

Report Q205

in the name of the Latvian Group
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Exhaustion of IPRs in cases of recycling and repair of goods

Questions

I) Analysis of the current statutory and case laws

1) Exhaustion

In your country, is exhaustion of IPRs provided either in statutory law or under case law with respect to patents, designs and trademarks?

Exhaustion of IPRs is provided in statutory law for patents, designs and trademarks.

What legal provisions are applicable to exhaustion?

Patent Law, Article 21, Law on Trade marks and Geographical Indications of Origin, Article 5(2) and Article 5(3), Law on Designs, Article 13.

What are the conditions under which an exhaustion of IPRs occurs?

Patents

Exhaustion occurs if the patent owner himself or any other person with his consent has put the patented product on the market in the European Economic Area (EEA) and the patent owner has no legal grounds for objection to subsequent marketing of the patented product (Art.21 of Patent Law).

Trade marks

The owner of a trademark is not entitled to prevent the use of the trademark in relation to goods which have been put on the market under that trademark in the EEA by the owner of the trademark or another person with his consent. The principle of exhaustion does not apply where the trademark owner has legitimate reasons to prohibit further commercialization of the goods, especially, if the quality of the goods has changed after being put on the market or the goods have been impaired (Art.5(2), Art.5(3) of Law on Trade marks and Geographical Indications of Origin).

Designs

Exclusive rights shall not apply to the activities with a product, where a design, which is included in the scope of legal protection of the protected design, has been applied to or incorporated into, if such product has been included in the economic circuit in the EEA by the owner of the protected design himself or by another person with his consent (Art.13(4) of Law on Designs).

What are the legal consequences with regard to infringement and the enforcement of IPRs?

Exhaustion of IPRs is a limitation to the exclusive rights of IPR owners. IPR owner may not enforce his exclusive rights in case of exhaustion of IPRs. Therefore infringement actions are only possible in cases when the exceptions of principle of exhaustion provided by law are applicable (see above).

2) *International or national exhaustion*

Does the law in your country apply international exhaustion for patents, designs or trademarks? If yes, are there any additional conditions for international exhaustion compared to regional or national exhaustion, such as a lack of marking on products that they are designated only for sale in a specific region or country or the non-existence of any contractual restrictions on dealers not to export products out of a certain region? What is the effect of breach of contractual restrictions by a purchaser?

If your law does not apply international exhaustion, is there regional exhaustion or is exhaustion limited to the territory of your country?

The EEA wide regional exhaustion is applied in respect to all IPRs.

In case your country applies regional or national exhaustion, who has the burden of proof regarding the origin of the products and other prerequisites for exhaustion and to what extent?

According to Article 93(1) of Law on Civil Procedure every party of civil proceedings has to prove the facts underlying his claims or objections. The plaintiff must prove the justification of his claims; the respondent must prove the justification of his objections to the claim.

In accordance with the case law of the European Court of Justice the burden of proof regarding the origin of the products and exhaustion of IPRs is borne by the party who claims the exhaustion of IPRs. Also the party who claims exhaustion of IPRs due to the consent by the owner of IPRs to further marketing of products protected by IPRs has to prove the consent of the owner of IPRs.

3) *Implied license*

Does the theory of implied license have any place in the laws of your country? If so, what differences should be noted between the two concepts of exhaustion and implied license?

Not applicable.

4) *Repair of products protected by patents or designs*

Under what conditions is a repair of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "repair" in this context?

A specific definition of the term "repair" is not available in context of IPRs. No general legal regulation regarding repair of patented or design protected products available. Only some specific limitations to the exclusive rights of IPR owners are stipulated in relation to use of patented or design protected products in repair of complex products regardless their protection with IPRs (see below).

Patents

The exclusive rights may not be enforced against the use of an invention in a construction or exploitation of a foreign transport vehicle that is present in the territory of Latvia occasionally or temporarily and if the invention is used only for that vehicle (Art.21.5).

Designs

The exclusive rights may not be enforced against the use of a design:

- 1) in repair of apparatuses and accessories in foreign ships and aircraft that are registered in foreign countries and that are temporarily present in the territory of Latvia. Also the imports of spare parts and accessories for the purposes of repair of the said may not be prohibited (Art.13(2) of Design Law);

- 2) against a person who uses a design if the following conditions are present:
- the product where such design is applied to or incorporated into is a part (component) of a complex product;
 - a design is dependent upon (subordinate to) the appearance of the complex product; or
 - the aim of the use of a design is to ensure the repair of the complex product, in order to restore the original appearance thereof (Art.13(3) of Design Law).

5) *Recycling of products protected by patents or designs*

Under what conditions is a recycling of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term “recycling” in this context?

There is no special legal regulation regarding recycling of products protected by patents or designs. Recycling of products protected by patents or designs is subject to general legal regulation on recycling. There is no specific definition of the term “recycling” in context of IPRs.

6) *Products bearing trademarks*

Concerning the repair or recycling of products such as reuse of articles with a protected trademark (see the examples hereabove), has your national law or practice established specific principles? Are there any special issues or case law that govern the exhaustion of trademark rights in your country in case of repair or recycling?

No special legal regulation or case law available.

7) *IPR owners’ intention and contractual restrictions*

a) *In determining whether recycling or repair of a patented product is permissible or not, does the express intention of the IPR owner play any role? For example, is it considered meaningful for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use?*

b) *What would be conditions for such kind of intentions to be considered?*

The intention of the IPR owner for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use does not play any role. The statutory provision regarding exhaustion of patent rights cannot be altered by IPR owner’s intention or any contractual restrictions imposed by the IPR owner on third parties.

c) *How decisive are other contractual restrictions in determining whether repair or recycling is permissible? For example, if a license agreement restricts the territory where a licensee can sell or ship products, a patentee may stop sale or shipment of those products by third parties outside the designated territory based on his patents. What would be the conditions for such restrictions to be valid?*

Regardless any provisions of a license agreement, if the product is sold with the permission of the patentee or his licensee within the territory of the EEA the patent rights regarding the particular piece of product are exhausted.

In particular circumstances the said restrictions could be also subject to antitrust law and these restrictions could be construed as partitioning of the relevant market within the EEA. Therefore the said restrictions could be considered invalid.

If the patented products are imported by third parties from outside the EEA, the patentee or his licensee within the relevant country of the territory of the EEA in which the patent is granted may object to selling and shipping of products from third countries regardless any contractual provisions.

- d) *Are there any other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions?*

Not available.

- e) *How does the situation and legal assessment differ in the case of designs or trademarks?*

The situation regarding exhaustion of trade mark or design rights does not differ. The Statutory provisions regarding exhaustion of trade mark or design rights cannot be altered by IPR owner's intention or any contractual restrictions imposed by the IPR owner on third parties. The legal assessment is the same.

- 8) *Antitrust considerations*

According to your national law, do antitrust considerations play any role in allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks?

Antitrust considerations may play a role if there are contractual restrictions not allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks.

- 9) *Other factors to be considered*

In the opinion of your Group, what factors, besides those mentioned in the Discussion section above, should be considered in order to reach a good policy balance between appropriate IP protection and public interest?

No opinion available.

- 10) *Interface with copyrights or unfair competition*

While the present Question is limited to patents, designs, and trademarks as noted in the Introduction above, does your Group have any comments with respect to the relationship between patent or design protection and copyrights or between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods?

No comments available.

- 11) *Additional issues*

In the opinion of your Group, what would be further existing problems associated with recycling and repair of IPR-protected products which have not been touched by these Working Guidelines?

No opinion available.

II) Proposals for uniform rules

- 1) *What should be the conditions under which patent rights, design rights and trademark rights are exhausted in cases of repair and recycling of goods?*

No proposals available.

- 2) *Should the repair and the recycling of goods be allowed under the concept of an implied license?*
No proposals available.
- 3) *Where and how should a line be drawn between permissible recycling, repair and reuse of IP-protected products against prohibited reconstruction or infringement of patents, designs and trademarks?*
No proposals available.
- 4) *What effect should the intent of IPR holders and contractual restrictions have on the exhaustion of IPRs with respect to recycling and repair of protected goods?*
No proposals available.
- 5) *Should antitrust issues be considered specifically in cases of repair or recycling of goods? If so, to what extent and under which conditions?*
No proposals available.
- 6) *The Groups are invited to suggest any further issues that should be subject of future harmonization concerning recycling, repair and reuse of IP-protected products.*
No proposals available.
- 7) *Based on answers to items 1 to 6 above, the Groups are also invited to provide their opinions about how future harmonization should be achieved.*
No proposals available.

Summary

A specific definition of terms "repair" and "recycling" is not available in context of IPRs. No general legal regulation regarding repair and recycling of patented or design protected products available. Only some specific limitations to the exclusive rights of IPR owners are stipulated in relation to use of patented or design protected products in repair. Recycling of products protected by patents or designs is subject to general legal regulation on recycling. There is no case-law regarding infringements of IPRs in the context of repair or recycling of IPR protected goods. The exhaustion of IPRs may not be altered by the intention of IPR holder.

Zusammenfassung

Es gibt keine konkret vorliegende Definition für die Termini "Reparatur" und "Recycling" im Rahmen der Rechte geistigen Eigentums. Es sind keine generellen Rechtsvorschriften bezüglich Reparatur und Recycling von patentierten oder von Geschmacksmustern geschützten Produkten vorhanden. Nur einige spezifische Begrenzungen der ausschliesslichen Rechte der Inhaber des geistigen Eigentums sind in Bezug auf den Einsatz von patentierten oder von Geschmacksmustern geschützten Produkten in der Reparatur festgelegt. Das Recyceln von Produkten, die patentrechtlich oder Geschmacksmuster geschützt sind, unterliegt den generelen Rechtsvorschriften, die das Recycling regeln. Es gibt kein Fallrecht bezüglich der Rechtsverletzung der Rechte des geistigen Eigentums im Rahmen der Reparatur oder des Recycelns der von den Rechten des geistigen Eigentums geschützten Waren. Das Erschöpfen der Rechte des geistigen Eigentums kann nicht mit der Absicht des Inhabers der Rechte des geistigen Eigentums geändert werden.