

DEPÓSITO LEGAL ZU2020000153  
*Esta publicación científica en formato digital  
es continuidad de la revista impresa*  
**ISSN 0041-8811**  
**E-ISSN 2665-0428**

# **Revista de la Universidad del Zulia**

**Fundada en 1947  
por el Dr. Jesús Enrique Lossada**



**Ciencias**

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**Sociales**

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**y Arte**

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**Año 14 N° 41**  
**Septiembre - Diciembre 2023**  
**Tercera Época**  
**Maracaibo-Venezuela**

## Legal Status of the National Intellectual Property Authority: European Experience

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### ABSTRACT

The purpose of the scientific research is a detailed analysis of the organization and activity of the national intellectual property body in European countries. The analysis of the European experience of intellectual property bodies is a necessary foundation for the Ukrainian mechanism in the context of the implementation of positive aspects and integration into the European environment. Research methods were used: systematization, comparative method, generalization; analysis and synthesis of ideas developed. On the basis of the conducted analysis, taking into account the study of positive European experience, recommendations were developed for possible implementation into national legislation in the researched area. As a result of the conducted research, it was concluded that in such European countries as Great Britain, France, Germany, Spain and Poland, a single universal model of building national intellectual property bodies has not been developed; each State has a special system of intellectual property bodies; at the same time, despite the diversity of sub-departments and the organizational structure of the national intellectual property bodies of each of these countries, there are several common features.

KEY WORDS: Intellectual property, European Union, country reports, legislation, legal status.

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## Situación jurídica de la Autoridad Nacional de Propiedad Intelectual: Experiencia europea

### RESUMEN

El objetivo de la investigación científica es un análisis detallado de la organización y actividad del organismo nacional de propiedad intelectual en los países europeos. El análisis de la experiencia europea de los organismos de propiedad intelectual es una base necesaria para el mecanismo ucraniano en el contexto de la implementación de los aspectos positivos y la integración en el entorno europeo. Se utilizaron métodos de investigación: sistematización, método comparativo, generalización; análisis y síntesis de ideas desarrolladas. Sobre la base del análisis realizado, teniendo en cuenta el estudio de la experiencia europea positiva, se desarrollaron recomendaciones para su posible implementación en la legislación nacional en el área investigada. Como resultado de la investigación realizada, se concluyó que en países europeos como Gran Bretaña, Francia, Alemania, España y Polonia, no se ha desarrollado un modelo universal único para la construcción de organismos nacionales de propiedad intelectual; cada Estado tiene un sistema especial de órganos de propiedad intelectual; al mismo tiempo, a pesar de la diversidad de subdepartamentos y la estructura organizativa de los órganos nacionales de propiedad intelectual de cada uno de estos países, existen varias características comunes.

**PALABRAS CLAVE:** Propiedad intelectual, Unión Europea, informes de países, legislación, régimen jurídico.

### Introduction

The national mechanism for the formation and implementation of state policy in the field of intellectual property is ensured, along with a high-quality legal basis, as well as an effective permanent state authority. At present, such a system is only being formed and balanced in Ukraine, and the present already presents our country with enough tasks both at the national and international level. Actually, the analysis of the European experience of intellectual property bodies, which dates back to the 19th century, is a necessary foundation for the Ukrainian mechanism in the context of the implementation of positive aspects and integration into the European environment.

The main purpose of the article is a detailed analysis of the organization and activity of the national intellectual property body in European countries.

## 1. Materials and methods

The methodological basis of scientific work is a set of general scientific and special scientific methods and methods of cognition, which are comprehensively used to solve the tasks set in the research. The research is based on the analysis of modern scientific literature (Drapushko R., Horinov P., Filyk N. 2020; Boshytskyi Yu. 2020; Bulat E. 2019), as well as current legal acts regulating the peculiarities of the legal status of the national body on intellectual ownership in Ukrainian and European practice. The current legal acts of Ukraine, as well as European countries such as Great Britain, France, Germany, Spain and Poland, are analyzed.

Based on the analysis of legal acts of various European countries, it was established that there is no single universal model of building national intellectual property bodies. As a matter of fact, each state has a special system of intellectual property bodies. At the same time, despite the diversity of sub-departments and the organizational structure of the national intellectual property bodies of each of these countries, there are several common features - regulation by the national institutional law, sub-department to one of the governmental branch ministries, competitive selection of the staff (head and members, with their division into qualified members and experts).

The structural-analytical method, methods of analysis and synthesis made it possible to reveal the peculiarities of the national body on intellectual property, its legal status and the main functions assigned to it.

In order to study the essence and peculiarities of the functioning of national bodies on intellectual property issues in European countries, the methods of functional and system analysis were used as one of the main methods of this work. Methods of classification and grouping provided the possibility of classification of the main models of national bodies on intellectual property issues. With the help of the system-analytical method, it is proved that the national bodies on intellectual property issues in different countries should rely only on competent rights and obligations in their activities and use in their activities the means, forms, and methods provided for by the legislation during the adoption of the relevant normative - legal acts.

In addition, research methods were used: systematization, the method of comparative studies, generalization, content analysis, prognostic-legal, etc. On the basis of

the conducted analysis, taking into account the study of positive European experience, recommendations were developed for the possible implementation of certain provisions on the functioning of national bodies on intellectual property issues into national legislation in the researched field.

## 2. Results and discussion

The Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority" dated 16.06.2020 No. 703-IX made significant adjustments to the structure of the state system of legal protection of intellectual property, namely the establishment of the National Intellectual Property Authority (hereinafter – NIPA) (Law of Ukraine, 2020).

Thus, NIPA is defined as a legal entity under public law (state organization) belonging to the department of the Ministry of Economic Development, Trade and Agriculture (Ministry of Economy).

In accordance with the provisions of the Law of Ukraine "On Amendments to Some Laws of Ukraine Regarding the Creation of a National Intellectual Property Body" dated June 16, 2020 No. 703-IX (On Amendments to Some Laws of Ukraine Regarding the Creation of a National Intellectual Property Body, 2020), National an intellectual property body is a state organization that is part of the state system of legal protection of intellectual property, defined at the national level by the Cabinet of Ministers of Ukraine as the one that exercises powers in the field of intellectual property, defined by this Law, other laws in the field of intellectual property, acts of the central executive body authorities, which ensures the formation and implementation of state policy in the field of intellectual property, and by statute, and has the right to represent Ukraine in international and regional organizations.

It should be noted that, in accordance with the legislation, the functions of the IPPR are performed by a legal entity under public law (state organization), established by the central executive body, which ensures the formation and implementation of state policy in the field of intellectual property, and is determined by the Cabinet of Ministers of Ukraine.

Article 2 of the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority" dated 16.06.2020 No.

7 03-IX establishes that the functions of the IP are performed by a legal entity under public law (state organization) established by the central executive body, which ensures the formation and implementation of state policy in the field of intellectual property, and is determined by the Cabinet of Ministers of Ukraine (Law of Ukraine, 2020).

In accordance with the set goal of activity, NIPA implements the following within the limits of its powers:

- accepting applications, carrying out their examination, making decisions about them;
- implementation of state registration of industrial designs and issuance of certificates;
- recognition of industrial design rights as invalid in whole or in part in accordance with the procedure provided for by law;
- publishing official information about industrial designs, maintaining the Register, entering information into it, providing extracts and extracts in electronic and (or) paper form;
- implementation of international cooperation in the field of legal protection of intellectual property and representation of Ukraine's interests in matters of protection of rights to industrial designs in the World Intellectual Property Organization and other international organizations in accordance with legislation;
- training, certification and registration of representatives in intellectual property matters (patent attorneys);
- maintaining the State Register of representatives in intellectual property matters (patent attorneys);
- informing and providing explanations regarding the implementation of state policy in the field of industrial design rights protection (Law of Ukraine, 2020).

For a long time, the functions of the National Intellectual Property Authority were performed by the state enterprise "Ukrainian Intellectual Property Institute (Ukrpatent)" (About the National Intellectual Property Authority, 2020). On November 8, 2022, the order of the Cabinet of Ministers of Ukraine dated October 28, 2022 No. 943-r "Some issues of the National Intellectual Property Authority" entered into force, by which the Ukrainian National Office of Intellectual Property and Innovation (UNOIP) was designated as an

entity performing the functions of an IPIP. and the performance of these functions by the State Enterprise "Ukrainian Institute of Intellectual Property" (Ukrpatent) has been discontinued (Some Issues of the National Intellectual Property Authority, 2022).

Taking into account the above-mentioned novelties of the national mechanism for the formation and implementation of national policy in the field of intellectual property, we consider it necessary to investigate the nature and peculiarities of the functioning of similar state bodies in the European plane, namely in such countries as Great Britain, France, Germany, Spain, Poland and Portugal.

Thus, a clear and effective mechanism for the formation and implementation of state policy in the field of intellectual property of Great Britain is provided by the Intellectual Property Office, whose working title is the Patent Office (The Manual of Patent Practice (MOPP) Explains the Intellectual Property Office's Practice Under the Patents Act, 1977).

The Intellectual Property Office is the UK's official government body that covers the entire system of intellectual property elements, including patents, industrial designs, trade marks and copyright.

It should be noted that the Office is an executive agency of the Department for Business, Energy and Industrial Strategy, under which it is coordinated and funded.

In relation to the powers entrusted to it, the Office has direct administrative responsibility for the examination and issuance or rejection of patents, as well as for the maintenance of registers of intellectual property, including patents, industrial designs and trademarks. As in most countries, the UK does not have a statutory register of copyright, so the Office does not exercise any direct administration of copyright matters within its mandate.

The Patent Office is headed by the Controller General of Patents, Industrial Designs and Trademarks, who simultaneously performs the duties of the Registrar of Trademarks, the Registrar of Industrial Designs, and the Office's Chief Executive Officer. The existence of the Patent Office and the post of Comptroller-General is a requirement of the Patents and Designs Act 1907 (although most other provisions of that Act have been repealed).

In addition, the legal basis for the activities of the Intellectual Property Office is the Manual of Patent Practice, which establishes the relevant patent legislation and operational

practice regarding patents (The Manual of Patent Practice (MOPP) Explains the Intellectual Property Office's Practice Under the Patents Act, 1977).

Interestingly, the UK Patent Office, which is responsible for registering trademarks, has recently launched a national intelligence database, TellPat, which is available to law enforcement. Thus, expanding the scope of its competence and interaction with other state authorities.

In France, the National Institute of Industrial Property is the national intellectual property agency responsible for patents, trademarks and industrial design rights (Loi N 51-444 Du 19 Avril 1951 Crйant Un Institut National De La Propriйtй Industrielle, 1951).

The activities of the National Institute of Industrial Property are aimed at the economic development of the state by promoting innovations: registration and issuance of industrial property rights (patents, trademarks, samples and models); reception and processing of applications for geographical indications.

The institute provides innovators with comprehensive legal and technical documentation through open national databases on patents, trademarks, designs and models, as well as the National Register of Trade and Companies, which provides equipment.

In addition, this body plays an important role in the development of industrial property law and represents France in the competent community and international bodies such as the World Intellectual Property Organization, the European Patent Office (or the European Union Intellectual Property Office). The institute is the main relay in the fight against counterfeiting, and is also responsible for the general secretariat of the National Anti-Counterfeiting Committee.

The National Institute of Industrial Property was created on the basis of the Law on the Creation of the National Institute of Industrial Property dated 19.04.1951 No. 51-444 under the Ministry of Industry and Trade of France and has its own legal personality and financial independence (Loi N 51-444 Du 19 Avril 1951 Crйant Un Institut National De La Propriйtй Industrielle, 1951).

In accordance with the assigned powers, the implementation of the envisaged missions of the institute is ensured through:

- centralization and distribution of all information necessary for the protection of innovations and for the registration of companies, as well as the initiation of any actions to increase awareness and education in these areas;
- application of laws and regulations regarding industrial property, commercial register and companies, as well as commercial directory; for this purpose, the institute ensures, in particular, the receipt of applications for industrial property titles or additions to industrial property, their examination and their issuance or registration and control over their preservation; it centralizes the trade register and the register of companies, the trade directory and the official bulletin of civil and commercial announcements; it ensures the dissemination of technical, commercial and financial information contained in industrial property documents and centralized legal promulgation tools;
- legislative initiatives aimed at constant adaptation of national and international legislation to the needs of innovators and businesses; in this regard, the Institute shall propose to the Minister responsible for industrial property any reforms that are potentially useful in these matters; the institute participates in the development of international agreements, as well as in the representation of France in competent international organizations (Loi N°51-444 Du 19 Avril 1951 Cr yant Un Institut National De La Propri t  Industrielle, 1951).

As for Germany, the role of the national patent office is performed by the German Patent and Trademark Office (Patentgesetz in der Fassung der Bekanntmachung, 1980).

The office is the central authority in the field of intellectual property protection in Germany. Its duties include issuing patents for the registration of industrial designs, trademarks and designs, as well as informing the public about existing industrial property rights.

The German Patent and Trademark Office aims to inform the public, in particular small and medium-sized enterprises, about intellectual property rights in general and their limitations, as well as about the exercise and protection of these rights.

In carrying out its tasks, the German Patent and Trademark Office cooperates with the intellectual property offices of other countries and regions, the European Patent Organization, the Intellectual Property Office of the European Union and the World Intellectual Property Organization. Cooperation also includes copyright issues.

The recognized partner of the department in Germany itself is the Patent Information Centers, united in the Association of Patent Information Centers of Germany. Today, there are more than twenty such national patent information centers in Germany, which are German institutions that provide services on intellectual property rights.

The legal basis for the activities of the German Patent and Trademark Office is the German Patent Act. According to which, the German Patent and Trademark Office is an independent higher federal body under the competence of the Federal Ministry of Justice and Consumer Protection (Patentgesetz in der Fassung der Bekanntmachung, 1980).

The office consists of a president and other members who are eligible to hold judicial positions under the German Judges Act (legally qualified members) or to be experts in the field of technology (technical members). It should be emphasized that the members of the department are appointed for life.

Their selection is quite specialized, which was established by us during the analysis of German legislation. As a general rule, only those who have passed a state or academic final exam in a technical or scientific subject at a university, technical or agricultural college or mining academy in Germany, followed by at least five years in natural sciences or technology and have the necessary legal knowledge. At the same time, final exams in another member state of the European Union or in another member state of the Agreement on the European Economic Area are equivalent to the internal final exam in accordance with the legislation of the European Communities.

Along with Germany, the national mechanism of Spain for the formation and implementation of national policy in the field of intellectual property protection is also appropriate for comparative analysis.

Therefore, the Spanish Patent and Trademark Office is an autonomous agency of the Spanish Ministry of Industry, Trade and Tourism that promotes and supports technological and economic development by providing legal protection to various forms of industrial property through the issuance of patents and utility models (inventions); industrial samples (formation); trademarks and brand names and security documents on the topology of semiconductor products. In addition, the department disseminates information on various forms of industrial property protection.

The activities of the Spanish office and its organization are regulated by Royal Decree No. 1270/1997 dated 24.07.1970 (Real Decreto 1270/1997, De 24 De Julio, Por El Que Se Regula La Oficina Espacola De Patentes Y Marcas, 1970).

At the same time, please note that the Spanish Patent and Trademark Office has its own legal personality and legal capacity to act to achieve its goals and is regulated by the Spanish Law on the Creation of an Autonomous Body of the Register of Industrial Property dated 02.05.1975 No. 17/1975 (Sobre Creaciyn Del Organismo Autynomo "Registro De La Propiedad Industrial", 1975). Therefore, based on the analysis of the above-mentioned law, we conclude that as early as 1975 in Spain, the functioning of a separate decentralized entity of state power in the field of intellectual property protection - the Register of Industrial Property under the Ministry of Industrial Property of Spain - was started.

The Spanish Office of Patents and Trademarks is responsible for carrying out the relevant state administrative activities in matters of industrial property in accordance with current legislation and international conventions and is an instrument of technological policy in this field.

To achieve this goal, the Spanish Patent and Trademark Office has the following powers:

1. Administrative actions aimed at maintaining registration protection for various manifestations of industrial property, inventions, topology of semiconductor products, forms and distinctive signs, including processing and authorization of files, annotations for evidence and preservation and publicity of documents.

2. Effectively disseminate registrable technological information on a regular basis without prejudice to other types of special publications that are reasonably appropriate in the field.

3. To apply, within the limits of its competence, the current international conventions on industrial property, offering, if necessary, the participation and support of Spain in international convention agreements that have not yet been implemented in Spain, and in general to promote the development of international relations in this area.

4. To promote initiatives and develop activities aimed at increasing the level of awareness and the most appropriate protection of industrial property, both at the national

and international levels, and to maintain direct relations with any Spanish or foreign bodies and organizations dealing with these matters.

5. To inform about draft laws or, in general, provisions that must be provided for by national legislation.

6. To act as a mediation and arbitration body in disputes related to the application, use, conclusion of contracts and protection of the right to objects of industrial property and minor disputes.

7. Any other functions assigned by law to the Spanish Patent and Trademark Office or those that will be directly assigned to it in the future within its competence.

Along with that, the department, which was created back in the 19th century, also acts as an International Searching Authority and an International Preliminary Examining Authority in accordance with the procedures established by the Patent Cooperation Treaty.

In addition, at the international level, the Office of Patents and Trademarks is responsible for the presentation of Spain in various international forums and organizations dealing with industrial and intellectual property issues.

In Poland, the Polish Patent Office is responsible for the national policy in the field of intellectual property, which is the central body of state management in matters of industrial property. The office reports to the Council of Ministers, and its activities are supervised by the Minister responsible for the economy on behalf of the Council of Ministers.

The legal basis of the activity of the Polish patent office is the resolution of the Council of Ministers on the detailed scope of activity of the Patent Office of the Republic of Poland dated 8.01.2002 No. 59 (Rozporządzenie Rady Ministrów Z Dnia 8 Stycznia 2002 R. W Sprawie Szczegółowego Zakresu Działania Urzędu Patentowego Rzeczypospolitej Polskiej, 2002).

In accordance with the requirements of the said resolution, the Polish Patent Office is the competent authority to make decisions on awarding subjects, national and foreign patents, protection rights and registration rights.

It should be noted that the detailed scope of activities and powers of the Patent Office includes:

- receiving and considering applications for such items as: industrial property: inventions, utility models, industrial designs, trademarks, geographical indications, topography, integrated circuits, made for the purpose of obtaining protection, including notifications made according to a special procedure regulated by international agreements, of which the Republic of Poland is a member;
- making a decision regarding the subjects of awarding national and foreign patents, protection rights and registration rights, as well as issuing evidence to draw up notices and documents confirming the granting of these rights;
- making decisions during the consideration of a dispute on issues determined by the provisions of the Industrial Property Law;
- maintaining registers of issued patents, protection rights and registration rights, as well as issuing extracts from these registers to interested persons;
- publication of an official body called "News of the Patent Office", which contains official notices about issued patents, protection and registration of rights and information about changes in their legal status, as well as judicial practice, clarification of regulatory legal acts and statistical data in the field protection of industrial property;
- publication of an official body called "Bulletin of the Patent Office", which contains an official announcement about claimed inventions, utility models and trademarks and others.

The Chairman of the Patent Office is appointed by the Chairman of the Council of Ministers from among persons selected through open and competitive recruitment, on the proposal of the Minister responsible for the economy. The term of office of the President of the Patent Office is 5 years from the date of appointment.

The head and deputies of the Patent Office are appointed and dismissed by the Prime Minister. Appointment takes place through open and competitive recruitment. The Head of the Office appoints experts who form a panel of experts on matters within the competence of the Office.

## Conclusions

Thus, the analysis of the features of the mechanism of formation and implementation of state policy in the field of intellectual property shows that in such European countries as

Great Britain, France, Germany, Spain and Poland, a single universal model of building national intellectual property bodies has not been developed. As a matter of fact, each state has a special system of intellectual property bodies. At the same time, despite the diversity of sub-departments and the organizational structure of the national intellectual property bodies of each of these countries, there are several common features - regulation by the national institutional law, sub-department to one of the governmental branch ministries, competitive selection of the staff (head and members, with their division into qualified members and experts).

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