Report Q194
in the name of the Spanish Group

The Impact of Co-Ownership of Intellectual Property Rights on their Exploitation

Questions

I) The current substantive law

1) Groups are invited to indicate whether, in their countries, the statute of co-ownership of IP rights is uniformly organised or if each IP right has its own regulation concerning co-ownership, particularly as far as their exploitation is concerned.

What options are left for co-owners to regulate their co-ownership relationship: are the statutory rules mandatory, or do they apply only in case of the absence of a contractual regulation of co-ownership between the parties?

In Spanish law, the system of co-ownership of Industrial and Intellectual Property rights is regulated under special laws. The joint-ownership deriving from the co-ownership of Industrial and Intellectual Property rights is first governed by the will of the parties, secondly by the provisions on joint-ownership provided under the Civil Code.

The legal provisions governing the co-ownership in relation to each type of Intellectual Property are analysed hereinafter, without prejudice that a detailed response to the issues coming out later may be also provided:


The system of co-ownership on patents or patents applications is foreseen in Article 72 of the Spanish Patent Act (SPA). It provides that joint-ownership shall be governed by the will of the parties, subsidiarily by the provisions of the Act and finally by the general provisions on joint-ownership in the Common Law.

The aforementioned Article provides that in the absence of agreement between the parties, any co-proprietor may by himself:

- Dispose of his part, notifying thereof the other co-proprietors, who may exercise their right of first refusal and pre-emptive rights.
- Exploit the registration by himself, subject to prior notification to the other co-owners.
- Take the steps necessary for conserving the application or registration.
- Institute civil or criminal proceedings against anyone who somehow infringes the rights deriving from the patent or patent application.

Furthermore, any co-proprietor may grant a license to a third party to exploit the invention. Such a license must be jointly granted by all the co-owners unless the Court, on the grounds of equity given the circumstances of the case, authorises one of them to grant by himself the said license.
**Trademarks (Act 17/2001 of 7 December, on Trademarks) (STA)**

The system of co-ownership for Trademarks is foreseen in Article 46 of the said Act. It provides that joint-ownership shall be governed by the will of the parties, subsidiarily by the provisions of the Act and finally by the general provisions on joint-ownership in the Common Law.

Unless otherwise agreed, the law provides that any of the co-owners may by himself:

- Grant licenses and use the trademark independently, the agreement of the majority of the co-owners being necessary thereto.
- Institute civil and criminal proceedings in defense of the trademark, notification thereof to the other co-owners being necessary.
- Exercise his right of first refusal and pre-emptive rights.
- Consider that any of the co-proprietors has waived his rights, to all effects, when (the latter) absolutely and unjustifiably objects to the use of the trademark in such a way that it may give rise to the declaration of caducity thereof.

**Industrial Design (Act 20/2003 of 7 July, on Legal Protection of Industrial Designs) (IDA)**

The system of co-ownership on industrial designs is foreseen in Article 58. It provides that where an application or a registered design belongs jointly to several persons, the resulting joint-ownership shall be governed by the will of the parties, subsidiarily by the provisions of the aforementioned Article and finally by the general provisions on joint-ownership as provided in the Common Law.

Furthermore, in the absence of agreement between the parties, the Act provides as follows:

- Each of the co-owners may by himself:
  a) Dispose of his part, notifying thereof the other co-proprietors, who may exercise their right of first refusal and pre-emptive rights.
  b) Exploit the design by himself, subject to prior notification to the other co-owners.
  c) Take the steps necessary for conserving the application or registration.
  d) Bring any civil or criminal action against anyone infringing the rights deriving from the registered design, notifying thereof the other co-owners so that they may join in the legal action and contribute to the accrued expenses.

It is also provided that the grant of a license to a third party to exploit the design shall require the consent of the majority of the partners under the terms provided in Article 398 of the Civil Code.

**Copyright: Re-written Text of the Intellectual Property Act (IPA) approved by Legislative Royal Decree 1/1996 of 12 April.**

Regarding joint-ownership on copyrights, the general provisions on joint-ownership provided under the Civil Code apply, with the particularity that the moral rights of the author are unrenounceable and unalienable (Article 14 IPL). Therefore, as far as exploitation rights on copyrights are concerned, free will is clearly recognised. It can thus be asserted that provisions on joint-ownership provided under the Civil Code apply to this matter in the case of absence of agreement between the parties.

Within the framework of copyrights, the law clearly specifies two cases where co-ownership of the author’s rights applies: collaborative works (Article 7 IPL) and software (Article 97). In the first case, i.e. collaborative works, some imperative provisions, such as the requirement that all the co-authors agree to disclose and modify the work, and some specific provisions, such as the exploitation system or the assignment of shares, which are non-mandatory, are...
foreseen. The other matters are governed by the general system of joint-ownership. In the second case, i.e. computer programs, legal entities are entitled to enforce their industrial property rights and the law specifically provides that where several authors exist, the work shall belong jointly to all of them and the authors shall determine the share corresponding to each of them.

2) Groups are invited to explain who has the right to exploit an IP right which is co-owned by two or more persons: may each co-owner exploit the right freely and without any consent from the other co-owners or is this exploitation subject to conditions?

Even if this exploitation by only one co-owner is permitted by the national law, shall the co-owner who exploits a right pay any compensation to the other co-owners.

Finally, in case compensation is required by the legal rule, how is the amount of compensation determined?

In order to answer this question, the different types of Intellectual Property shall be individually analysed:

**Patents and Utility Models**

Article 72.2 (b) of the SPA allows each of the co-owners to exploit, by himself, the invention, subject to prior notification to the other co-owners.

Regarding the possible compensation of the co-proprietor who exploits the invention, no specific solution is foreseen in the SPA. Accordingly, this is an unresolved issue that may be subject to different interpretations. Yet most of the scholars seem to support the affirmative option on the grounds that it assures that the joint-ownership resulting from any patent exploitation be compatible with the particular interests of those co-owners who have decided to remain outside of the exploitation concerned.

**Trademarks**

Article 46 STA provides that the independent use of the trademark by each co-owner must be agreed upon according to the provisions of Article 398 of the Civil Code. This article provides that the agreement concerning the administration and better enjoyment of the joint property must be adopted by the majority of the co-owners. The Court shall decide in the absence of agreement or in the event that the agreement be prejudicial to the rights of the co-owners, and it may appoint an administrator.

It must also be pointed out that the simultaneous and independent use of the trademark by any of the co-owners may give rise to conflicts in relation to the identifying function of the corporate origin of the goods and services which is characteristic of any distinctive sign, to the detriment of the consumers’ interests.

As regards the possible compensation to the remaining co-proprietors, although this is not provided for under the STA, there is nothing preventing the co-owners from adopting the participation system in profits and/or losses they deem to be appropriate.

**Industrial Designs**

Like the Spanish Patent Act, Article 58.2.b) IDA expressly sets forth the possibility that each of the co-owners may, by himself, exploit the design, subject to prior notification to the remaining co-owners.

Regarding the possible compensation to the rest of the co-proprietors by the one of them who has carried out the exploitation of the design, we refer to the response provided in relation to Patents and Utility Models.
Copyright

In relation to copyrights, Article 7 IPA provides, whenever possible, for the separate exploitation of the contribution of each of the authors of the collaborative works. Paragraph 3 of this Article so specifies, provided that no prejudice to the joint exploitation be caused, in line with Article 394 of the Civil Code. Therefore, the separate exploitation of each individual contribution will be only excluded where an agreement between the authors to limiting the separate exploitation exists.

Article 7.4 IPL provides that intellectual property rights over collaborative works correspond to all the authors, each one’s share being determined by themselves. In the absence of agreement between the co-authors to this effect, it is to be assumed that the presumption provided in Article 393 of the Civil Code would apply, which establishes that the share of each co-owner in the joint work shall be presumed to be equal unless proof to the contrary is provided.

In relation to the compensation, we understand that the other co-owners should not be entitled to take part in the profits of the exploitation of a collaborative work when the exploitation has as a subject matter a separate and distinguishable contribution by the author of such a part of the work.

3) The Groups are also invited to give an overview of their national Law in relation to the benefits which may result from the exploitation of an IP right which is co-owned.

In particular, the Groups are invited to indicate if their national Law provides any kind of obligation for a co-owner who exploits personally its share of an IP right to pay any benefits to the other co-owner wherever the second exploits or no the same IP right.

If there is such an obligation, how the amount of money that should be paid to another co-owner is determined?

In response to this question, we refer to the response to the above-mentioned question, in particular as regards the possible compensation that the co-proprietor who is not involved in the exploitation of the jointly owned intellectual and industrial property right is entitled to receive.

4) The Groups are also invited to indicate if the co-owner may grant a licence to third parties without any authorisation from other co-owners, or if the granting of such a licence is subject to certain conditions?

If such conditions exist, the Groups will have to specify their content.

As a general rule, under the Spanish Law it is not possible for a co-proprietor to freely grant a license without the authorisation of the others.

This issue is analysed hereinafter in respect of each type of Intellectual Property:

Patents and Utility Models

Article 72.3 of the SPA provides that a license must be granted jointly by all the co-owners, unless the Court, on the grounds of equity given the circumstances of the case, authorises one of them to grant it.

Thus, the general rule is that unanimity must exist in order for a licence to be granted.

According to the said Article, one or several co-owners may request the Court to decide over the possibility of granting a license without the consent of one or several of the co-owners. The Law provides that the Court must examine the circumstances of the case and consider whether or not the request should be accepted for reasons of equity.
In the case of a license on a patent which belongs to several persons, the exception to the general rule provided under the SPA, based upon an “equity” criterion, should be made by establishing a balance among the different interests. For example if, as a result of the lack of exploitation of the patent, this would be likely to get lapsed, the Court should, taking into account the interests at stake, authorize one of the co–proprietors to grant the license, since obviously the common interest is to maintain the patent in force.

**Trademarks**

Article 46 of the TMA provides that the grant of a license in the case of co–ownership shall be governed by the provisions of Article 398 of the Civil Code. This article provides that the agreement by the majority of the co–owners is compulsory for any act of administration and use of good in joint–ownership; it is to be understood that majority exists when it represents the largest share of interests over the property, which is, in this case the trademark. Where no majority exists or the agreement causes a serious prejudice to the interested parties , the Court may, at the request of any party, decide whatever it deems to be appropriate, including the appointment of an administrator. In this case the Court should also take into account the equity criteria, even though this is not specifically provided for.

**Industrial Designs**

Article 58.3 of the IDA specifically provides that the grant of a license to a third party to exploit the design shall require the agreement of the majority of the partners, as provided for under Article 398 of the Civil Code, examined above.

**Copyrights**

Due to the peculiarity of copyrights, only the rights of exploitation over the work may be the subject matter of a license since the moral rights are unalienable and non–transferable.

In relation to “collaborative work”, the rights over the work correspond to all the co–authors, the share of each being decided by them,, and their use and enjoyment shall be governed by the provisions on joint–ownership provided under the Civil Code. Such provisions of the Civil Code have been explained in the above section relating to trademarks.

Furthermore, Article 7.3 of the IPA provides that, unless otherwise agreed by the co–authors, each author may separately exploit his own contribution, provided that this causes no prejudice to the joint–exploitation. It can be deduced from that provision that it is possible to reach agreements by virtue of which such a separate exploitation be not authorised.

When, according to this provision, it be possible to perform a separate exploitation of one of the contributions and the said exploitation be made through a third party to whom the author has assigned the exploitation rights relating to his specific contribution, this could be understood as a license expressly regulated by the IPA in the terms already exposed.

5) The question of the exploitation of an IP right interferes with the possibility of transferring such an IP right to third parties.

The Groups should indicate the solution in theirs countries relating to the possibility of transferring a share of co–ownership of an IP right to third parties: may such a transfer (by assignment) be carried out freely without any conditions or must it be offered firstly to the other co–owners or is it specifically subject to the agreement of the other co–owners?

The Groups are invited to indicate the conditions to which such a transfer is subject.

In the Spanish legal system, neither the special laws applicable to the different types of joint–ownership, nor the general law contained in the Civil Code prohibit the free transfer of the individual share and do not impose any special condition affecting the effectiveness thereof.
The system of exercising the right of first refusal and pre-emptive rights, as provided for either under the different special laws or under the general provisions of the Civil Code, is identical for all types of Industrial Property. The only difference lays in the time limit to exercise them:

- trade marks and trade names: there is a term of one month both for the right of first refusal and for pre-emptive rights. Regarding the latter, it shall be applied as of (the date of) the publication of the recordal of the transfer at the Spanish Patent and Trademark Office (Article 46.1 TMA);
- patents, utility models and industrial designs: there is a term of two months for the right of first refusal and of one month for the pre-emptive rights as of (the date of) of the publication of the recordal at the Spanish Patent and Trademark Office (Article 72.2.a) of the SPA and 58 of the IDA)

As regards copyrights, the law does not contemplate specific provisions on the transfer of shares in joint-ownership, therefore, unless otherwise agreed by the parties, the provisions on joint-ownership provided under the Common Law apply.

6) IP rights may also serve as a guarantee for the investment which is necessary for their exploitation.

The question then arises of whether a share in co-ownership of an IP right can be used as such a guarantee and under what conditions.

Is it necessary to obtain agreement from all the co-owners in order to secure an IP right or can each co-owner freely secure his own share of an IP right without seeking the consent of the other co-owners?

The Groups are invited to describe their legal systems on this question.

A chattel mortgage on a jointly owned Industrial Property or Intellectual right can only be constituted for the whole rights and subject to the consent of all the partners.

This is provided for in Article 1.2 of the Act of 16 December 1954 on Chattel Mortgage and Pledge without Transfer of Possession. This prohibition has further been confirmed by the General Directorate of Registries and Notaries by means of a Resolution of 29 November 1995, stating that a chattel mortgage on the indivisible part of a Trademark may not be registered in the Spanish Patent and Trademark Office.

Intellectual and Industrial Property Rights may not be subject to pledge without transfer of possession in compliance with Articles 12 and 55 of the the Act of 16 December 1954 on Chattel Mortgage and Pledge without Transfer of Possession.

7) The enforcement of IP rights plays an important role in their exploitation.

Such enforcement is mainly achieved by means of legal proceedings that may be filed by the owner of an IP right in order to penalise the infringement of his right by third parties.

The question arises of whether such a legal action must be filed by all of the co-owners of an IP right or whether it can be filed by only one of the co-owners.

The Groups are therefore invited to specify the legal solutions and procedural exigences in their countries in relation to the possibility of one of the co-owners of an IP right filing an infringement action.

The Patent Act (Article 42 PL), the Trademark Act (Article 46 TML) and the Industrial Design Act (Article 48 IDL) provide that each partner may by himself bring civil and criminal proceedings to defend their rights, but they must notify the other co-proprietors so that they may join in such proceedings.
On the other hand, the Trademark Act and the Industrial Design Act provide that the notification to the other co-owners has not only the purpose of allowing them to join in the pending legal proceedings but also that of allowing them to contribute to the payment of the expenses.

Regarding copyrights, there are no specific provisions in the Intellectual Property Act relating to legal proceedings by the co-proprietors. On the other hand, the Civil Code does not set forth any specific provisions in relation to the legal actions for enforcing the joint rights against any possible attack or infringement by third parties. The case-law from the Supreme Court concerning the interpretation of Articles 392 and 394 of the Civil Code applies to this case, which generally provides that any of the co-owners may appear in court in relation to any matter which affects the rights in joint-ownership, either to exercise them or to defend them, provided that such be made for the benefit of everyone.

8) The exploitation of the IP rights depends also upon the existence of these rights and, more specifically, upon the capacity of their owner to ensure the continuity of the existence of these rights.

Now, the decision on maintaining patents or trademarks by the payment of the renewal fee, may vary according to the legal system of organization of co-ownership.

The Groups are therefore invited to tell how the question of the decision making process of the maintaining or renunciation of the patents or trademarks is organized in their national law.

The Spanish Civil Code generally provides that any of the co-owners shall assume the burdens and has the right to the resulting benefits in a manner proportional to his share in the joint-ownership, which, unless otherwise agreed upon, shall be presumed to be equal (Article 393 CC). The owners shall also have to right to force the remaining partners to contribute to the costs of maintaining the right (Article 395 CC).

In the specific regulations on industrial property rights subject to registration, as far as patents is concerned, it is understood that it is possible for a co-proprietor to oblige the remaining co-owners to pay him a compensation for the costs incurred in paying the required maintenance fees (Article 72.2 SPA). The Industrial Design Act only establishes the right of each of the co-proprietors to perform the acts necessary to ensure the prosecution of the application or the maintenance of the registration (Article 58.2 IDL). The Trademark Act lays down no provisions in relation to this point.

9) The Groups are also invited to describe their national rules of international private law in relation to conflicts of law relating to the co-ownership of the IP rights and conflicts of jurisdiction in order to enforce these rights.

More specifically, the Groups are requested to indicate if their international private law rules accept that the statute of ownership of an IP right co-owned in different countries be regulated by one law.

In this case, what law is applicable for determining the statute of co-ownership?

What is the criteria for seeking the proper jurisdiction in cases of conflict between the co-owners concerning their rights?

Applicable Law

Article 10.4 of the Civil Code provides that "intellectual and industrial property rights shall be protected within the Spanish territory according to the Spanish Law, without prejudice to the provisions laid down by international agreements and treaties to which Spain is a party".
In that respect, it is necessary to point out that international agreements with effect in Spain do not regulate this question. Therefore, in the absence of an applicable agreement, the Spanish Law applies.

**International Judicial Competence**

To determine the competent court, reference to the Council Regulation 44/2001 of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be made.

It is also necessary to analyse separately each type of conflict:

a) **Proceedings concerning registration or validity of industrial property rights subject to filing or registration.** By virtue of Article 22.4 of Regulation 44/2001, the competent courts are exclusively the Courts of the Member State in which the filing or registration has been effected or has deemed to be effected. This provision does not affect intangible rights, such as copyright rights, in respect of which the registration is not required for their existence according to the Spanish Law.

b) **Proceedings concerning the validity of the recordals.** According to Article 22.3, the competent courts are the Courts of the State where Register is sited.

c) **Proceedings on the ownership of rights.** In this case, the general provisions apply; the competent courts are those of the country in which the defendant is domiciled or those chose by the parties (Articles 2, 23 and 24).

d) **Proceedings for infringement of intellectual property rights.** The provisions relating to extracontractual liability apply (Articles 2, 23, 24 and 5.3).

e) **In the event that the subject matter of the controverted issue be merely of obligational nature (i.e. where neither the validity, nor the ownership nor the rights, title or interests inherent to any co-owner are discussed),** the competent Courts shall then be those Courts of the country in which the defendant is domiciled, regardless of his nationality (Article 2). If there are several defendants and these defendants are resident in different States, competence shall fall on the Courts of any of them, provided that there is such a close link between the actions that they should be prosecuted and that simultaneously in order to avoid incompatible judgments Article 6.1).

Accordingly, in relation to the joint-ownership, the previous provisions apply depending on the type of legal action. For example, should the subject matter of the action is the share of ownership, paragraph c) shall apply, whereas, should the conflict relates to the agreement regulating the joint-ownership, paragraph e) shall apply.

10) Finally, the Groups are invited to indicate what other specific solutions or problems relating to the question of the exploitation of IP rights co-owned by two or more persons are raised in their respective countries.

Co-ownership of industrial and intellectual property rights may entail another kind of problems, such as those deriving from the exercise of moral rights by the co-authors of collaborative works, collaborating authors and transformers.

Some problems also arise when the status of undivision comes to its end, which in the case of indivisible goods must be settled through public auction sale. This is connected with the problem of the economic value of these rights, especially when the indivisible part of an industrial or intellectual property right is seized.
On the other hand, in relation to distinctive signs, a situation of unfair competition may arise deriving from the use of rights which have “per se” an indivisible nature specially when, due to a subsequent transfer or to an acquisition of rights by inheritance, different companies are using an identical or similar distinctive sign for identical or similar products, which involves a risk of confusion and/or association.

II) Proposals for future harmonisation

The Groups are also invited to formulate their suggestions in the framework of an eventual international harmonisation of national/regional intellectual property rights or, at least, an improvement or completion of the existing solutions.

1) In particular, the Groups are requested to indicate if they consider that the principle of freedom of contracts should apply to allow the co–owners to determine the statute of the rights and the conditions for their exercising or if the rules governing co–ownership of IP rights should be mandatory.

The Spanish AIPPI Group considers that intellectual and industrial property rights in joint–ownership shall be governed first be the will of the co–owners and in the absence of agreement by the legal provisions.

2) The Groups are also requested to indicate if a statutory rule should give equal rights to all co–owners to individually exploit the IP rights or, without the authorisation of others co–owners, to grant the IP rights to third parties or whether, due to the exclusive character of an IP right, such exploitation can only take place with the agreement of all co–owners.

Should this requirement of the agreement of all co–owners apply to all acts of exploitation and acts in defence of IP rights, or only to the acts of disposal of IP rights for the benefit of third parties, such as licensing or transferring to a third party?

The Spanish AIPPI Group understands that there must be an agreement among the co–proprietors for all the above–mentioned acts, both those relating to the exploitation and those relating to the disposition of such rights in favor of third parties. Otherwise, as far as patents is concerned, the unity of the subject matter of the invention could be jeopardized and the exploitation may vary to a great extent depending on the person who is working the invention. As regards distinctive signs, the necessary identification of the goods or services by its origin would be lost and there would be a potential risk of unfair competition. The same would occur in relation to industrial designs, the quality and aesthetics of which could be jeopardized, depending on who exploited them. As regards copyrights, the moral right of one of the authors would be infringed if the person exploiting the work did so in a manner that may cause a prejudice to one of the co–authors.

3) The Groups are also invited to give their preference as to the possibility of an enforcement action for infringement being initiated by all co–owners or only by some of them.

The Spanish AIPPI Group understands that the enforcement of intellectual property rights by one of the co–proprietors should be possible subject to notification thereof to the remaining co–proprietors so that they may join in the legal action.

Summary

In Spanish law, the system of co–ownership of Industrial and Intellectual Property Rights is regulated under special laws. The joint ownership derived from the co–ownership of Industrial and Intellectual Property Rights is first governed by the will of the parties, secondly by the provisions of the specific law and thirdly by the provisions on joint ownership provided under the Civil Code.
In relation to patents, utility models, distinctive signs and industrial designs, the specific laws generally provides that in the absence of agreement between the parties, any co–owner may by himself:

1) Dispose of his part, notifying thereof the other co–proprietors, who may exercise their rights of first refusal and pre–emptive rights.

2) Exploit the registration by himself, subject to prior notification to the other co–owners.

3) Perform the actions necessary for conserving the application or registration.

4) Institute civil or criminal proceedings against anyone who infringes his exclusive rights, notifying thereof the other co–owners so that they may join in the legal action.

5) Grant licenses to third parties, which would require the consent of the majority of the co–owners. Yet any license on patents and/or utility models shall be granted, in principle, jointly by all of the co–owners.

In relation to copyrights, the applicable provisions are the general provisions on joint ownership provided under the Civil Code, with the particularity that the moral rights of the author are unrenounceable and unalienable. The law clearly specifies only two cases where co–ownership of the author’s rights applies: collaborative works (Article 7 Intellectual Property Act) and software (Article 97 Intellectual Property Act).

Résumé

Dans la législation espagnole, le régime de copropriété des droits de Propriété Industrielle et Intellectuelle est régi par les lois spéciales. La communauté dérivée de la copropriété des droits de Propriété Industrielle et Intellectuelle est régie en premier lieu par la volonté des parties, en second lieu par les dispositions de la législation particulière et, en troisième lieu, par les normes régulatrices de la communauté de biens établie dans le Code Civil.

En rapport avec des brevets, des modèles d’utilité, des signes distinctifs et des dessins et modèles industriels, la législation particulière établit, de manière générale, qu’en l’absence d’accord entre les parties, le copropriétaire pourra lui-même:

1) Disposer de la partie qui lui correspond, en le notifiant aux autres membres de la communauté, qui pourront exercer les droits de préemption et de retrait.

2) Exploiter lui-même l’enregistrement, après l’avoir notifié aux autres cotitulaires.

3) Réaliser les actes nécessaires à la conservation de la demande ou de l’enregistrement.

4) Intenter des actions civiles ou pénales contre ceux qui violent ses droits d’exclusivité, en le notifiant aux autres cotitulaires afin que ceux-ci puissent se joindre à l’action.

5) Octroyer des licences en faveur des tiers, ce qui requerra l’accord de la majorité des membres de la communauté, sauf dans le cas des brevets et des modèles d’utilité, pour lesquels la licence devra en principe être accordée conjointement par tous les participants.

Au sujet des droits d’auteur, ils sont régis par les normes générales applicables à la communauté de biens établies dans le Code Civil, avec la particularité que les droits moraux de l’auteur sont incessibles et inaliénables. La loi ne spécifie clairement que deux cas dans lesquels la cotitularité est établie par les auteurs: l’œuvre de collaboration (art. 7 LPI) et le logiciel (art. 97 LPI).
Zusammenfassung


In Bezug auf Patente, Gebrauchsmuster, Kennzeichen und Geschmacksmuster, legt die besondere Gesetzgebung in groben Zügen fest, dass in Abwesenheit von Vereinbarungen zwischen den Parteien, darf der Mitinhaber für sich allein:

1) Über den ihm entsprechenden Teil zu verfügen, unter Benachrichtigung der weiteren Teilhaber, damit diese das Vorkaufs- und Rückkaufsrecht ausüben dürfen.
2) Selbstständig das Register verwerten, unter Vorbenachrichtigung an die weiteren Mitinhaber.
3) Die notwendigen Handlungen für die Erhaltung der Anmeldung bzw. des Registers durchführen.
4) Zivil- oder Strafklage erheben gegen jene, die ihre Ausschliesslichkeitsrechte verletzen, unter Benachrichtigung der weiteren Mitinhaber, damit sich diese an der Klage anschliessen dürfen.
5) Dritten Lizenzen zu erteilen, was den Mehrheitsbeschluss der Teilhaber erfordert, außer in dem Fall der Patente und Gebrauchsmuster, wo die Lizenz grundsätzlich gemeinsam von allen Beteiligten erteilt werden muss.

In Bezug auf das Uhrheberrecht, gelten die allgemeinen, im Bürgerlichen Gesetzbuch festgelegten Bestimmungen, die auf die Gütergemeinschaft anwendbar sind, mit der Besonderheit, dass die Urheberrechte unverzichtbar und unübertragbar sind. Das Gesetz bestimmt mit Deutlichkeit nur noch zwei Fälle, unter welchen die Mit inhaberschaft möglich ist: Die Gemeinschaftsar beit (art. 7 LPI (Urheberrechtsgesetz)) und die Software (art. 97 LPI).