Application of GIS in the Legal Protection of Geographical Indication in Poland

Introduction

In the time of globalisation, just before joining to European Union, Polish national economy became the area of many changes which are required for adapting to European standards, as well as being obligatory to free-market rules. Every country, region, units of territorial autonomy (communes, administrative districts, provinces) as well as every businessman who wants to prosper well and develop constantly has to adapt his own activities to obligatory economic rules and must keep up with all changes, both in law and in theories of management.

Regional development management is connected with development planning, organizing development processes, development motivating and control of realization and acquired results. All these activities have to lead to reach expected results in scale of define area due to widely comprehended social business.\(^1\)

One of many factors connected with indirect way with regional development is management of geographical indications (regional names and indication of origin). Producers of definite commodities can protect their own business by registering geographical indication, identifying commodity as origin from given area.

In further parts of this article I will bring up problems of legal protections of geographical indications and in particular the process of their registration in Patent Office of Polish Republic\(^2\) as well as usefulness of Geographical Information System (GIS) in this subject.

Expression and classification of geographical indications

Dynamic development of trade and competition, which induced local producers to assure solid protection of indications to produce by them commodities, caused much more interest in geographical indications.\(^3\) This fact and willingness to adapt Polish law to European effected Polish legislator to settle

---


\(^2\) Patent Office or UPRP in further part of this article.

detailed protection of geographical indications within industrial property law. In Poland there are still obligatory rules of unfair competition law, but they protect geographical indications only in range of unfair competition.

Geographical indication is one of the objects of industrial property law. The law regulations normalizing relations in range of geographical indications were concluded in the III title of the act dated 30th of June 2000 – Industrial Property Law. PWP act introduces wider than so far existing protection based on registration system in UPRP.

According to article 174, paragraph 1 of PWP, geographical indications are word signatures, referring directly or indirectly to the name of a place, city, region or country (area), which identify commodity as origin from this area, if specific quality, good opinion or other features are mainly credited to geographical origin of this commodity.

Protected geographical indications refer to the names of specific area. Area (fr. terrain from lac. terrenum, ‘area’) as territory, that is geographical area possessing clear borders with proper form and its proper cover, separated because of some features characteristic only to this area. Article 174, paragraph 1 of PWP as area treats place, city, region or country, that is parts of area that belong to specific country or its administrative part (city or region which can be for instance units of territorial autonomy such as communes, administrative districts, provinces), restricted by country or administrative border. As far as region is concerned, that is area with specific features however different from neighbouring area, can be built of smaller units of administrative partition not necessarily belonging to the same country (e.g. euroregions).

Geographical indication not necessarily has to immediately refer to a name of specific area (e.g. piersniki toruńskie – that is honey-cakes from Toruń - or Porto wine); it can also indirectly show the origin place of commodity (e.g. oscypek - kind of sheep's cheese - from Podhale).

Geographical indications are registered for commodities with specific quality, good opinion or other features credited mainly to geographical origin of this commodity, so that potential buyer or customer could, by this indication, identify the commodity as the one coming from given area and simultaneously having specific features e.g. geographical indication for ‘Bordeaux’ wines identifies this wine as the one coming from Bordeaux region in France and at the same time shows unique properties which have wines produced from grapes growing in this region (similarly with Porto wines, Ceylon tea, Colombian coffee, champagnes from Champagne, cognacs from regions of city Cognac or even Polish oscypek).

4 Statute from the day 30th of June 2000. Industrial Property Law - PWP (Act from 2001 No 49, item 508).
Interest of registration geographical indications constantly increases in Poland. On April the 04th 2002 nowotarski, tatrzański and żywiecki districts, Podhalanie Association and Regional Association of Sheep and Goat Breeders submitted to UPRP five geographical indications: redykołka, bryndza, bundz, żentyca and oscypek, on which in April 2003 UPRP gave the registration rights. Thanks to this, commodities (cheese) marked by these indications it will be identified by customers as cheese origin from administrative district: nowotarski, tatrzański or żywiecki (because it can be produced only there) and simultaneously being characterized with specific taste, consistency and colour. Original oscypek is produced from sheep milk according to traditional highlanders methods that is pressing in suitable temperature, wetting in salted water and properly keeping, has characteristic salty taste, lightly cream colour, and contains not less than 60 per cent of fat. It owes its values from mountainous grounds origin, where natural factors and production according to regional methods have decisive influence on quality and characteristic features of commodity.

Origin and special features of cheese, marked by remaining registered geographical indications, can be identified as well.

In Poland there is also possibility of protection of foreign geographical indications on condition that such indication is protected in the country of its origin. Foreigners (organizations authorized to representing business of producers, units of government administration or territorial autonomy) should add to application evidence that the mark is protected in a country of origin, which can be in particular every international contract based of which geographical indication is a subject of protection (article 176, paragraph 5 of PWP).

Right deriving from the registration of geographical indication and registration procedure

Protection of geographical indications follows after registering in UPRP. Registration procedure begins from submission the application of geographical indication in UPRP, which then is examined by representatives of patent office.

Application can be done by organization authorized to represent producers’ business, working on specific area and also unit of government administration or territorial autonomy proper on area, which this geographical indication refers to.

In case of finding by UPRP any lacks and relevant errors in application the author is called to complete it or remove errors. If not the application is turned down.

If UPRP ascertains that application was prepared correctly, it makes a decision about giving rights from registration on geographical indication what ascertains certificate of registration. This decision has to be followed by fee for

---

5 www.slowfood.pl/oscypek.htm
Mariusz Grzesiczak

Protection; otherwise UPRP ascertains expiration of decision about giving rights from registration.

Protection consequence from giving rights for registration on geographical indication lasts from the day of registration, run by UPRP and has no time limit.

Entitled to marking commodities with registered geographical indications can point that this indication were registered by placing (on commodity) words like: “registered geographical indication” or letter “G” written in a circle near this indication what can definitely strengthen the image of appointed commodity on the market and certainly help in its promotion.

It is a big difference in the kind of protection of geographical indications in relation to other industrial property objects protection. For instance in case of inventions or trademarks, the law from patent on invention or protective right on trademark gives its owner the right to sole using the invention or sole using the trademark to make money or use it professional in Poland. People that are not entitled from patent or trademark protective right can use them only after the agreement of entitled (e.g. licensing contract) or in special causes provided in PWP statute. But in case of geographical indications every person whose commodities realize conditions of profiting from indication can use them in their business. Such person has to prove that his commodities fulfil required conditions (written declaration from the entitled person deriving from the registration or opinion of court), after that he can apply for registration in UPRP as entitled to use this indication.

Correct geographical indication application should contain among other things:

- exact description of geographical indication with pointing ways to use it in trade, in particular on etiquettes, wrappings or commodities,
- pointing of commodities for which geographical indication is intended (e.g. sheep - cheese in case of oscypek),
- pointing of businessmen who use or will use geographical indication,
- description of special attributes and features of commodities as origin from specific area with conditions of using geographical indication,
- exact description of area borders, which geographical indication refers to, by describing these borders and enclosing a map of this area with indispensable explanations and others.

Detailed requirements relating to applications are normalized in Decree-law in accomplishment and consideration of geographical indications applications.

Application prepared in this way is a subject of detailed registration procedure, of which final effect should be a decision to acknowledge the right deriving from the registration on given geographical indication.

---

Decree-law of Prime Minister from the day 25th of April 2002 in accomplishment and consideration of geographical indications applications (Act No 63, item 570).
Usefulness GIS at registration of geographical indications

The “Geographical Information System” (GIS) term is used to describe computerized system, which makes possible collecting, storage, analysis, presentation and making spatial data connected with specific location available in geographical environment.

In recent years GIS, thanks to combination of research from geography, geodesy, cartography, electronics and first of all sudden development of computer science and information management methods, is more commonly used. The number of fields where these systems are used systematically increases. Unquestionable growth of possibilities, ideas and results of using it appears more often. In practice specialist systems are used having specific application and also universal systems, which can be used in different ways depending on current needs.

In order to apply, every GIS has to be equipped with suitable database connected with location of geographical structure. This data can be divided into:

- spatial data, that can contain information both about shape and strict location of individual structures in the frame of reference given, and also about their topology that is mutual place relative to other structures (for instance data such as in what province dąbrowski district is placed and what district it border),
- not spatial data, describing features quantitative or qualitative of geographical structures not connected with their location in space (for instance area, number of population taking up residence on specific area etc.)

Specialist creating GIS has to, of course, equip it with suitable symbol list that is graphic description of figure, in which objects will be presented or made available, so that they can fit for perception by potential user.

In the legal protection of geographical indications already existing GIS, which databases can be completed with necessary information in need, can be very helpful. Such systems could be used for different aims:

1. As a system helping in drawing up application of indication for registration. One of the points of this application, as I mentioned, is exact description of area borders, which it refers to, by describing it and enclosing a map of this ground with indispensable explanations. Legislator does not specify, as a matter of fact, what explanations are needed exactly (he just demands the scale of the map and presenting it in a way it could be directly reproduced) but you may guess these are all names of geographical structures that can be found on a map. It is also possible to place indications related to vertical forms of ground, but this is permissible only if it is necessary to point area borders.

Someone who submit a geographical indication to UPRP could therefore bring out from GIS both data helping to describe borders of selected area and to receive

8 look note 5.
specific data presentation given in graphic form (a map). For instance someone who submits the geographical indication “oscypek” would gain from GIS maps of districts: tatrzański, nowotarski and żywiecki with necessary explanations. User would be able to choose objects, which should be shown, according to his own criterions e.g. their location or attribute values. GIS makes possible changing the way of graphic presentation of chosen objects, but also size of a piece of the map, colours or names of places describing objects on the map.¹¹. Legislator demands that area borders description has to be made in printed writing in colour black and description and the map (already registered on paper carrier) in A4 format. Devices, which are used mostly in preparing permanent copy of a map in paper carrier, are plotter and tessellated or laser printers¹². An additional trump of this system could be the fact that then more less similar applications would be provided to UPRP (at least regarding parts connected with border description and maps) what could help clerks with their work.

2. As a system helping the specialists from UPRP, to consider applications of geographical indication. Person considering application of geographical indication for registration could easily check if the application (regarding part connected with area border description) is prepared correctly. Namely if border description and a map are compatible with real territorial system of the country. Specialist’s access to GIS could help in catching eventual errors or inaccuracies in application. For instance someone who submits an application describing area borders marks nowotarski district but on the map presents wider area expanded by Stary Sącz commune belonging to neighbouring nowosądecki district. This disagreement of area border description with its map is questionable. It is not known if he really means to mark nowotarski district with Stary Sącz commune area or by a mistake he placed this commune in nowotarski district. After catching this error specialist from UPRP could demand removing it in a time limit.

3. For informative and statistical UPRP aims. We are talking here about creation of such system, which would make possible for potential user easy and quick access to information about protected geographical indications in Poland, and in particular about region of country, area where the commodities marked by these indication are produced. Person who wants to find out on which area in Poland the given commodities signed with registered indication are produced, would be able to begin from basic layer map, which would be the map of Poland divided into provinces. The map would be divided to (light, bold typed or marked with other colour) these provinces on which those areas exist (Fig. 1).

¹¹ look note 5.
¹² look note 5.
The next step would be marking the provinces, user is interested in and, as an effect, and it would get maps of marked provinces divided into administrative districts. The map divided in such a way would include and show administrative districts, which are the area connected with the protected indication (Fig. 2).

At present, when there are only five geographical indications protected in Poland, GIS would not be so complicated. Areas that those indications are connected with (redykolka, oscypek, żentyca, bundz and bryndza) are included only in three administrative districts (nowotarski, żywiecki and tatrzanski).

That is why the further detailing of maps with partition on communes and cities is not the main task at this moment, but - taking GIS usefulness into account for specialist from UPRP in consideration of application (look point 2) – is also important.

On this stage it would be possible to put the next layer on the basic one with marked businessmen who use or will use the geographical indication. After marking the selected businessmen, basic information about him could be obtained e.g. address, telephone etc. (Fig. 3).

I would like to point out that legislator in clause 4, paragraph 1, point 6 of Decree-law in accomplishment and consideration of geographical indications applications orders to point businessmen who use or will use geographical indication. This pointing should contain at least description of actual or foreseen number of businessmen with announcement of their location. It can be also prepared in form of a list containing their surnames and first names or name, with the address.

The next important function would be possibility of obtaining information about protected geographical indications. Marking some area and clicking on the window placed close to the map ‘information about geographical indications’ we would receive many information about protected indication.
Fig. 2

Silesian province

Information about businessman

Information about indication

ŻC- Żywiec District

Fig. 3

Silesian province

Information about businessman

Information about indication
Conclusion

In a short time possibility of legal protection of geographical indications will be one of very important factors affecting on companies development producing traditional, regional commodities, what can surely lead to development of all regions.

All Polish economy can profit from good management of geographical indications rights, especially when Poland joins the European Union, where the protection of geographical indications has longer traditions. “Fight” for protection of one’s own traditional, regional products is lasting on European markets. Producers of ‘brand-name food’ from many countries have suddenly begun making applications for protection.

Geographical indications are already protected from countries such as:

- Portugal: 12 kinds of cheese, 14 sorts of smoked meat, about 20 other meat-products, 9 kinds of honey and 5 kinds of olive oil,
- Greece: 20 kinds of cheese, among other things famous ‘feta’,
- France: 41 kinds of cheese, among other things camembert, comte, roquefort.
- Those are just select products that are protected. The list already contains about 600 items from different countries and constantly increases.

There are only five kinds of cheese protected in Poland but the list of products that can be protected in this way is long, e.g. krakowska and śląska sausages, some kinds of apples, aronia juices, beer, vodka, smoked cheese like ustrzycka roulade, brand-name cottage cheese, etc.

Legal protection of geographical indications on European market has not only marketing meaning, but also has to serve to emphasize one’s own national distinction and enhance the image in the eyes of other nationalities.

Hence all ideas improving registration procedure and strengthening protection of geographical indications, such as using GIS in this way, are in my opinion necessary, because this can have an influence on faster development of each regions and in consequence all country.

Bibliography


Mariusz Grzesiczak