

PROTECTING INNOVATION AS AN INSTRUMENT OF ORGANIZATIONAL RESILIENCE

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Purpose: The purpose of this article is to answer the question of whether innovations that are an instrument for the resilience of an organization can be protected by the organization from their use by others, and if so, based on what regulations.

Design/methodology/approach: The considerations of the following article are based on the literature on the subject and the case law of common and administrative courts. These materials were subjected to critical analysis.

Findings: The analysis carried out leads to the conclusion that innovations that are products can be the subject of exclusive rights, while innovations that constitute a production process can, moreover, be the subject of a patent as an invention. Regardless of this, innovations including non-productive processes and marketing and organizational methods can be protected under the provisions of the law against unfair competition.

Practical implications: The introduction of innovations by organizations raises the need to protect them from exploitation by other organizations, especially competing entrepreneurs. The article discusses the legal regulations that can be the basis for such protection, creating a framework for their practical use.

Originality/value: The issue of qualification of innovations from the point of view of intellectual property law has already been the subject of research in the Polish literature. The article is partly polemical in character with regard to the presented results of these studies, and, moreover, complements them with regard to the regulation of combating unfair competition. The addressees of this research are, in particular, entrepreneurs who use innovations in their activities.

Keywords: innovation, organizational resilience, intellectual property, know-how, intellectual property courts.

1. Introduction

Resilience is the ability of a system or society exposed to threats to adapt to a new situation by resisting or making changes to maintain an acceptable level of functioning (United Nations, 2007). As K. Sienkiewicz-Małyjurek points out, resilience is considered a trait of individuals,

organizations and communities that allows them to cope with threats. It can be a driver of entrepreneurship in crisis situations. Entrepreneurship, in turn, as the ability to use resources in the right way and at the right place and time, builds resilience to future threats, even in the event of failure (Sienkiewicz-Małyjurek, 2020). One of the instruments that allow organizations to resist threats arising in the environment in which they operate is to undertake innovative activities. New models of implementation of innovation processes determined by changing conditions are gaining importance (Woźniak, 2024). A correlate of the innovative activities undertaken by organizations is the need to ensure their protection from the enticements of other organizations competing in a given environment. Consequently, the analysis of this issue becomes important from the point of view of an organization wishing to protect the innovations it uses. The purpose of this article is - using the method of critical analysis - to answer the question of whether, and if so, on the basis of which regulations and in what proceedings an organization can seek legal protection against such actions, and in particular, whether a particular innovation can be protected as an object of exclusive rights, or only under the regulation of combating unfair competition?

2. Qualification of innovations as the subject of exclusive rights

It is difficult to find a clear definition of innovation in the literature. Among the reasons for this are the short tradition of conducting research on the understanding and perception of this concept, as well as the consideration of this problem from many points of view. In equal measure, the lack of previous interest and the failure to attach significant importance to innovation have resulted in the failure to form a unified definition. Authors embrace the concept with both broad and narrow meanings. The broad meaning already allows a small change as an innovation, as it is enough for it to be something improved, slightly modified. On the other hand, in the narrow sense, innovation is a fundamental change that serves to revolutionize a specific area (Żero, 2018). For the purposes of further consideration, it can be assumed that an innovation can be considered a product, service or process (including business) that is new or existing and has been improved (Taylor, 2017).

On the other hand, the legal definition of innovation is found in Article 7(6) of the Act of September 11, 2019 Public Procurement Law (consolidated text, Journal of Laws of 2024, item 1320), according to which the term should be understood as the implementation of a new or significantly improved product, service or process, including, *inter alia*, production processes, construction or design, a new marketing method or a new organizational method in business activities, work organization or external relations. One should also cite the definition of innovative activity contained in Article 2(1)(3) of the Act of May 30, 2008 on Certain Forms of Support for Innovative Activity (consolidated text, Journal of Laws of 2022, item 2474),

which, in the legislator's view, is an activity consisting in the development of a new technology and launching on its basis the production of new or significantly improved goods, processes or services.

In this context, the question arises whether an innovation is a new product, process or service, regardless of whether it follows the application of a new technology? However, a positive answer to this question in light of the above definitions may lead to surprising results. In the case of certain categories of entrepreneurs (e.g., publishers of books, magazines or phonograms), the essence of the activity is the introduction of new products to the market on a permanent basis. This would mean that such entrepreneurs should be considered innovative *per se*. Such a qualification does not seem right. Rather, the assessment of such entrepreneurs in terms of their innovativeness should be made through the prism of their introduction of new product categories (e.g. e-books, audiobooks), rather than specific books, magazine issues or phonograph albums.

Before analyzing the possible qualification of innovations as one of the intangible goods, it is necessary to pay attention to the governing principle of *numerus clausus* of rights on intangible goods. This principle implies that it is not possible to create new subjective rights of an absolute nature other than by statutory means, in particular, by means of a legal act or a court ruling (Kurosz, 2021; Dybowski, 2003). Therefore, in order to protect innovation, it is necessary to qualify it as one of the subjects of exclusive rights stipulated by the legislator.

3. Qualification of innovations as the subject of exclusive rights

First of all, it should be pointed out that Article 1(1) of the Act of February 4, 1994 on Copyright and Related Rights (consolidated text, Journal of Laws 2022, item 2509, hereinafter referred to as CRRA) allows works embodied in innovative products to qualify as works. In order for this to occur, the innovative good must be produced based on a design fixed in a tangible medium (*corpus mechanicum*), in particular in the original product itself, and thus constitute an original or copy of the work. For it should be remembered that the work is not the innovative product *per se*, but the work of which it is a carrier. Among the works enumerated by way of example in Article 1(2) of PrAut, which pretend to be works, the work of industrial design (Article 1(2)(5) of CRRA) deserves special attention. The form of a product, due to its new and unique design, may therefore be qualified as a work, and the product itself may constitute an innovation in the above sense (Szewc, 2014).

On the other hand, it should be pointed out that Article 1(2¹) of CRRA explicitly excludes procedures and methods, among others, from copyright protection. It is emphasized that, on the one hand, they are a part of reality, inherent in it, although they have not been noticed so far for various reasons, and thus cannot be considered the result of creative activity,

and, on the other hand, that granting property rights to such intangible goods would mean their monopolization and the impossibility of free access to them by others (Ferenc-Szydełko, 2021). As a result, not only innovations in the form of services, but also production processes, construction or design, as well as new marketing methods or new organizational methods in business, should be excluded from the possibility of qualifying as an object of author's protection.

At this point, a distinction must be made between the innovative process or method as a potential subject of exclusive rights and its description. The innovative process/method itself, like its description, has an intangible form, with the difference that the description of a given process/method may be fixed on a tangible medium. While the innovative process/method itself *per se* cannot be the subject of copyright in light of Article 1(2¹) of CRRA, as is clear from this provision, its description can already be qualified as a work within the meaning of Article 1(1) of CRRA. The fact that a description of a process/method as a work of literary character (Article 1(2)(1) of CRRA) meets the prerequisites for qualifying it as a work should not pose any major difficulties. Only that the object of protection as a work will then not be the process/method embodied in that description, but the description itself. In other words, the copyright monopoly will cover the use in any field of exploitation (Article 50 of CRRA) of the description of the process/method, but not their own. This means that while a particular description of a process/method will be protected as a work, the use of a particular process or method will be permitted.

In principle, it is also impossible to exclude the possibility of qualifying as an object of related rights the artistic performance (Article 85 of CRRA), phonogram (Article 94(1) of CRRA), videogram (Article 94(2) of CRRA), broadcast of a program (Article 97(1) of CRRA), and press publication (Article 99⁷(1) of CRRA) contained in an innovative product. Finally, it should be pointed out that it is possible to qualify an innovative product as a database within the meaning of Article 2(1)(1) of the Act of July 27, 2001 on the Protection of Databases (consolidated text, Journal of Laws of 2021, item 386; hereinafter referred to as PDA), and consequently be covered by *sui generis* right.

Turning to the assessment of the possibility of protecting innovations under the Act of June 30, 2000 Industrial Property Law (consolidated text, Journal of Laws of 2023, item 1170; hereinafter referred to as IPL), it should be pointed out that it is possible to qualify an innovative good as an invention (art. 24 of IPL), including a biotechnological invention (Article 93¹(1) of IPL), utility model (Article 94(1) of IPL), industrial design (Article 102(1) of IPL) or integrated circuit topography (Article 196(1) of IPL). While in the case of utility models, industrial designs and integrated circuit topographies the protection of innovations refers only to innovative creations, in the case of inventions it is broader. This is because it covers not only the product, but also the method of manufacturing products (Article 27 of IPL). This means that not only innovative products, but also production processes can be protected as inventions. In the latter case, not only the innovative process itself is covered by the patent, but also the products created

using it (Article 64(1) of IPL). It should be added that the protection of innovations that are products as community designs under the provisions of Council Regulation (EC) No. 6/2002 of December 12, 2002 on Community designs (Official Journal of the EU L 2002 No. 3, p. 1) also comes into play.

On the other hand, it should be emphasized that Article 28(1)(3) of IPL, which, based on Article 100(1) of IPL, is appropriately applicable to utility models, excludes the possibility of qualifying as an invention, as well as a utility model, schemes, rules and methods for carrying out thought processes, playing games or conducting business. The lack of technical nature of such solutions is cited as justification for this exclusion (Demendecki et al., 2015; Kostański, 2010). The sphere of technology does not go beyond the domain of natural sciences, while its subject is the use of inanimate or animate matter. Thus, the sphere of technology does not include solutions whose objects are ideas of an abstract-thought nature, including organizational ideas, as they solve intellectual or organizational problems (Kondrat, 2021), and such include marketing or organizational methods in business, organizing work or external relations. The enumeration contained in Article 28(1)(3) of IPL - like the enumeration contained in Article 1(2¹) of CRRA - explicitly mentions methods of carrying out thought processes, and consequently it should be considered that marketing or organizational methods in business activities, organizing work or external relations are excluded from industrial property protection due to their non-technical but organizational nature.

On the other hand, the possibility of protecting an innovation as a trademark should be excluded, as a general rule. This is because a trademark is a sign that makes it possible to distinguish the goods of one enterprise from those of another enterprise, and in particular a word, including a name, a drawing, a letter, a number, a color, a spatial form, including the shape of the goods or packaging, as well as a sound (Article 120 of IPL), so it can be neither a good, nor a service, nor a process/method. An exception will be the possibility to protect as a trademark an innovative product due to its shape or the shape of its packaging, since, as mentioned earlier, the shape of the goods themselves or their packaging can constitute a trademark. The assessment as to the inadmissibility of protection of an innovation as a trademark also applies to the European Union trademark within the meaning of Article 4 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark (consolidated text, Official Journal of the EU L No. 154, p. 1).

As is the case with trademarks, contrary to the position expressed in the literature (Szewc, 2014), the possibility of protecting innovations as geographical indications in a broad sense should be rejected. This is because in this case, the object of protection is the designation, not the goods, services or process/method. Therefore, regardless of what we are dealing with is a geographical indication within the meaning of Article 174(1) of IPL, or a protected designation of origin or protected geographical indication within the meaning of Article 46(1) and (2), respectively, of Regulation (EU) 2024/1143 of the European Parliament and of the Council of April 11, 2024 on geographical indications for wine, spirits and agricultural products

and traditional specialties guaranteed and quality terms used optionally for agricultural products, amending Regulations (EU) No. 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No. 1151/2012 (Official Journal of the EU L of 2024, p. 1143; hereinafter Regulation (EU) No. 2024/1143), the object of protection is the use of a specific name (designation) for specific products, not products *per se*.

On the other hand, for slightly different reasons, contrary to the position expressed in the literature (Szewc, 2014), there will be no basis for protecting innovative products as traditional specialties guaranteed within the meaning of Article 53(1) and (2) of Regulation (EU) No. 2024/1143. For first, as is the case with trademarks and geographical indications, the object of protection in this case is the name, not the good, service or process/method. Secondly, a good bearing a name protected as a traditional specialty guaranteed must be "traditional". This means historically documented use of the name by producers in a given community for a period of time allowing transmission between generations. This period must be at least 30 years (Article 2(3) of Regulation (EU) No. 2024/1143). By its very nature, therefore, a good designated as a traditional specialty guaranteed is a negation of an innovative product, which should be characterized by novelty.

Finally, the qualification of an innovative agricultural product that is a plant variety as a protected variety under the provisions of the Act of June 26, 2003 on the Legal Protection of Plant Varieties (consolidated text, Journal of Laws of 2021, item 213; hereinafter LPPVA) may come into play. The condition for qualifying a variety as a protected variety is that the variety is either bred or discovered and derived by the breeder of the variety (Article 1(1) in conjunction with Article 2(1)(4) of LPPVA).

In conclusion, it should be pointed out that the current legal regulations creating subjective rights provide, in principle, the possibility to protect innovative products as objects of exclusive rights. This may include protection of works or objects of related rights incorporated in these products, as well as databases. They can also be protected as inventions, utility models, industrial designs, community designs and integrated circuit topographies (the arrangement of the individual elements of an integrated circuit contained therein), as well as plant varieties. Protection of innovations that are processes as subjects of subject rights is limited only to production processes patentable as inventions. Outside of protection as subjects of exclusive rights are therefore services, non-productive processes, and marketing or organizational methods in business, labor organization or external relations.

4. Protection of innovations outside the system of exclusive rights

When looking for protection of innovations that constitute non-productive processes and organizational methods in business activities, labor organization or external relations, the first point to be made is the possibility of qualifying them as a rationalization project. Indeed, according to Article 7(2) of IPL, any exploitable solution that is not a patentable invention, utility model, industrial design or integrated circuit topography can be considered a rationalization project. This means that non-productive processes, particularly those involving construction or design, as well as organizational methods in business, organizing labor or external relations, could qualify as a technical (in the case of construction or design processes) or non-technical (in the case of organizational methods), organizational solution to the specific problem of achieving certain strategic and operational goals of the organization in specific circumstances. However, the condition for recognizing such a process or method as a rationalization project is that the entrepreneur recognizes this type of solution as a rationalization project in the rationalization regulations adopted by the entrepreneur (Article 7(2) *in principio* in conjunction with Article 7(3) of IPL). As it follows from the above, the possibility of qualifying a given process or method as a rationalization project applies only to such organizations that have the attribute of an entrepreneur and, moreover, have adopted regulations for rationalization (Article 7(1) of IPL). It should be noted, however, that the model adopted by the legislator for the protection of rationalization projects is different from other industrial property rights, which have been formed as subjective rights of an absolute nature. Consequently, an entrepreneur whose employee has created a rationalization project in the form of a specific process or organizational method is not entitled to the protection belonging to civil subjective rights of an absolute nature. (Judgment of the Provincial Administrative Court in Wrocław of January 12, 2010, I SA/Wr 1602/09, LEX No. 559606; Skubisz, 2012; Żelechowski, 2021).

Therefore, further consideration should be given to the possibility of protecting innovation on the basis of tort liability regulated by the Act of April 16, 1993 on Combating Unfair Competition (consolidated text, Journal of Laws 2022, item 1233; hereinafter referred to as the CUCA). Pursuant to Article 3(1) of CUCA, an act of unfair competition is an act contrary to law or morality, if it threatens or infringes the interest of another entrepreneur or customer. It is assumed that an action should also be understood as an omission, i.e. a situation in which the entity committing a tort as defined in the CUCA should behave in a certain way in order not to commit an act of unfair competition (Nowińska, Szczepanowska-Kozłowska, 2022; Michalak, 2013).

The provision of paragraph 1 of Article 3 of CUCA defines the act of unfair competition in a general way, while paragraph 2 of this article lists by way of example certain acts, further typified in Articles 5-17 of CUCA, which should be interpreted in such a way that the general

definition and the provisions detailing the act of unfair competition remain in the following relations: the acts listed in the Act do not form a closed catalog, an act not listed in Articles 5-17 of CUCA, as long as it meets the prerequisites defined in Article 3(1) of CUCA (the so-called supplementary function); the requirements set forth in the definition of Article 3(1) of CUCA apply to acts listed in Articles 5-17 of CUCA, and the general clause has a corrective function with respect to specific provisions. When a given state of facts, formally, meets the prerequisites of Articles 5-17 of CUCA, but in reality the action does not exhibit any of the elements of Article 3(1) of CUCA (e.g., unlawfulness, contrary to good morals), it is not possible to recognize it as an act of unfair competition.

In the protective context of innovation under consideration, two stipulated acts of unfair competition are noteworthy, i.e. infringement of a business secret by disclosing, using or acquiring someone else's information that constitutes a business secret (Article 11(1) of CUCA) and copying a product by means of which its external form is copied by technical means of reproduction (Article 13(1) of CUCA).

Processes, including production, construction or construction processes, marketing or organizational methods in business, organizing work or external relations can qualify as specific know-how. This term includes both know-how that is generally known (so-called open know-how) and that which is confidential in nature (so-called secret, confidential know-how). The basis for this protection of the latter is to be found in the regulation of Article 11(2) of CUCA, which indicates that an enterprise secret is understood to be not only technical or technological information, but also organizational information of an enterprise or other information having economic value, which as a whole or in a particular juxtaposition and collection of its elements is not generally known to persons normally dealing with this type of information or is not readily available to such persons, provided that the person authorized to use or dispose of the information has taken, with due diligence, actions to keep it confidential. Business secrets protected by Article 11(2) of CUCA can therefore be divided into technical information and organizational information.

The first category includes technological information, confidential (technical) know-how, recipes, rationalization projects, technical solutions even if they do not meet the premise of inventive step required by the provisions of IPL (Kępiński, Szwaja, 2024). Production, construction or construction processes should be qualified as such. The categories of organizational information of an enterprise that can be qualified as business secrets in the literature include methods of quality control of goods and services, methods of marketing, or methods of labor organization (Kępiński, Szwaja, 2024), as well as principles of cooperation between individual departments of an enterprise (Nowińska, Szczepanowska-Kozłowska, 2022). Thus, marketing or organizational methods in business, labor organization or external relations can be classified as such. At the same time, it should be remembered that due to the scope of application of the CUCA, only marketing or organizational methods used in the enterprise, and not in other organizations, can be covered by this protection.

The prerequisite for including the information in question as a business secret is that it is confidential and covered by the entrepreneur's activities aimed at maintaining this confidentiality, as well as its economic value (Kępiński, Szwaja, 2024; Nowińska, Szczepanowska-Kozłowska 2022). Therefore, there may be difficulties in protecting as a business secret organizational methods in external relations. On the other hand, it is not necessary for such information to be usable in another enterprise (Kępiński, Szwaja, 2024), i.e. a given marketing or organizational method, due to its specificity, may not be usable in other enterprises.

In turn, Article 13(1) of CUCA may provide a basis for protecting innovative products from so-called slavish imitation. It consists in copying the external form of a product by technical means of reproduction. The condition for qualifying such copying of a product as a stipulated act of unfair competition is the danger of misleading customers as to the identity of the manufacturer or innovative product. At the same time, it does not constitute an act of unfair competition to imitate the functional features of a product, in particular, the construction, design and form that ensure its usefulness. If the imitation of the functional features of a finished product requires taking into account its distinctive form, which may mislead customers as to the identity of the manufacturer or product, the imitator is obliged to mark the product accordingly (Article 13(2) of CUCA). Thus, this protection does not cover situations of imitation of a product that do not lead to a danger of misleading customers as to the identity of the manufacturer or innovative product, but involve copying an innovative product in order to parasitize its reputation. Protection against so-called parasitic imitation of a product constituting an untyped act of unfair competition should therefore be sought in the general clause of the act of unfair competition (Article 3(1) of CUCA).

The situation will be similar in the case of innovative services. An action consisting in offering innovative services by a competing entrepreneur, taking advantage of the reputation that characterizes such innovative services, may be qualified as contrary to morality and, moreover, as threatening or infringing the interest of the entrepreneur who was the first to offer such innovative services. It may constitute an unspecified act of unfair competition, the protection of which will take place on the basis of the general clause contained in Article 3(1) of CUCA, using its supplementary function.

5. Claims for infringement of innovation rights

The catalog of claims to which an entrepreneur whose exclusive rights to innovations have been infringed or who has been harmed by an act of unfair competition is entitled, regardless of the basis for the claims asserted, includes a claim for cessation of infringement (Art. 79(1)(1) CRRA, Art. 11(1)(1) of PDA, Article 287(1) of IPL, Article 36a(1)(1) of LPPVA) or

unauthorized acts (Article 18(1)(1) of CUCA) and to remedy the consequences of the infringement (Article 79(1)(2) of CRRA, Article 11(1)(2) of PDA, Article 36a(1)(2) of LPPVA) or unauthorized acts (Article 18(1)(2) of CUCA). Where the infringement of author's economic rights or related rights, *sui generis* right to a database, industrial property right or exclusive right to a plant variety is of an innocent nature, the court may order the person who has infringed author's economic rights, related rights, *sui generis* right to a database, industrial property right or exclusive right to a plant variety, at his request and with the consent of the right holder, to pay an appropriate sum of money to the right holder, if the abandonment of the infringement or the removal of the consequences of the infringement would be disproportionately severe for the infringer (Art. 79(3) of CRRA, Article 11(3) of PDA, Article 287(3) of IPL, Article 36a(3) of LPPVA).

In addition, the holder of exclusive rights and an entrepreneur affected by an act of unfair competition may demand surrender of wrongfully obtained benefits (Article 79(1)(4) of CRRA, Article 11(1)(4) of PDA, Article 287(1) of IPL, Article 36a(1)(4) of LPPVA, Article 18(1)(5) of CUCA), except that in the case of an act of unfair competition, surrender of wrongfully obtained benefits should be made under general rules. They may also demand reparation of the damage caused to the right holder under general rules (Article 79(1)(3a) of CRRA, Article 11(1)(3a) of PDA, Article 287(1)(1) of IPL, Article 36a(1)(3a) of LPPVA, Article 18(1)(4) of CUCA), i.e., the rules set forth in the Civil Code Act of April 23, 1964 (consolidated text, Journal of Laws of 2024, item 1061). Due to difficulties in determining the causal link between the action of the infringer or the perpetrator of the act of unfair competition and the damage, as well as the amount of the damage itself, the holder of exclusive rights or the entrepreneur affected by the act of unfair competition may seek lump-sum damages as an alternative to compensation under general rules. The holder of author's economic rights, related rights and *sui generis* right to a database under, respectively, Article 79(1)(3b) of CRRA, Article 79(1)(3b) in conjunction with Article 101 of CRRA and Article 11(1)(3b) of PDA may claim lump-sum damages in the form of a sum of money equal to twice the relevant remuneration which, at the time of claiming it, would have been due for granting the holder permission to use the work, the subject of related rights or the database. In turn, the holder of industrial property rights under Article 287(1)(2) of IPL may claim lump-sum damages in the form of a sum of money equivalent to the license fee or other appropriate remuneration which, at the time of claiming them, would be due as a result of the holder granting permission to use the invention, utility model, industrial or community design or integrated circuit topography. A breeder entitled under an exclusive right to a plant variety pursuant to Article 36a(1)(3b) of LPPVA may claim lump-sum damages in the form of a sum of money in the amount corresponding to the license fee which, at the time of claiming it, would have been due by virtue of the granting of a license by the breeder, and in the case of a culpable infringement in the amount corresponding to a multiple of that remuneration, but no more than three times its value. On the other hand, in the case of an act of unfair competition involving infringement of

a business secret, the holder may demand, instead of compensation, reparation of damages by payment of a sum of money in an amount corresponding to the remuneration that would be due at the time of claiming it by virtue of the holder's granting of permission to use information constituting a business secret (Article 18(5) of CUCA). In addition, an entrepreneur affected by an act of unfair competition in a situation where the commission of the act of unfair competition was of a culpable nature may demand an award of an appropriate sum of money for a specific social purpose related to the promotion of Polish culture or the protection of national heritage. (Art. 18(1)(6) of CUCA) This claim has no equivalent in CRRA, PDA, IPL or LPPVA.

Irrespective of the above claims, the holder of author's economic rights, related rights, *sui generis* right to a database or exclusive right to a plant variety, or an entrepreneur affected by an act of unfair competition, may demand one or multiple announcements of a statement of appropriate content and form (Article 79(2) of CRRA, Article 11(2) of PDA, Article 36a(2) of LPPVA, Article 18(1)(3) of CUCA). However, while in the case of infringement of intellectual property rights, only the dissemination of the statement in the press may be demanded, in the case of an act of unfair competition, the statement may be demanded in any manner not excluding the press and the Internet.

In addition, both the holder of exclusive rights and the entrepreneur affected by the act of unfair competition may request that part or all of the court decision issued in the case under consideration be made public, in the manner and to the extent specified by the court (Article 79(2) of CRRA, Article 11(2) of PDA, Article 287(2) of IPL, Article 36a(2) of LPPVA, Article 18(5) of CUCA). However, the condition for granting such a request in the case of committing an act of unfair competition involving the violation of a business secret is to justify it by the circumstances of committing the act of unfair competition, in particular, the manner in which the act was committed, the value of the information to which the act referred, the effect of the act and the likelihood of committing the act of unfair competition in the future, and in the case where the defendant is a natural person - if, in addition, this is not opposed by the defendant's legitimate interest, in particular, consideration of the protection of his personal rights. However, the manner and extent of public disclosure of the verdict or the contents of the verdict may not lead to disclosure of business secrets (Article 18(3) of CUCA).

Pursuant to Article 79(4) of CRRA, Article 11(4) of PDA, Article 286 of IPL or Article 36a(4) of LPPVA, the court, in deciding on the infringement of the right, may, at the request of the right holder, rule on the unlawfully produced objects (products, seed or harvested material) and the means and materials used in their production, in particular, may rule on their withdrawal from the market, award to the right holder against the compensation due (the sum of money awarded) or destruction. When ruling, the court shall take into account the gravity of the violation and the interests of third parties. The said means and materials are presumed to be the property of the person who violated intellectual property rights (Article 79(5) of CRRA, Article 11(5) of PDA, Article 36a(5) of LPPVA). In turn, pursuant to Article 18(2) of CUCA, the court, at the request of the right holder, may also adjudicate products, their packaging,

advertising materials and other objects directly related to the commission of the act of unfair competition. In particular, the court may order their destruction or credit for damages.

6. Investigating claims for infringement of innovation rights

As of July 1, 2020, by virtue of the Regulation of the Minister of Justice of June 29, 2020, on transferring to certain district courts the cognizance of intellectual property cases from the jurisdiction of other district courts (consolidated text, Journal of Laws of 2022, item 1398), intellectual property divisions were separated in the structure of the district courts of Gdańsk, Katowice, Lublin, Poznań and Warsaw. Thanks to this procedure and the entrusting of the adjudication of appeals against the decisions of these district courts to the Courts of Appeals in Poznań and Warsaw, a structure of specialized courts (hereinafter referred to as intellectual property courts) for the adjudication of intellectual property cases was created (Kurosz, 2021).

The concept of an intellectual property case is defined in the introduction to the Act of November 17, 1964. - Code of Civil Procedure (consolidated text, Journal of Laws of 2023, item 1550, as amended; hereinafter referred to as the CPC) by virtue of the Act of February 13, 2020 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws of 2020, item 288), Article 479⁸⁹ of CPC. Intellectual property cases, according to Article 479⁸⁹ § 1 of CPC, include cases for the protection of copyright and related rights, for the protection of industrial property rights, and for the protection of other rights on intangible property such as the *sui generis* right to a database or the exclusive right to a plant variety. They therefore include cases for infringement of exclusive rights to innovative products, or, in the case of an invention, innovative production processes. In light of Article 479⁸⁹ § 2(1) of CPC, intellectual property cases are also cases for the suppression of unfair competition. As a result, intellectual property cases also include cases for acts of unfair competition committed with respect to innovative products, services, and processes and methods.

Classification of the above innovation cases as intellectual property cases entails not only subjecting them to the jurisdiction of intellectual property courts, but more importantly, recognizing them within the framework of separate proceedings in intellectual property cases covered by the regulation of Article 479⁸⁹-479¹²⁹ of CPC. As a result, an entrepreneur whose exclusive rights to an innovation have been infringed or who has been harmed by an act of unfair competition committed with respect to his innovation will be able to take advantage of special legal institutions specific only to intellectual property proceedings that facilitate his claims, in particular for compensation and the release of unjustly obtained benefits, known as ancillary measures.

Ancillary measures include three institutions provided for by the provisions of intellectual property proceedings, i.e., securing a measure of evidence (Articles 479⁹⁶-479¹⁰⁵ of CPC), disclosure or issuance of a measure of evidence (Articles 479¹⁰⁶-479¹¹¹ of CPC), and summons for information (Articles 479¹¹²-479¹²¹ of CPC). While in the case of securing a measure of evidence, the right holder will be able to use this institution both to derive his claims from the laws regulating intellectual property rights and the CUCA, in the case of disclosure or issuance of a measure of evidence and a summons for information, the application of these institutions is limited, as follows respectively from Article 479¹⁰⁶ *in principio* of CPC and Article 479¹¹³ § 1 of CPC - only to cases of infringement of exclusive rights referred to in Article 479⁸⁹ § 1 of CPC, with, therefore, is not possible in cases of acts of unfair competition (so the Court of Appeals in Warsaw in the decisions of November 20, 2020, ref. no. VII AGz 497/20, not published, of December 15, 2021, ref. no. VII AGz 498/21, not published, of January 28, 2022, ref. no. VII AGz 613/21, not published, and of September 6, 2024, ref. no. VII AGz 483/24, , not published; differently, the Court of Appeals in Poznań in decisions of April 5, 2022, I AGz 5/22, not published; of August 2, 2023, I AGz 54/23, LEX no. 3622487 and of March 18, 2024, I AGz 240/23, not published).

In addition, it should be noted that an entrepreneur whose exclusive rights to an innovation have been infringed or who has been harmed by an act of unfair competition committed with respect to his innovation can use the institution of claim security (Articles 730-757 of CPC), which allows him, in particular, to interrupt the state of exploitation of his innovation by a market competitor. This procedural institution in intellectual property cases is characterized by certain peculiarities as a consequence of the changes made by the Act of March 9, 2023 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws of 2023, item 614) relating to securing non-monetary claims (Gołaszewska, 2023). It is expressed in the departure in these cases from the principle of *ex parte* proceedings, which is the rule, to a hybrid model with adversarial proceedings dominating and exceptions in favor of *ex parte* proceedings (Antoniuk, 2023).

7. Concluding remarks

The considerations carried out lead to several conclusions. First, it is possible to protect innovations as the subject of exclusive rights, i.e. works or objects of related rights, databases, inventions, utility models, industrial designs, community designs, topographies of integrated circuits and plant varieties. However, this possibility applies only to innovations that are products. Thus, it does not allow for the protection as the subject of exclusive rights of innovations that are services, processes or methods, with the exception of production processes, which may be patentable as inventions. Second, it also excludes the possibility of protecting

innovations as marks or geographical indications in the broad sense. Third, it is possible to qualify processes or methods as a rationalization project, provided that such a process or method is recognized as a rationalization project by the entrepreneur in the rationalization regulations adopted by him.

Fourthly, and finally, innovations in the form of products may be protected against copying as an act of unfair competition as stipulated in Article 13(1) of CUCA, while innovations that are processes or methods constituting business secrets may be protected against disclosure as an act of unfair competition as stipulated in Article 11(1) of CUCA. Protection of innovations in the form of services, on the other hand, can be sought, at most, in the general clause of the act of unfair competition (Article 3(1) of CUCA), using its complementary function as a untyped act of unfair competition.

An entrepreneur whose exclusive rights to an innovation have been infringed or who has been harmed by an act of unfair competition carried out in relation to his innovation is entitled to a wide range of claims provided for in the laws regulating exclusive rights and the CUCA. These claims will be pursued in separate intellectual property proceedings before specialized intellectual property courts, which is intended by the legislator to increase the quality of judgments rendered in intellectual property cases. Within the framework of these proceedings, the entrepreneur will be able to take advantage of special procedural institutions to support his claims, especially monetary ones, the so-called auxiliary measures.

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