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INTRODUCTION TO THE FIELD OF INTELLECTUAL COMMON PROPERTY LAW

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ABSTRACT
The 21st century is the era of innovation when it has prominent role how quickly a groundbreaking and profitable solution is developed. This process can be promoted greatly if more persons, companies or a research team try to produce common result together. In this case the intellectual product created with joint work shall be seemed as an intellectual common property.
In practice, there are a number of benefits for people creating a common intellectual property. First, the time as well as the cost invested in research can be reduced. On the other hand, in the course of creation the ideas from the other party might lead to an entirely new direction and thus unexpected results, intellectual property can be formed. It is an entirely different matter that in the phase of utilisation the higher number of the entitled might be a problem.
So, in the practical life the intellectual common property law is a widespread legal institution but the legal theory has not collected the relevant knowledge related to it yet. This way researching this institution promises both practical and theoretical benefits.

Keywords: intellectual common property law, innovation, classical ownership, protection of industrial property rights, copyright

INTRODUCTION

Nowadays it is more and more common that an intellectual product is created by a research team or more persons. The 21st century is the era of innovation, research and development when certain companies are trying to develop groundbreaking and profitable solutions compared to the current state of technique. As it is said, “time is money”. An effective way of this process could be if more companies, research team seek to achieve the goal together by combining their results and developments.
Basis of legal analyzing is rooted in the fact that the intellectual common property is widespread in the practise but the jurisprudence has not worked out its legal theory yet.
Field of the intellectual property law can be divided into two parts: copyright and protection of industrial property rights. Beside the protection of industrial property rights oriented approach the copyright and different works covered by it shall be kept in mind as well. In the past and present too it is a widespread phenomenon that more creators combine their creativity in a common work increasing its artistic value. Result of this common intellectual product cannot be measured in money but in such a value that is enduring and integral part of the cultural heritage.
Name of the legal institution analyzed by the present Paper entails examination of rules applied to the “classical” common property regulated within the property law. Its main reason is that the legal institution of common property regulated by the Civil Code (PTK.) under the ownership has already been worked out by the legal theory and the judicial practise that would become starting point for later researches.
Overall using the term of intellectual common property was ignored in the past in the relevant legal literature and there is not a comprehensive work focusing on it. Furthermore,

the concept of "intellectual property law" as the name of field of law that involves the intellectual products is more and more widespread in the legal literature (FICSOR, 2000, BACHER, 2000b) and practical legal life as well. This term clearly replaces the "law of intellectual products" that is used in the Civil Code being in force. These facts and trends support for researching the intellectual common property.
Present Paper is aimed at introduction to the intellectual common property law focusing on the main frames and inspiring points.

MATERIAL AND METHOD

In the study, the conclusions are based on the examination of the primary literature dealing with this subject, analytical studies and monographs published in the Hungarian legal doctrine in this field of law, as well as on analyzing empirical data obtained from the judicature. During research, we considered the jurisprudential opinions and the conclusions drawn from the practice of everyday life.

RESULTS

Significance of the intellectual common property

First of all, significance of the intellectual property shall be analyzed. Intellectual works are such breakout points in what an individual's or a group's intellectual potential can manifest. This intellectual potential is suitable for and capable to develop such an innovative solution that may have effect on its entitled person's and its narrower and broader environment's social, labour market and economic status, shorter and longer strategy (GÖRÖG, 2012). The last thought determines in brief the social and economic significance of the intellectual property and refers to the fact that the intellectual product can be created by a community as well. This product shall be seemed as an intellectual common property.
The real value of the intellectual common property is that more persons' creativity and idea unite in one product or work. This way time can be saved during each improvement and individuals affect each other. New ideas generate newer ones and researches can be oriented in other direction. In field of copyright it can be observed as well when more artists create together and they get the most out of each other.
In case of intellectual common property creators form a community. Specific characteristic of the intellectual products is that persons and groups involved in the creation have creative ideas during the work that is a great help, but uncertain conditions may lead to conflicts among parties at stage of using and utilization.
If rights related to an intellectual work are owned by more persons, possibility of a dispute will increase. This kind of discuss may occur as well if creators develop the same new result at different places and time, but its possibility is more increased in case of a result achieved with common work.
Taking into account the mentioned above, it is necessary to arrange the parties' internal relation, their rights and obligation. Who, how and what rights entitled to and who, how and what obligations are burdened.

Legal theoretical basics

At exploring the legal theoretical basics of the intellectual common property the following issues shall be analyzed: basis of the term of intellectual property, dogmatic relationship

between the "classical" ownership ruled in the Civil Code and the intellectual property, intellectual product as the subject of ownership and the legal rules related to the intellectual common property law.

First of all, we should analyze the name of this field of law. In both theoretical and practical life the term of "intellectual property law" is more and more spreading instead of "law of intellectual products". Some international conventions and treaties, furthermore, the change of the name of Hungarian Intellectual Property Office in 2011 show this trend (MÓD. TV.). Using different name is not aimed at avoiding the repetition but it refers to the theories related to this field of law. In sum, it should be said that the term of intellectual property law can be linked to the theory that places particular emphasis on the property law aspect (CSÉCSY, 1998).

The next question is whether the intellectual property may be the subject of ownership. The basic of this issue what is seemed as thing, namely subject of ownership. In my opinion, it should be agreed that in legal term thing is what can be the subject of ownership. The thing as civil law concept is the abstract term of the subject of ownership (EÖRSY AND VILÁGHY, 1962). This way, intellectual products may be the subject of ownership (BACHER, 2000a).

In this case, the subject of property is special, namely an intellectual product. It is such a property that is basically different from the classical property: it has mental object, it is not fixed location (FALUDI, 2006) and has special characteristics.

If intellectual products are subject of ownership, consequently besides the provisions of the Act on Copyright and Protection of industrial property rights the rules on classical common property can be applied to the property law aspects of the intellectual common property.

This conclusion defines the legislative background applied to the intellectual common property that include the Act on Copyright and Protection of industrial property rights, furthermore, the provisions on classical common property of Civil Code.

Specific forms of the intellectual common property in the practical life

In field of the copyright intellectual common property manifests in common works. In this case, copyright work is created by more persons who may be joint authors or co-authors depending on whether the parts of this common work may be used independently. It is important to emphasise that copyright relation among persons will establish if all of them are participated in the creation of common work with creative activity. This way, "muse", dramaturges or lector shall not be seemed as joint authors or co-authors (FALUDI, 2006).

If the parts of common work cannot be used independently, co-authors are entitled to the copyright jointly and in equal proportion in case of doubt, but all of them have the right to take action against the copyright infringement independently (SZJT.). If the parts of common work can be used independently, copyrights related to each own part may be exercised independently (SZJT.). In the last case, creators of common work are joint authors because it is possible to establish who the each part was created by.

In field of the protection of industrial property rights common invention and common patent may be seemed as intellectual common property. In the first case parties are called joint inventors, in the second joint patentees.

Relationship among inventors is established before creating patent when more persons develop a new invention with their creative activity. The Act on Patent being in force includes only few rules on this legal institution. The Act includes the following provision: If more persons develop an invention, inventors or their successors will be entitled to the patent jointly. If there are more claimants, proportion of patent claims shall be seemed equal – unless otherwise stated.

Among inventors there is joint author relationship because a work of technical nature cannot be usually divided into parts. (VÉKÁS, 2006) Regarding the proportion of joint inventors' patent claim the Act on Patent uses the rule applied to the classical common property, namely in case of doubt proportions are equal.
Condition of joint author/co-author shall be applied in the present case as well taking the consistent judicial practice into account. So, inventor relationship will form if the involved person participates in creating the invention with his creative activity. (FALUDI, 2006) Giving advice, simple help or the control does not justify this relation. (LEGF. BÍR. PF. IV.)
According to the judicial practice, beside the inventor relationship the proportion of patent claim is also supported by the creative activity and its extent. So, the joint inventor whose participation in creating the invention has been more significant, he gets bigger proportion. (FALUDI, 2006)
The joint patentee relationship is ruled in more details in the Act (SZT.) that stipulates the detailed rules on parties' internal and external relation toward third persons. The legal institution in question is regulated similarly to the classical common property relying on its elements.
Similarly to the joint inventors, each joint patentee's percentage of share is adapted to the own creative activity (CSÉCSY, 1998) but in case of doubt proportions shall be seemed equal. (SZT.) The importance of the percentage of share is rooted in the fact that each joint patentee is entitled to the right and burdened with obligation derived from the patented invention to the extent corresponding to the own percentage of share. (FALUDI, 2006) Invention may be exploited by each patentee alone but for the others he is obliged to pay appropriate fee corresponding their percentage of share. (SZT.)

CONCLUSIONS

In sum, it will have several advantages if more persons, companies or a research team seek to produce an innovative result that is qualified as novelty compared to the prior art. On the one hand, time used to the research may be shortened because of unifying experiences and results. On the other hand, persons involved in the research affect each other continually, so the common work may lead to a new and unexpected result.
Consequently, intellectual common property is quiet widespread in the practical life but the jurisprudence has not summarised its theory yet.
Regarding to the legal theoretical basics it should be said that the term of intellectual property law may be linked to the ownership theory; furthermore, intellectual product may be the subject of ownership. The last conclusion clearly shows the legislative background applied to the intellectual common property.
As regards the practical forms of intellectual common property, this legal institution manifests in the common works in the field of the copyright and in the common invention and patent in the field of the protection of industrial property rights.
In sum, the intellectual common property law is a field of the civil law that is widespread in the practical life but the jurisprudence has not worked out it yet. So, its research promises useful results.

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