



MACROJOURNALS

The Journal of **MacroTrends** in Technology and Innovation

The industrial property law and the moral right of publication

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Abstract

Moral rights are usually seen in the copyright field and less in the industrial property law. This is formally justified by the specificity of the copyright creation that reflects the author's personality and therefore needs to be protected beyond its economic side towards the person of the creator by the moral rights. From this perspective the industrial property creation seems to be more closely bound to the commercial distribution and less affected by the author's personality. But in reality this argument is not valid, because the intellectual creation is more or less impersonal either in copyright law or industrial property law. It is too simple minded to consider that the intellectual creation, as it has an author, could be more personal in the copyright area and less personal in the industrial property domain. It is inconceivable to sustain that the copyright creation is "forged" by the author more for himself and less to the general public as it is impossible to argue that the industrial creation does not reflect its author personality, as if it could be created by a robot. The consequence is that we have moral rights in the industrial property sphere with all the so known consequences over the economic rights that are powerfully influenced by the moral prerogatives and by the protuberant statute of the author. The most important moral right is the right of publication well bound to the economic rights, so closely that some scholars argue that before the exercise of the right of publication we do not have any economic rights. This opinion ignores completely the case of an undisputed publication of the intellectual creation and the exhaustion of the right of publication.

Keywords: *intellectual property law, moral rights, industrial property law, right of publication*

1. Introduction

It should be noted that a greater attention is paid to moral rights in the copyright field compared to the importance given to them in the industrial property domain. This is because one of the justifications for the recognition of moral rights is that thorough regulation of the

moral rights of the author emphasizes the primacy of the status and personality of the author to other persons who have, acquire or claim a right of use over it, the protected work has an intrinsic value and closely linked to the author's person independently of its social valorization, including in its circuit. However, in the industrial property domain, where intellectual creation is indissoluble linked to the commercial distribution through the condition of industrial applicability, the moral rights of the author, even if there are, they are much less highlighted by the national and supranational regulations.

2. Right of publication in the industrial property domain

Non-economic right of publication even if not expressly mentioned and analyzed in terms of intellectual creations in the industrial property domain, industrial creations and distinctive signs, also subsists relating thereto. In this regard, for example, the jurisprudence of the courts of Romania is relevant when establishing that the right to trademark gives rise to moral rights to the extent that the trademark is well-known, famous, due to the special efforts of the owners to ensure and maintain the outstanding quality of the trademarked products¹. To the same effect there are a number of legal provisions that establish the existence of moral rights in the industrial property domain, namely art. 35 para. 1 of Law 64/1991 on invention patents² which states: *"The inventor has the right to have his last name, first name and his status mentioned in the issued patent, in the work book, and in any documents or publications concerning his invention"*, art. 58 of the same law which provides *"The unlawful appropriation, in any manner, of the inventor merit is an offense and shall be punished with imprisonment from 6 months to 2 years or a fine from 5,000 RON to 10,000 RON"*, art. 41 of Law 129/1992 on the protection of designs and patents³ which requires *"(1) The author has the right to have his last*

¹ "(...) Although the plaintiff claimed to have suffered non-material damage, the Court of Appeal held that the plaintiff has not shown the existence of such a damage. (...) It has not been shown, in the opinion of the Court of Appeal, that following the defendant's use of the trademark, the trademark "HEBO INTERNATIONAL LTD" it has lost its distinctiveness. (...) Neither regarding the encroachment on the image of the plaintiff, the Court did not hold it as proven or that it can be inferred from the facts. In relation to this finding, legally the Court of Appeal ruled that the defendant can not be required to pay a fee for moral damages, since the plaintiff has not shown that it has occurred. (...) On appeal, the plaintiff argues her claim to non-material damages by reference to a series of cases which she considers similar, addressed by foreign courts (...) Without constituting a source of law, they can be used as reference by the High Court in addressing the issue raised by the case, only that, in the cited cases, the courts have considered as an essential element to retaining non-material damages, to reputation of the trademark (Louis Vuitton) or its celebrity (Christian Dior), special efforts of its holders to achieve and maintain outstanding quality products so trademarked; regarding the facts through which the rights of the holders were violated, they consisted of selling or allowing to be traded of counterfeit products (...) The appellant argued that, also regarding her trademark, it is a well-known trademark, that by using the trademark, the defendant took advantage of its reputation and undermined distinctiveness of the trademark. However these issues, related to the high degree of distinctiveness of the trademark "HEBO INTERNATIONAL LLC", to the brand's awareness or possibly its reputation, were not the object of the trial. (...) The plaintiff invoked as the basis for action the conflict with an earlier registered trademark, created through the use of a sign identical or similar to the trademark for identical goods, and not the conflict with a well-known brand or which has acquired a reputation (...) Also, although she argued that the trademark has acquired a high degree of distinctiveness, which decreased through its use by the defendant and that its image itself was affected, the plaintiff has not proven these matters, as the Court of Appeal held, within the limits of the transfer and through the revaluation of the facts (...) Thus, the Court of Appeal did not consider that the compensation of non-material damages would be incompatible with the action of trademark infringement, in which case it would have questioned the legality of the decision but held, correctly, that the violation of a right to trademark does not automatically involve the creation of a non-material damage (...) Since the one who makes an allegation must prove it, according to art. 1169 C. civ., and in this case it was recorded by the Court of Appeal that the plaintiff has not established the existence of a non-material damage, the decision to reject the complaint with this object appears to be legal (...) For these reasons, based on art. 312 proc. civ., also the plaintiff's appeal will be dismissed." see High Court of Cassation and Justice, Civil and intellectual property division (2010) - Trademark infringement action. Using the trademark publication in B.O.P.I. Non-material and material damages. Legally grounds (HEBO/HEBO ROM INTERNATIONAL SRL), Decision no. 2856 of May 7, 2010, published in Spineanu-Matei, O., (2011) - Intellectual property (5): judicial practice 2010, Hamangiu Publishing House, Bucharest, p 244-245

² republished under art. IV of Law no. 28/2007 amending and supplementing Law no. 64/1991 on invention patents, published in the Official Gazette of Romania, Part I, no. 44 of January 19, 2007 and corrected in the Official Gazette of Romania, Part I, no. 351 of 23 May 2007, giving the texts a new numbering.

³ republished under art. IV of Law no. 280/2007 amending and supplementing Law no. 129/1992 on the protection of industrial designs and industrial patents, published in the Official Gazette of Romania, Part I, no. 729 of October 26, 2007, giving the texts a new numbering.

name, first name and his status mentioned in the issued registration certificate, and in any documents or publications concerning his design or patent. (2) The data from the registration certificate shall be recorded in the work book "and art. 50 of the same Act which provides that "The unlawful appropriation, in any manner, of the author merit of the design or patent is an offense and shall be punished with imprisonment from 6 months to 2 years or a fine from 1,500 RON to 3,000 RON".

The variations that occur on the right of publication of intellectual creations in the industrial property domain, whether industrial creations or distinctive signs, are due to the legal protection mechanism established by the procedure of registration of the intellectual creation, during this procedure making an examination both formal and substantive of the respective intellectual creation, the substance examination requiring the verification of the condition of novelty in the case of industrial creations (inventions) and of the availability for distinctive signs (trademarks).

Novelty or availability, represent the equivalent in the industrial property, of originality in the copyright representing the legal basis of the publication right. Specifically, due to the fact that the protected work in the field of copyright is the original, its author - thanks to which it is original - is entitled to publish it. Similarly, due to the fact that the protected work in the industrial property domain is new (in the case of industrial creations) or available (in the case of distinctive signs), its author is entitled to publish it.

After having carefully analyzed the influence of the formalities imposed by the normative systems for the activation of the legal protection of intellectual works in the domain of industrial property, I can conclude that they cannot influence the nature of the protected rights by inclusion in a public database⁴. From the point of view of the publication right, the registration of the intellectual creation in a public database is relevant because this way the intellectual creation is brought into contact with the public. In this way, it is observed the importance of the publication, thus follows that the right of publication for the purposes of registration of the intellectual creation in a public database is important for the author of the intellectual creation in the industrial property domain, because only in this way it can completely protect it from a legal point of view. To the extent that the author does not exercise the right of publication of his creation in the industrial property domain, legally it is not fully protected. When a third party illegally publishes the intellectual creation this represents an anteriority that blocks the ability of the author to protect the intellectual creation in the industrial property domain.

The interest in the analysis of the moral right of publication of the intellectual creation in the industrial property domain refers to the possibility of exercising this non-economic right prior to submitting the registration request for the intellectual creation, and if this right is exercised prior to the application for registration, to what extent such publication, representing an "anteriority", can be an obstacle to a full protection of the intellectual creation by blocking the possibility of registering the intellectual creation in the public database.

⁴ the requirement imposed by a series of legal provisions relating to the registration of rights instruments or of real rights in The Electronic Archive For Security Interests In Movable Property or in the Land Registry does not influence the nature of the respective subjective rights see *supra* 42.05.

Prior to going through the procedure of registration of the intellectual creation in the industrial property domain, it is protected through the mechanism established within the scope of copyright field. Thus all the documentation and technical description together with the conclusion which underlies the basis for finding a technical solution which represents the invention is in most cases a scientific paper protected by copyright. Also the susceptible sign of graphical representation that underlies a trademark is most often a work of visual art protected by copyright. As a result of protecting the intellectual creation in the field of copyright, the right of publication can be exercised just as I stated above, with all the consequences and implications featured in detail. But here the right of publication refers to a work in the field of copyright, which could be protected in the domain of industrial property rights also, but not to the right of publication of a creation in the industrial property domain.

It is important to identify to what extent the rules of industrial property domain identifies the moral rights of the intellectual creation's author in the industrial property field, by establishing a legal system for them or these rights are subordinated to the economic rights which are carefully outlined from a legal standpoint. Do the rules in the industrial property domain allow the author of the intellectual creation to exercise the right of publication prior to initiating the procedure for registering the creation from the industrial property domain in the public databases? What if the right of publication of the author is violated, the creation is made public by a third party, including in an illegal manner in that it seeks registration of industrial property creation in public databases.

3. Publication of the industrial creations.

Regarding industrial creations, it acknowledges⁵ the existence of the right to publish the invention⁶, right which is similar to the right to publish the work protected by copyright.

The recognition of this right assumes that legal rules must protect the secrecy of the invention until its description is published in public databases by the specialized authority⁷, because after this invention is published it is in contact with the intended audience. It therefore follows that the law⁸ protects the right of disclosure only to the extent that industrial creation's author exercises it, because this public communication is the source of all industrial creation author's recognized rights, including economic rights.

If the industrial creation is made public illegally by a third party, they even managing the registration in the public databases, the author's rights are seriously affected, the remedies available to the author being civil actions⁹ falling within the substantial side of the legal content of subjective property rights in the intellectual property domain, which aims to block the release

⁵ "(...) this right (the right to publish the invention – s.n.) has both a positive (right to make publish - by any means - the invention), and a negative aspect (right to object to the publication of the invention)"see Mihai, L. (2002) – *The invention. The substantive requirements of patentability. Rights*, Legal Universe Publishing House, Bucharest, p. 38.

⁶ "the author of an invention as the author of any work of intellectual creation, is basically the only one who can decide to bring it to the public, when it deems it to be final. But unlike what happens in the field of copyright, in the field of inventions the exercise of this right is, in some cases, subject to conditions provided by law" see Eminescu, Y. (1982) - *Treaty of industrial property - volume I new creations*, Publishing House of the Academy of Socialist Republic of Romania, Bucharest, p. 82.

⁷ in Romania the specialized authority is the State Office for Inventions and Trademarks.

⁸ art. 40 para. (1) of Law 64/1991 on invention patents provides that "*The invention subject of the patent application submitted with OSIM can not be disclosed without the consent of the applicant, until its publication, and has the status established by the special law until its publication.*"

⁹ including the administrative procedures

of the title of protection, cancellation of the protection, when it has already been released, changing the patent of inventions holder¹⁰, obligation to payment of monetary damages for non-material and material damage. These civil actions even if at first only protect patrimonial rights, in reality protect moral rights also, especially when they are so related to economic rights. However, in Romania, the special law states that novelty as a condition of patenting the invention is satisfied even if the author is the victim of an obvious abuse, including the illegal disclosure of the invention by a third party, provided that it occurred within 6 months before the date of submission of the patent application¹¹. We will shortly see what is the reason for imposing the 6 months deadline.

To the extent that industrial property legal system allows the publication of the industrial creation only by publishing its description in public databases, nothing seems to prohibit its previous communication directly by the author or with the author's agreement. But the extent to which publication of the industrial creation may be exercised is impaired by the condition of novelty imposed by the registration of the intellectual creation as invention. This is because an industrial creation is new as long as it is not contained in the art world. To the extent that the author of the industrial creation discloses it prior to its publication in the public database, the technical process which is intended to be protected as an invention, may come to be part of the art world, so that the condition of novelty is not fulfilled for issuance of legal protection, in our case the invention patent. Incorporating the invention in the art is an objective material fact, the proof being the term of 6 months, until the end of which, the abusive publication of the invention made by a third party is not destructive of novelty. After this period, however, the legislator considers that the publication of the invention, even done improperly, leads to its inclusion in the art world, making it impossible to issue a formal legal protection such as an invention patent. The author's moral right of publication has been clearly violated and is it still represents a legally protected value, but the author of the invention can formulate a civil action to cover moral or material damage suffered and to cancel the certificate of legal protection obtained by the third party, in case it was obtained illegally. The same term of 6 months is fixed as objective reference for including the invention in the current state of knowledge if the author decides himself to communicate his invention to the public in a universal exhibition¹², which is the clearest manifestation of the authorship right regarding industrial creations, as I will show below.

From all this it follows that the right of publication is recognized since the "*birth*" of the industrial creation, but its exercise, even abusive by a third party, prior to the publication of the description of the industrial creation is capable to destroy the novelty and thus make it impossible to release a formal legal protection in the industrial creations domain. The

¹⁰ art. 66 para. (1) of Law 64/1991 on invention patents provides that "*If through a court decision it is established that a person other than the one mentioned in the patent is entitled to the patent, OSIM issues the patent to the entitled person and publishes the change of ownership*"

¹¹ art. 11 para. (1) point a) of Law 64/1991 on invention patents provides that "*(1) In the application of art. 10, the disclosure of the invention shall not be taken into consideration if it occurred within 6 months before the submission date of the patent application and whether it is the direct or indirect result of: a) an obvious abuse in relation to the applicant or his predecessor in title*".

¹² art. 11 para. (1) point b) of Law 64/1991 on invention patents provides that "*(1) In the application of art. 10, the disclosure of the invention shall not be taken into consideration if it occurred within 6 months before the submission date of the patent application and whether it is the direct or indirect result of: (...) b) the fact that the applicant or his predecessor in title presented his invention in an official international or officially recognized exhibit, under the Convention on International Exhibitions, signed at Paris on 22 November 1928, with subsequent revisions.*"

intellectual creation exists, it is protected, but not through an invention patent, but through other mechanisms of legal protection, including those established in the field of copyright and civil actions which fall within the procedural side of legal content of the economic rights in the intellectual property field, which as noted above are useful remedies for the protection of moral rights.

Should be emphasized that if the third party illegally publish the invention and registers it in the public databases, the prejudiced author may request legal proceedings to remedy the false registration, but this civil action, beyond the certain effects on an economic level, represent a procedural means to protect the moral rights relating to authorship of the work, because the right of publication was already exhausted when the industrial creation was put into contact with the audience it was intended for by registration in public databases.

4. Publication of the distinctive signs

The intellectual creations likely to be protected through the specific legal mechanisms of specific signs must be registered to do so in public databases, similar to industrial creations. This registration has a dual aspect, since it is not only aimed at determining and certifying the sign as a the graphic representation and description, such as in the case of industrial creation where the description of the invention is registered, but also at determining the distinctness or the classes of goods and services for which the registering is being made.

These intellectual creations likely to be legally protected through the mechanism of distinct signs, prior to going through the registration procedure represents in most cases works of plastic art, graphic art, works protected by copyright. In this case the author of the work can exercise the right to disclosure in the terms and with the nuances mentioned above for the intellectual creations protected by copyright.

It remains to be assessed to what extent the creator of the distinctive sign can reveal it prior to its registration as a trademark and what are the effects of such prior disclosure especially when disclosure is made illegally by a third party.

In the case of distinctive signs the analysis is much easier to be made than in the case of industrial creations, as the function of distinctive signs is different from the industrial creations'. Essentially distinctive signs are designed to inform the consumer of products and services by distinguishing goods and services of a trader or professional from the products and services of another trader or professional. Considering that distinctive signs have mostly an informative role, not enrichment of science or of art world role, the exhaustion of the right of publication, either by the author himself or by a third party illegally, does not have such dramatic consequences as in the case of industrial creations. Certainly the right of disclosure of the distinctive sign is exhausted when it is placed in contact with its intended audience, regardless if this operation is done by the author or by a third party illegally and any procedural remedies that the author of the distinctive sign has at his disposal, from a non-economic point of view, they can only protect the moral rights related to the authorship of the work. The consequences are not dramatic for the rights and legal interests, of moral and non-economic nature, of the distinctive sign's author, because erroneous information from a third party, made even maliciously, including through registration of the distinctive sign in the public databases can be

corrected, so that in practice the economic and non-economic consequences on the author will be minimal.

The disclosure prior to the registration of the distinctive sign does not block the future registration procedure of the same distinctive sign in the public databases and the issuing of a title of legal protection. The issue of the legal protection title and unavailability of the distinctive sign is blocked by the existence of a anteriority which consists in the protection of that sign through another mechanism of the intellectual property domain or through a legal mechanism to protect intangible property¹³, but also through the existence of a notorious trademark and of

¹³ relevant in this respect are the following provisions of Law 84/1998 on trademarks and geographical indications art. 5 which states "(1) Are refused registration or can be declared invalid if they are registered for the following absolute reasons: a) signs which can not constitute a trademark under Art. 2; b) trademarks which are devoid of any distinctive character; c) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established trade practice; d) trademarks which consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or the fabrication time the product or the provision of the service or other characteristics thereof; e) trademarks which consist exclusively of the shape of product, which is required by the nature of the product or is necessary to obtain a technical result or which gives substantial value to the product; f) trademarks which are likely to mislead the public about the geographical origin, quality or nature of the product or service; g) **trademarks which contain or consist of a geographical indication, for products not originating in the territory indicated (sn)**, if the use of such information is likely to mislead the public about the true place of origin ; h) **trademarks which contain or consist of a geographical indication (sn)**, identifying wines or spirits not originating in the place indicated; i) trademarks which are contrary to public order or morality; j) **trademarks which contain, without the consent of the holder, the picture or the surname of a person who has a reputation in Romania (sn)**; k) trademarks which include, without authorization by the competent authorities, reproductions or imitations of armorial bearings, flags, state emblems, insignia, official seals of warranty and control, coats of arms, belonging to countries of the Union and covered by art. 6 ter of the Paris Convention; l) trademarks incorporating, without the authorization of the competent authorities, reproductions or imitations of armorial bearings, flags, other emblems, logos, initials or names which are covered art. 6 ter of the Paris Convention and which belong to the international intergovernmental organizations of which one or more countries of the Union are part of; m) trademarks containing highly symbolic signs, especially a religious symbol; n) trademarks containing, without the authorization of the competent bodies, badges, emblems, coats of arms, heraldic signs, other than those considered by art. 6 ter of the Paris Convention. (2) the provisions of para. (1) point b) to d) shall not apply if, before the date of submission of the application for registration, the trademark has acquired distinctive character through its use" art. 6 which states "(1) In addition to the grounds provided for in art. 5 para. (1) a trademark shall not be registered or, if applicable, is liable to be canceled for the following relative reasons: a) **if it is identical with an earlier trademark (sn)** and the products and the services for which the trademark is submitted or has been registered are identical with those for which the earlier trademark is protected; b) if, for reasons of identity or similarity in relation to the earlier trademark and for reasons of identity or similarity of the products or services that the two trademarks designate, can be created, in the public perception, a risk of confusion, including the risk of association with the earlier trademark. (2) For the purpose of par. (1), are earlier trademarks those trademarks whose submission date is prior to the submission date of the application for registration of the trademark or, where appropriate, of the priority claimed in its support and those who belong to the following categories: a) Community trademarks; b) trademarks registered in Romania; c) trademarks registered under international agreements having effect in Romania; d) Community trademarks for which it is invoked, in a valid manner, earlier seniority, according to the Regulation on the Community trademark, to a mark referred to in point b) or c), even if the latter trademark ceased to exist or has been surrendered; e) applications for registration of trademarks under letter a) -d), provided the subsequent registration of trademarks; f) **trademarks which, on the submission date of the application for registration or, where appropriate, on the date of the priority claimed, are notorious in Romania (sn)** within the meaning of Art. 6 bis of the Paris Convention. (3) A mark shall also not be registered or, if registered, is liable to be canceled if it is identical or similar in relation to an earlier Community trademark within the meaning of para. (2), and if it was meant to be, or is already, registered for goods or services which are not similar to those for which the earlier Community trademark is registered, **where the earlier Community trademark enjoys a high reputation in the European Union (sn)** and whether the use of the later trademark would lead to the gain of an unfair profit from the distinctive character or from the reputation of the earlier Community trademark. (4) A trademark is, also not be registered or, if registered, is liable to be canceled if: a) the trademark is identical or similar to an earlier trade mark registered in Romania, within the meaning of para. (2), and if it is intended to be registered or is already registered for goods or services which are not similar to those for which the earlier trademark is registered, when **the earlier trademark has a reputation in Romania (sn)** and if the use of the later trademark would lead to the gain of an unfair profit from the distinctive character or from the reputation of the earlier trademark or if its use would be detrimental to the distinctive character or to the reputation of the earlier trademark; b) **the rights arising from a non-registered trademark or from another sign used in trade** were acquired prior to the date of submission of the application for registration of the later trademark, or, where appropriate, before the priority claimed in the application for registration and if that subsequent non-registered trademark or sign gives its rightful owner the right to prohibit the use of the later trademark; c) **there is an earlier right, other than those referred to in para. (2) point d), in particular a right to a name, a right to imagine, copyright, an industrial property right (sn)**; d) the trademark is identical or similar to a previous collective trademark, conferring a right which has expired no more than three years before the submission date; e) the trademark is identical or similar to a previous certification trademark, whose validity ended no more than 10 years before the date of submission; f) the trademark is identical or similar to an earlier trademark registered for identical or similar goods or services, conferring a right which expired due to non-renewal not more than 2 years before the submission date, provided the owner of the earlier trademark has consented to the registration of the later trademark or has not used the trademark; g) the trademark may be confused with a trademark in use abroad on the submission date and which continues to be used there, if the application was made in bad faith by the applicant. (5) A mark shall also be denied registration, when the registration is requested by the agent or representative of the trademark owner, in his own name and without the owner's consent, if the agent or representative of the owner does not prove that it has the right to request this record. (6) **A trade mark shall not be refused registration or, where applicable, the registration is**

a trademark with a reputation. To the extent that the previous appropriation of the distinctive sign through another mechanism of intellectual property field or through a legal mechanism of protection of the intangible property is cancelled, on the grounds that a third party illegally protected the distinctive sign, or there is an agreement of holder's previous legal protection, the distinctive sign is available and can be registered, but the right of publication is exhausted, all these actions having only on a non-economic level consequences on the authorship of the work. In this respect are relevant provisions of Law 129 of 29 December 1992 on the protection of designs and patents, namely Article 6 which requires the condition of novelty for the registration of designs and patents¹⁴ and article 7 that sets firstly and thoroughly the criteria for assessing whether disclosure of a design or patent is destructive of novelty, namely the extent to which various forms of communication are able to put in contact the intellectual creation (industrial design and patent) with the intended audience, secondly remedies at the disposal of the author of the industrial design and patent for recognizing legal protection when it is made public by him directly or through or based on the information he has provided, thirdly remedies at the disposal of the author of the industrial design or patent for the recognition of legal protection when it is illegally disclosed to a third party¹⁵. Certainly in the latter two cases the respective remedies refer from a non-economic point only to the authorship of the work, and not to the right of publication which is exhausted, more so as the exhaustion criteria are so clearly defined.

The reference of the notorious trademark and of the trademark with a reputation among interiorities which block the fulfillment of the condition of availability of the sign chosen as a trademark, represents evidence that the disclosure right may be exercised prior to the registration of the distinctive sign, by simple disclosure and usage fulfilling the information and distinguishing functions of the products and services of the enterprise, exactly like a trademark, the owner having the possibility to even record it. Similarly the industrial design and patent previously disclosed either directly by the author, or with his consent, or illegally by a third party fulfills, even unregistered in public databases all the functions of a design or patent which has already completed the registration procedure¹⁶ and can subsequently be registered because it meets the conditions for registration, including *factio juris* availability regarding the novelty condition.

not canceled when the owner of the earlier trademark or of the earlier right consents to the registration of the later trademark (sn). (7) A trade mark may be refused registration or, where appropriate, likely to be canceled as provided in art. 6 septies of the Paris Convention. "

¹⁴ in this respect art. 6 para. (1) of Law 129 of 29 December 1992 on the protection of designs and patents provides that "*The object of the application can be registered to the extent that it constitute a design or patent in the sense of art. 2, is new (sn) and has an individual character. "*

¹⁵ in this respect art. 7 of Law 129 of 29 December 1992 on the protection of designs and patents requires "(1) In the meaning of applying Art. 6, it is considered that **a design or patent was made public if it has been published or disclosed** (sn) otherwise, exhibited, used in trade, except where these events could not reasonably and in ordinary business, become known to the specialized circles of people in that domain, operating within the European Union before the date of application for registration or, if priority has been claimed, before the priority date. However, it will not be considered that the design or patent was made public for the simple reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality. (2) In application of art. 6 para. (2) and (4) **the disclosure is not taken into account** (sn) if the design or patent for which protection is claimed has been made public: a) by the author or his successor in title or by a third party based on the of information provided or acts performed by the author or successor; b) during the 12 months preceding the date of submission of the application for registration or, if priority is claimed, the priority date. (3) **The provisions of par. (2) are also applicable in the situation in which the design or patent was made public as a result of abuse** (sn) in connection with the author or his successor. "

¹⁶ in this respect art. 5 of Law 129 of 29 December 1992 on the protection of designs and patents requires "(1) *The rights on a design or patent acquired under this law shall not prejudice **the rights of unregistered designs or patents** (sn), trademarks and other distinctive signs, invention patents and utility models, typographic symbols, topographies of semiconductor products. (2) *The protection of the registered design or patent under this Law shall not exclude or prejudice its copyright protection. "**

The issue of disclosure of the distinctive sign previously to its registration as a trademark it raises another issue that is specific to this matter on the exercise of moral rights, including the right of publication. The trademark legislation refers to the owner of trademark, respectively to the person who is awarding the legal protection title, without making any reference to the author of the distinctive sign. To the extent that the author of the distinctive sign is different from the person who is awarding legal protection title, and between the two there is an assignment of the copyrights, the question arises to what extent the author of the distinctive sign may exercise his moral rights. The question is all the more important in the situation where the author of the distinctive sign discloses it first. This is because the right of publication is exhausted and often the distinctive sign is protected by legal mechanisms specific to copyright. Even if this question relates to the other moral rights referring to the paternity of the intellectual creation, to the protection of the integrity or to its retraction, from the point of view of the disclosure right, it is interested to what extend the distinctive sign previously disclosed and protected by copyright legal mechanisms, after the protection by registration in public databases represents or not a new intellectual creation or different from the first. The answer is simple because simple browsing of an administrative procedure involving different formalities of registration and which ends with the issuance of the protection title is not able to give rise to intellectual creations. The entire normative system in this area assumes the existence of several mechanisms of legal protection of the same intellectual creation, the issue of a certificate of registration in public databases by the competent authority represents only a legal protection title, which can be given for an already protected intellectual creation, obviously respecting the already protected rights¹⁷.

5. Conclusions

The intellectual property moral rights also present a particular feature at the level of the entire legal system. The existence of the generally moral rights (non patrimonial rights) is recognized in any legal system, but rather as having a completely different object than economic rights, which is most often the person or others legal subjects or its private life. But the intellectual property moral rights have the same object with the intellectual property economic rights, which is the intellectual creation. Basically, the author simultaneously exercises economic rights and moral rights on and in relation to the intellectual creation. This is the only case of coexistence of economic and moral (non patrimonial) rights over the same object, i.e. the intellectual creation. The only other link between an economic right and exercise of a non-economic right is the fact that in case of failing to comply with a non-economic right allows the rightholder to claim damages, having recognized its economic right of claiming compensations for the moral damage suffered. However, this connection, also valid for infringement of moral rights, is by far a representation of simultaneous exercise of moral and economic rights on the sole object represented by the protected intellectual creation, which confirms the uniqueness of moral rights in the field of intellectual property. This simple coexistence of simultaneous exercise of moral and non-economic rights on intellectual creation protected by the law, results

¹⁷ in this regard art. 6 para. (6) of Law 84 of April 15, 1998 on trademarks and geographical indications provides: "*A trademark shall not be refused registration or, where applicable, the registration is not canceled when the owner of the earlier trademark or of the earlier right consents (sn) to the registration the subsequent trademark*".

in a very close relationship between moral rights and economic rights, where exercise of economic rights may be influenced by moral rights. This is the high stake of the recognition of the moral rights in the industrial property field.

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013*

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