

## Protection of intellectual property

The Czech Republic is party to most international treaties in the area of intellectual property including, among others:

- Paris Convention for the Protection of Industrial Property (1883)
- Bern Convention for the Protection of Literary and Artistic Works (1886)
- Convention Establishing the World Intellectual Property Organisation (1967)
- Patent Cooperation Treaty (1970)
- Convention on the Grant of European Patents (1973)
- Agreement on Trade-related Aspects of Intellectual Property Rights – TRIPS (1994)
- Trademark Law Treaty (1994)
- WIPO Copyright Treaty (1996)
- WIPO Performances and Phonograms Treaty (1996)

The state's administration of industrial property is governed by the Industrial Property Office, headquartered in Prague, which is the national patent office ([www.upv.cz](http://www.upv.cz)).

In proceedings before the Industrial Property Office, foreign entities must be represented by a patent agent who is also authorised to provide representation in civil proceedings. In some cases, however, the law requires representation by an attorney. Patent agents are associated in the Chamber of Patent Attorneys ([www.patzastupci.cz](http://www.patzastupci.cz)).

Intellectual property legislation is contained in several legal regulations; the basic norm governing the legal relationships deriving from intellectual property is Act No. 40/1964 Coll., the Civil Code. Individual rights are governed by special acts. The protection of intellectual property rights has recently been unified in Act No. 221/2006, on Enforcement of Industrial Property Rights.

Intellectual property can be protected by several acts simultaneously.

### Copyrights

Defined in *Act No. 121/2000 Coll., on Copyright and Rights Related to Copyright (the Copyright Act)*.

Subjects of copyright are literary, artistic, and scientific works, computer programs and databases. The copyright owner can only be a natural person.

The Czech copyright concept is based on the principle of informality. The subjective copyright arises, according to the law, at the moment a work is created. For acknowledgment of protection, no record is necessary. Rights of personality explicitly recognize the author as the originator of a work and expire with his/her death. Ownership rights endure for 70 years following the death of the originator and are part of the originator's estate. Copyrights, including ownership rights, are non-transferable. However, the owner of copyrights is authorized to assign, through a license agreement, authorisation for use of the work. Copyrights as such are not subject to execution of a decision; however, claims for royalties are subject to execution of a decision.

### Employee's work

In the case that an originator's work is created by an employee in an employment relationship and the creation of the work occurs within the context of fulfilment of his/her duties as an employee, the employer is authorized to exercise the ownership rights. The author/employee acquires authorisation to exercise these rights upon the death or demise of an employer that does not have a legal successor. Transfer of the right of use of the originator's work is possible only with the consent of the originator. The originator has the right to reasonable remuneration if the profit gained by the employer is in obvious disproportion to the remuneration paid to the employee.

If this concerns copyrights of university employees, the originators' works are mostly created outside the context of work duties. This means that the originator exercises all rights if he/she creates a work. Of course, this depends on the specific agreement with the university, and thus the opposite case is possible. Such an agreement in this case is generally an employment contract.

### **Work created to order**

If a work is created on the basis of a contract on work, it applies that the originator provides a license for the purpose deriving from the contract unless the contracting parties have agreed otherwise. This means that utilisation beyond the purpose of the contract can be agreed. The originator is legally authorised to provide a license to a third party unless the contracting parties have agreed otherwise.

### **Industrial designs**

Defined in *Act No. 207/2000 Coll., on Protection of Industrial Designs*

An industrial design relates to aesthetic designs, i.e. to the surface or spatial appearance of products or their part, consisting particularly in the features of lines, contours, colours, shape, structure or materials of the product itself or its ornamentation.

The material condition for protection of industrial designs is the requirement of their novelty, i.e. an industrial design should not be made available to the public prior to submission of registration. The second requirement is that an industrial design must demonstrate an individual character whereby it substantially approximates the concept of the originator's work.

The effects of a registered industrial design and the dispositive authority of its owner are analogous to those of the right of patent. Protection of a registered industrial design endures for a maximum of 25 years from the submission of the industrial design for registration.

### **Employee's work**

The right to an industrial design passes to the employer if the employer sets up a claim to such right within three months of the employee's notification of the creation of the industrial design. The employee is obligated to notify the employer of the creation of an industrial design.

### **Patents and utility models**

Defined in *Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals*.

Unlike copyright, the state's recognition of a patent is bound to registration with the Industrial Property Office (IPO). The IPO is simultaneously a place at which citizens of the Czech Republic and other persons who have their residence or seat in the Czech Republic can apply for international registration of inventions. The European patent application can also be submitted at this office in accordance with the Convention on the Grant of European Patents.

The purpose of the patent law is to protect inventive, creative activity. Thus its subject-matter is the protection of inventions. An invention can only be a solution from the area of technology which is the result of inventive activity and is industrially useful. Thus both a specific production process and a product itself are patentable. Novelty consists in the solution not being part of the state of the art and thus concerns a solution that is new to the world. A patent is transferable. Agreements on patent transfer and license agreements come into effect with regard to third parties on the day of their registration in the patent register administered by the Industrial Property Office.

The right of patent endures for a maximum of 20 years from submission of the application for registration. Maintaining a patent in force is subject to a fee (see Act No. 368/1992 Coll., on Administrative Fees).

The utility model right (so-called small patents) is in many respects subordinate to the patent right. The relationship with the patent right consists in the fact that these protected subjects are also creations of an industrial-technical character and can be the subject of commercial relations. Protection of utility models was introduced on Czech territory in 1992, whereas it had not previously existed here until that time. *Small patents are defined in Act No. 478/1992 Coll., on Utility Models*.

### **Employee's work**

This applies in the same manner as with industrial designs.

### **Topographies of Semiconductor Products**

Defined in *Act No. 529/1991 Coll., on Protection of Topographies of Semiconductor Products*.

Protection is granted without research on the basis of entry in the register of topographies of semiconductor products. Only such a topography that is created and is not generally known in the semiconductor industry can be registered.

The period of protection of exclusive rights to the registered topography endures for 10 years from its first commercial use or registration. Only a few of these creations are present in the register of topographies of semiconductor products administered by the Industrial Property Office. From current Czech experience, there are no known disputes regarding this right.

## Trademarks

Defined in *Act No. 441/2003 Coll., on Trademarks*.

A trademark is defined as a sign or symbol comprised of words, letters, numerals, illustrations or the shape of a product or its packaging, or a combination thereof, intended to distinguish products or services deriving from various enterprises and entered in the register of trademarks.

From the stated definition, it follows that the party registering a trademark can only be an entity conducting business in the relevant subject of activity for which the trademark is registered.

## Commercial name

The right to a commercial name is defined in *Act No. 513/1991 Coll., the Commercial Code*.

Czech corporate law is characterised by the fact that it relates only to those enterprises or entrepreneurs that are entered in the Commercial Register administered by the registration court. The names and titles of other enterprises or entrepreneurs are not protected by corporate law; however, for their protection the provision on unfair competition can be used for their protection.

The commercial name of a natural person is always his/her name and surname, and possibly a distinguishing supplement. The commercial name of a legal entity is its name entered in the Commercial Register. The basic regulation of protection is that a commercial name may not be interchangeable with the commercial name of another enterprise and may not be used in a deceptive manner. The commercial name itself cannot be the subject of contractual legal relationships, though it is bound to the enterprise which it represents. The transfer of a commercial name without the concurrent transfer of the enterprise is not permissible. In the case of interference in the subjective right to a commercial name, the injured party has the right to demand from the interfering party cessation of the wrongful conduct, elimination of the detrimental situation, due compensation, reimbursement of unjustified enrichment and compensation for damages. Besides the provisions of corporate law, the designations of enterprises are also protected by the unfair-competition law.

## Designations of origin and geographical indications

Defined in *Act No. 452/2001 Coll., on Protection of Designations of Origin*.

Designations of origin and geographical indications are designations relating only to the characteristics of the origin of goods not, however, in any way a service or business. These designations are used to identify goods from a specific territory if the quality or characteristics of such goods are exclusively or predominantly given by the particular geographical environment with its characteristic natural and human factors.

## Trade secrecy

Defined in *Act No. 513/1991 Coll., the Commercial Code*.

Trade secrecy, similarly as, e.g., know-how, falls within so-called "other asset values", to which the law assigns the quality of being the subject of legal relationships. Trade secrecy is part of the rights pertaining to an enterprises and consists in all facts of a business, production or technical nature connected with the enterprise which have real or at least potential material or non-material value, are not commonly accessible in the relevant business circles, are secret by the will of the entrepreneur/enterprise and are accordingly kept secret by the entrepreneur/enterprise. An entrepreneur operating an enterprise to which business secrecy relates has the exclusive right to handle this secrecy, particularly to grant consent for its use and to stipulate the conditions for such use. The entrepreneur's right to business secrecy is an exclusive right

and is not time limited. In addition, in the case of unfair competition, the entrepreneur has legal protection against infringement or endangerment of the right to secrecy. The Commercial Code defines infringement of business secrecy as a particular, factual matter of unfair conduct in economic competition.

### Know-how and confidential information

Explicit regulation of the protection of know-how is not grounded in Czech law. Some intangible goods falling within this concept can be protected by industrial property rights or as business secrecy or confidential information. Know-how does not enjoy protection of an absolute nature, and thus it is not protected by law. Its protection can be ensured only within the framework of contractual relationships. However, third parties are not bound by this protection. If know-how is imbued with the characteristics of business secrecy, this concerns the content of a business secret. Unauthorised use of know-how can thus constitute unfair competitive conduct.

Legal protection of confidential information is contained in the *Commercial Code*. If, during negotiations on the conclusion of a contract, the parties thereto provide each other with information designated as confidential, the party to which such information was provided may not disclose it to a third party or use the information for its own needs in contravention of the information's purpose, regardless of whether the contract is concluded or not. Whoever breaches this obligation is obliged to provide compensation for damages. Protection of confidential information is rigorously applied, for example, in negotiations on the provision of know-how which cannot be undertaken other than by familiarising the counterparty with the basic characteristics of goods prior to concluding the contract. In addition to this, protection of confidential information is provided by the unfair-competition law.

### Rationalisation proposals

Defined in Act No. 527/1990 Coll., on *Inventions and Rationalisation Proposals*.

This act considers rationalisation proposals to be proposals of technical, manufacturing or operational improvements such as the solution of safety problems or protection of health at work and the natural environment which the rationaliser has the right to implement. Rationalisation proposals are not subject to the principle of registration.

The rationaliser is obligated to offer the rationalisation proposal to his/her employer if the rationalisation proposal concerns an area of work or other activity of the employer. If the employer does not conclude with the rationaliser an agreement on the use of the rationalisation proposal, the rationaliser can apply the rationalisation proposal according to his/her own will.

## Protection of intellectual property rights

### Protection under civil law

Protection of intellectual property under civil law and its enforcement is governed by *Act No. 221/2006 Coll., on Enforcement of Industrial Property Rights*. This act unifies the regulation of protection of intellectual property rights in individual acts.

The basic means of protection is the civil lawsuit. The civil nature of intellectual property rights corresponds to the reality that in all cases of interference with the rights of owners, civil proceedings can be initiated only on the suggestion of an authorised party, but never from official duties. Civil proceedings can raise several basic requirements:

1. suspension of certain activities
2. removal of consequences or destruction of goods
3. moral or monetary compensation
4. compensation for damages and lost profit

The courts can order compensation for damages also as a lump sum stipulated on the basis of such data as the amount of license fees which would be necessary to pay if the liable party proceeded legitimately and requested consent for the use of the industrial right. The court can order lump-sum compensation in two amounts with regard to the circumstance of whether the infringing party was aware that it was infringing the industrial right, or whether it was unaware or could not be aware. The provision levies sanctions against the party that infringes industrial property rights without having the owner's consent.

5. claims for unjustifiable enrichment
6. declaratory judgement

The court's ruling that a certain good is, from the intellectual property perspective, counterfeit or a non-permitted copy results in further legal proceedings in the field of public law, particularly customs and consumer law. The practical difficulty consists

in the fact that reaching such a court ruling usually means a significant loss of time. This can paralyse the effectiveness of further public-legal measures and increase the costs incurred by the injured party.

7. publication of the decision

### **Protection under criminal law**

Intellectual property is also protected under the Criminal Code depending on the seriousness of the infringement of intellectual property rights. The Criminal Code distinguishes between several criminal offences:

- unfair competition
- infringement of rights to trademark, commercial name and protected designation of origin
- infringement of industrial rights
- infringement of copyright, rights related to copyright and database rights

### **Summary**

The protection of intellectual property in the Czech republic is in accordance with European law. This concerns both the regulation of individual intellectual property rights as well as their protection. With regard to collaboration with universities, it always depends on a specific agreement with respect to industrial rights.