases***

The new type of proceedings also sorts out the current and brings new evidence rules which might be very practical for future IP disputes but the way it will be applied in practice will be crucial for its usefulness. These include **the request to secure evidence** by way of retrieving goods, materials or tools used for production or documents, including e.g. collecting samples, which provides the claimant with a tool to secure evidence which might be destroyed at the later stage, as well as separate **disclosure or issuance of the means of proof**, which allows a claimant to physically obtain from a defendant, e.g. bank, financial or commercial documents, which are helpful in proving the facts of the case.

Moreover, there will also be a **new shape of information disclosure mechanism**. Such mechanism so far regulated in the various acts, including the Polish Copyright Act and Industrial Property Law, will now gain one, unified procedure in the Civil Procedure Code. Nonetheless, the requested party should first demonstrate - in a credible manner – the circumstances indicating an infringement in order to be granted such a disclosure decision and is obliged to repair damage suffered by the other party, *inter alia*, if the statement of claim was finally dismissed. If the court orders that such information be provided, the infringer should provide it - under pain of criminal liability - which constitutes a crucial *novum* in civil proceedings.

### ***New, specific types of complaints***

Finally, specific types of counter-complaints will be introduced to IP-related proceedings. Firstly, in cases relating to infringement of Polish trademarks or industrial designs, the counter-complaints relating to the invalidation or revocation (expiration) of such a trademark protection right or to the invalidation of a right in registration for industrial designs will be admissible. This is a very important change, as to date e.g. claims for invalidation of trademarks registered with the Polish Patent Office (PPO) has only been possible before the PPO, and not before the civil courts. Thus, it will be for the defendant to decide in trademark infringement proceedings which way – civil or administrative – is more convenient to try to invalidate the above-mentioned IP rights.

Secondly, there will be a new regulation of a claim to determine that a certain action does not infringe a specific patent, additional right of protection, protection right or right from registration specifying the circumstances in which the plaintiff has a legal interest to file such a claim.

***Amendments are expected very soon***

The discussed changes will enter into force, in principle, already on 1 July 2020. Thus, IP owners should be aware of the upcoming changes and also provide for them in their legal and business strategies for the future enforcement of their IP rights.

***For more information on the upcoming significant changes in IP enforcement in Poland, please contact one of our local CMS experts.***



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