Abstract

Vladimír Lajsek: Chosen Relative Grounds for Dismissal of a Trademark Registration

This topic is dealing with two chosen relative grounds of dismissal of a trademark registration, particularly with sec. 7 (1) (i) and sec. 7 (1) (j) statute No. 441/2003 Coll. The first part presents a general introduction in the whole issue, as with relative grounds for dismissal of a trademark registration and with proceeding on objections. Afterwards, there is described historical development of these provisions, which helped to their establishing into Czech legal order. The author finds, that these provisions were not established until convergence with the European law. Next parts are focusing on the particular provisions. The chapter about objection to the older copyright contains the role of the Czech Industrial Property Office in the proceedings of author crafts and their authorship. The Office should make its own conclusion in these circumstances, so it is not dependent on the binding decision of a court. In the issue of considering, whether particular mark is or is not an author craft, the author offers his own three-level-test of uniqueness, which is based on summarisation of the former decision-making of the Office. To the issue of the right to sue on grounds of this objection the author concludes, this right has not only the author himself, but even his legal successor and the collective administrator. At the end of the chapter the author deals with possible clash of industrial and copyright law protection. Next chapter discusses the provision of the older right to another industrial property and on its functioning. There is written about its main components like earlier priority, danger of infringement other's rights or about existence of this right in another institute of industrial property. The author is trying to make a list of these institutes by summarising of some international documents, but then he comes with his own list. Afterwards, he classifies these institutes according to their ability to be in conflict with a trademark into categories: concurrent, boundary and non-concurrent rights. To the concurrent rights, which are able to be in a conflict with a trademark, he gives both appellation of origin and geographical indication as well as design patents. Boundary rights are those which are able to be in conflict with a trademark but the above mentioned provision would be not used in these cases. These rights are business name, unfair competition, trade secret and goodwill. In the last category there are examined those rights, which are not able to be in conflict with a trademark. That includes patents, utility patents and the SPC, trademarks, circuit layout rights, rights to new plants varieties and know-how. Every of these institutes are

discussed in detail, considering their ability to be in conflict with a trademark and in some limits and problems. There are also outlined some administrational and court decisions. In conclusion, the author states, that concurring rights should be only rights to appellation of origin, geographical indication and rights to the design patents. Regarding to the industrial development he concedes possible shift of this praxis in the future. Moreover, he points on a dissention of a decision-making praxis in case of conflict with business name and solves some issues in the event of rights to appellation of origin, geographical indication and to the design patents.