

Appendix No. 3

Adrian Marcin Niewęglowski, Ph.D; Chair of Commercial and Trade Law, Faculty of Law and Administration at the Maria Curie-Skłodowska University in Lublin (I do not use my middle name in publications or speeches).

Summary of academic accomplishments

1. Name and surname

Adrian Marcin Niewęglowski

2. Diplomas and degrees awarded - detailing the awarding institution, the year of the award, and the title of the doctoral dissertation.

2.1. I graduated from law studies with distinction at the Faculty of Law and Administration at the Maria Curie-Skłodowska University in Lublin (**hereinafter WPIA UMCS**) in 2005. I was conferred the Master's Degree on the basis of a thesis entitled *“Patentowanie i wprowadzanie do obrotu produktów leczniczych”* [*“Patenting and marketing medicinal products”*] at WPIA UMCS. The thesis won a prize from the Minister of Education and Science in a competition organised by the Patent Office of the Republic of Poland for the best research papers in the field of industrial property.

2.2. I was awarded the Degree of PhD in legal sciences in 2009. I defended my doctoral dissertation at WPIA UMCS in Lublin. The PhD Degree was conferred to me on the basis of a dissertation entitled *“Cywilnoprawna problematyka realizacji prac badawczych”* [*“Civil-law issues in conducting scientific research”*] The dissertation received a prize from the Minister of Education and Science in a competition organised by the Patent Office in 2009.

3. Employment history at academic institutions

3.1. I have been employed at WPIA UMCS in Lublin (the Chair of Commercial and Trade Law) since 1 October 2009. I was initially employed in the position of assistant lecturer. Since 1 October 2010, I have been employed as a lecturer at the Chair of Commercial and Trade Law at WPIA UMCS. I am currently employed in this position. Between 2010 and 2012 I was a lecturer at the Postgraduate Studies in the field of *“Preparing academic staff for the role of lecturer in the field of intellectual property protection”* (UMCS, Faculty of Biology and Biotechnology).

3.2. Between 2005 and 2008, I ran classes in intellectual property law at the University College of Enterprise and Administration in Lublin.

4. Citing accomplishments under Article 16 (2) of the Act of 14 March 2003 on Academic Degrees and Titles, and Degrees and Titles in the Arts (Journal of Laws of 2016, item 882 as amended in the Journal of Laws of 2016, item 1311).

4.1. **Author:** Adrian Niewęglowski. **The title of the academic accomplishment:** *“Prawa własności przemysłowej w spółkach handlowych”* [“Industrial property rights in commercial companies”], Chapter LIX in a collective work entitled *System prawa prywatnego. Prawo własności przemysłowej* [*The Private Law System. Industrial property law*] edited by R. Skubisz, vol. XIV[C], pp. 865-1069 (the total number of pages in my chapter: 204). **Name of publishing house:** C.H. Beck. **Place of issue:** Warsaw

4.2. I would like to present chapter LIX of *System prawa prywatnego* [*The Private Law System*] (vol. XVI[C]) as my own academic accomplishment. The chapter is a separate part of the collective paper, bearing my name. It includes a separate title, table of contents and bibliography. The method of placing the chapter in the collective work and its marking (especially in terms of pagination) facilitates the separation of my chapter from the remaining chapters in volume XIV[C] of *The Private Law System*. It is a comprehensive work of over two hundred pages (17 sheets). I am the sole author of both the chapter’s outline and all the research theses. I also wrote the chapter personally. For that reason, I am the sole author of chapter LIX in *The Private Law System* (vol. XVI[C]). Thus, it constitutes a part of a collective paper, to which the provisions of art. 16 sec. 2 pt. 3 of the Act of 14 March 2003 on Academic Degrees and Title and Degrees and Title in the Arts apply. The legislators treated this type of collective paper as equivalent to other types of accomplishments listed in the regulations which are the basis for applying for the Degree of a habilitated Doctor.

4.3. The chapter entitled *“Industrial property rights in commercial companies”* is based on the concept of analysing the legal issues related to the status of industrial property at various stages of commercial companies’ operations, starting from the formation of a company, to its activities, and the point at which the company ceases to exist as a legal entity. In the paper, companies were treated as a framework of reference for such issues as making an in-kind contribution in the form of industrial property, retaining the industrial property right by transformed companies, and the outcome of industrial property rights during restructuring procedures, such as settlement approval procedures and recovery proceedings.

4.4. The research approach, which consists of examining the issues related to industrial property rights at each stage of commercial companies' operations, is rare, not only in Polish, but also in foreign literature on the subject. Until recently, the starting point for exploring the doctrine and practical applications were issues related to the admissibility of contributing certain industrial property rights to companies. The papers focused mainly on the evaluation of the ability to make in-kind contributions, such as patents or trademark protection rights. The issues have been addressed in several monographs and chapters of collective papers. As I started my work on the Chapter, I decided to take a few steps further. The significance of industrial property rights does not end at contributing them to the company. From that moment on, they become part of the company's assets and the subject of complex relations between the shareholders and third parties (e.g. licensees).

4.5. The first part of the paper entitled "*Industrial property rights in commercial companies*" is a description of the ways rights are acquired by companies. I have discussed both the initial acquisition of industrial property rights and acquisition under agreements with previous owners. The issues concerning the legal outcomes of company transformations and the continuity of the rights after the transformation. In practice, the transfer of industrial property rights in the case of company transformation could pose problems, as it might be difficult to establish which industrial property rights are subject to legal succession, or which, alternatively, could be continued in a new legal form. The chapter is an attempt to answer this question. It also addresses the issues related to the significance of entries in the Patent Office registers in the acquiring of rights by companies in connection with transformations. The paper deals with the complex question of whether a company which is the outcome of transformation procedures should be entered in the Patent Office registry in the case of the continuity or universal succession of industrial property rights, and to what extent it is significant in the case of lodging claims against third parties in breach of exclusive rights.

4.6. The most important way of acquiring property rights by companies is the acquisition of the object of industrial property by in-kind contribution. It is the most extensively discussed issue in the paper. I have analysed not only the ability to contribute "classic" industrial property rights, such as a patent, or trademark protection. I devoted a lot of attention to the issue of the admissibility of contributing intangible assets of contentious status. This includes company name, goodwill and customer base, Internet domains, press titles and relatively new objects of intellectual property rights such as websites. The most debatable issue is the ability to contribute know-how. In my paper, I have assumed that know-how can be divided into commercial know-how (to which enterprises are entitled) and non-commercial know-how (owned by entities which do not run business activities, but

are in possession of confidential valuable information). I accept the view that commercial know-how (i.e. company secrets) is the object of exclusive unconditional subjective rights, as laid down in art. 11 of the Unfair Competition Act. Such rights may be contributed by way of acquiring the same subjective rights, or creating new subjective rights. Confidential information owned by persons who are not entrepreneurs are protected under tort law and contract law (art. 415, art. 439 and art. 471 of the Civil Code). Non-professional transaction parties are not entitled to subjective rights to know-how. Nonetheless, non-disclosed confidential information of economic value may be contributed by way of acquiring new subjective rights, as each company is an enterprise, and on making the in-kind contribution, non-commercial know-how is transformed into a business secret. In such a case, the contribution is concurrent with creating the right to a business secret which can be contributed. Such an approach will enable us to solve problems involving the attempts to contribute confidential information to a company which entrepreneurs frequently encounter in practice.

4.7. A substantial issue is the analysis of the admissibility of contributing certain limited rights in rem (e.g. use) and contractual obligations (licences, leases) established on industrial property. The use of rights is a frequently analysed issue within the legal doctrine in the context of contribution capacity. A scholarly discussion on the subject began as early as the inter-war period, during which the Commercial Code was in force. The prevailing view was that the right to use rights cannot constitute a contribution to companies, due to its non-transferable nature. As is known, only transferable property rights may be the subject of contributions to a company. Concurring with the prevailing position, I decided to analyse another issue. It is the issue of transferring the entitlement to exercise the right to use non-tangible assets. In the Polish and foreign literature on civil law, there is a clear distinction between the transferability of the right to use and the transfer of the entitlement to exercise the right to use. In my paper, I express a view that under certain conditions, a company may acquire a contribution in the form of the right to use industrial property which applies only to the rights' user.

4.8. A new problem, which has not been previously discussed in the literature on the subject, involves the issues related to the evaluation of the outcomes of making an in-kind contribution in the form of industrial property rights which are subject to transfer of ownership for the purpose of securing a debt. A lot of attention was devoted to contributing the same rights or creating new rights arising from the licence to use industrial property rights. In my paper, I assumed that a licence is, as a rule, a transferable right. Therefore, it may constitute a contribution both to a commercial partnership and a commercial company, if it was not reserved otherwise. An individual obligation between licensor and licensee may at times be an obstacle to the disposing of a licence. Under

certain conditions, licences may be contributed to commercial companies not only by creating new rights (establishing a new licence) but also transferring existing rights (transferring an existing licence). Making a contribution in the form of a licence should at all times be profitable to the company. Otherwise it could not be treated as a contribution. In my paper, I oppose the admissibility of making an in-kind contribution in a way which would compel the company to take over any shareholder's debt arising from the licence (in particular liabilities involving the obligation to make payments to the licensor). Such a way of performing a licence agreement would not be beneficial to the company. It needs to be stressed that when transferring the existing licence, a shareholder should either be obliged to make payments on account of the licence, or to provide the company with an opportunity to use the subject of industrial property at lower licensing rates than the market rates.

4.9. In addition to the traditional issues related to the problem of contributions, I present more detailed issues in my work. This pertains to hidden in-kind contributions, making a contribution in the form of industrial property rights to companies in cooperation with research entities, and the issue of temporary contributions. The last subject matter is a relatively new phenomenon. It does not involve the temporary nature of industrial property rights, as it is a common feature of all rights of this type. The chapter discusses the issue of contributing industrial property rights to companies for a period shorter than the protection period. In practice, there are doubts as to whether this type of contribution is admissible in the case of commercial companies. Essentially, this means that on the expiry of the indicated period, the right "is returned" from the company's assets to the shareholder who initially made the contribution. A question may be posed as to whether we are dealing with an inadmissible refund of an in-kind contribution. I justify the position that in this case the contribution is not refunded. The industrial property right was contributed for a specified period of time. Under certain conditions, such in-kind contributions are permitted under Polish law. They can also be beneficial to shareholders and companies.

4.10. The chapter also includes a detailed discussion on making contributions together with an enterprise, and the issue of valuation. Taking the latter into account, I have analysed the individual valuation methods applied from the perspective of tailoring them to individual industrial property rights of a specific nature. I have suggested criteria which should be taken into consideration while calculating the value of industrial property rights. In my opinion, it is not possible to develop uniform factors underlying the valuation of enterprise's intangible assets. It is necessary to treat rights to technical solutions and the rights to trademarks separately. In the case of technical intangible assets, comparative methods may be applied, and sometimes the cost method (as in the case of know how).

In numerous cases, the methods cannot be used for assessing the value of trademarks. The income-based valuation method is applied to calculate the value of trademarks, including in particular the approach consisting of the so-called "company's release from the payment of licence fees"

4.11. Part two of the paper entitled "*Industrial property rights in commercial companies*" concerns the stage of companies' operations which follows the acquisition of intangible assets. It includes two thematic blocks. The first issue deals with internal relations in commercial partnerships and companies, made between the companies and their partners and stockholders. Moreover, the issue of legal relations created in respect of industrial property rights between members of groups of companies is presented.

4.12. After the acquisition of industrial property rights, their status in companies might change. It distinguishes the industrial property rights from other property rights, such as rights in rem. Where the majority of the company's property rights are in a sense static, industrial property rights are of a dynamic nature. They are subject to various transformations in the course of the company's business - the rights to obtain patents are transformed into patents, followed by patents of addition which may be obtained to the original patents. Several objects of industrial property can be developed further with a view to creating new intangible assets. This could pose problems every time shareholders and company own rights to objects in certain relations of dependency. The paper outlines the legal instruments which allow the reducing of the threat of conflicts between the company and its shareholders (stockholders). There are different types of instruments, depending on the type of enterprise (partnership, company). In commercial partnerships, such instruments are e.g. non-competition clauses and the duty of loyalty.

4.13. The paper includes issues related to the admissibility of imposing a ban on challenging industrial property rights, carrying out development works by company partners and shareholders (also as part of the obligation to make recurrent non-pecuniary contributions in limited liability companies) in respect of intangible assets belonging to the company. The provisions of the Code of Commercial Companies and Partnerships do not provide many solutions which could be adapted to the assessment of mutual relations between a shareholder and the company in respect of industrial property. Hence, it should be vital to adopt the *Terms and conditions for using industrial property by companies*. They can define the persons entitled to the object of intellectual property created by shareholders during the company's operations. It is also possible to determine the principles of potential acquisition of the right to new intangible assets developed by partners and stockholders.

The issues are related to reserving the right to so-called "industrial property acquisition options" from the shareholders by the company.

4.14. Companies holding industrial property rights are parties to various types of cooperation agreements. On the basis of their objectives, they can be divided into agreements concerning joint technology development works and agreements on the use of the objects of industrial property rights (so called "patent resources"). Considering the relations between the parties to the agreements, they can be divided into vertical and horizontal. In respect of the latter, the so-called "industrial property holdings" were analysed in the paper. They involve the formation of a company in which assets in the form of industrial property rights are placed. They are further licensed to the remaining companies belonging to the holding's structure. Due to the rights attached to the shares, companies using industrial property rights control the entity which granted the licence. Despite the fact that creating this type of holding structures is an almost-new phenomenon, it has already posed numerous legal issues. The chapter includes a presentation of the principles in which the company which is the holder of industrial property rights can claim compensations to the benefit of and for the remaining holding members. I have also discussed the issue of the abuse of legal personality in industrial property holdings. Activities involving unjustified compensation claims on account of a breach of industrial property rights can be observed, which are aimed at acting against the holding's competitors. A number of this type of actions (and also, e.g., refusing to grant a licence, inclining to the non-performance of contracts) can be classified as a breach of fair competition principles.

4.15. I have also analysed the issues of controlling the concentration and exhaustion of industrial property rights in a group of companies. The specific nature of industrial property rights in a group of companies requires a different approach to various problems from standard cases. This is the case of, i.a., the exhaustion of industrial property rights. In my paper, I support the view that the exhaustion of the rights occurs when a given product leaves the company, reaching the end users. The ownership transfer of the goods in which intangible assets have been incorporated (trademarks, designs) between the holding members does not lead to the rights' exhaustion. Such view is supported by the recent rulings of the EU Court of Justice. The subject of the role of industrial property in groups of companies (from the perspective of the aforementioned issues; exhaustion of rights, concentration control) has not been analysed in detail in the Polish literature on the subject. Moreover, this new issue has not been described extensively in the international literature on the subject.

4.16. The last part of the paper concerns the influence of dissolving and restructuring commercial companies on industrial property rights. As it is a very large subject area, I focused on the most important points. During the liquidation and bankruptcy of companies, numerous legal acts are performed which involve the intangible assets of commercial companies. As compared to bankruptcy proceedings, liquidation proceedings do not necessarily include realising industrial property rights. In practice, a problem arises as to whether a specific contribution made by a person to the company should be refunded during liquidation proceedings. Such a possibility should not be excluded, especially because it could be an effective way to make settlements with shareholders (e.g. if they contributed a patent and are currently the licensors of the patent). However, the contribution refund cannot be performed with prejudice to the protection of the creditors' interest. In general, it also cannot lead to circumventing legal regulations concerning the principles of liquidating commercial partnerships and companies.

4.17. The impact of filing a bankruptcy motion on licence agreements is a vital issue. I have analysed the problem of including provisions in licensing agreements which anticipate the termination or expiry of the licensing relationship in the event of licensor's or licensee's bankruptcy. Such provisions are subject to the sanction of absolute nullity.

4.18. It is not permissible to include a provision in the licensing agreement stipulating that the use of industrial property rights is established in the event of the receiver's withdrawing from the licensing agreement (conditional use). A provision stipulating the establishment of use instead of licence is considered null and void in respect of the bankrupt's estate. It can lead to circumventing the rules on the outcomes of the receiver's withdrawing from the licensing agreement. The views advocated by the supporters of the admissibility of such provisions in agreements are not justifiable under the legal regulations in force. A separate passage was dedicated to the sale of intangible assets in bankruptcy proceedings. The sale of industrial property rights by receivers under bankruptcy proceedings bears the consequences of enforcement sale. The buyer acquires rights without any encumbrances.

4.19. In my paper, I discussed the influence of the enterprise's liquidation of the rights of so-called "users". This pertains to persons acting in good faith who can use others' intangible assets within their business activities. I have assumed that closing an enterprise by a company in the operational sense does not result in the losing of user status by the enterprise. A company may suspend or close production based on an invention, and subsequently launch it again without losing any of its rights as user in the discussed scope. The case of liquidating an enterprise as a business entity needs to be assessed differently - this means that a company which previously enjoyed user status ceases to exist (e.g. as a result of removing a commercial company from the register following the bankruptcy

proceedings). The liquidation of the company in the above sense leads to the termination of its legal existence. If such a company ceases to exist, it cannot exercise any rights, such as users' rights. The way the company's assets are realised is the basis for deciding whether the right of a user is assigned to another entity. If the company is liquidated by selling the company's enterprise, the rights of user could be assigned to the buyer (the right can only be disposed of in conjunction with the enterprise).

4.20. In this part, I have discussed the issues related to the status of industrial property rights in restructuring proceedings in commercial companies. In the case of proceedings involving debtor's restructuring, the most-important issue from the point of view of the aim of the paper is the degree of the company's freedom to dispose of individual property rights. This degree is not the same for all restructuring proceedings. A debtor company subject to so-called "simplified restructuring proceedings" (settlement approval and accelerated settlement proceedings) enjoys the greatest degree of freedom. Within the two proceedings, the debtor may perform the day-to-day ordinary management of the industrial property rights. This poses problems in respect of defining which debtor's activities can be regarded as ordinary management, and which fall outside its scope. Debtors subject to restructuring proceedings surely cannot independently waive their industrial property rights, conclude a settlement agreement, narrow the scope of the requested protection in patent proceedings, withdraw from applying for protection, or make a conversion of their invention application etc. (without the consent of the settlement supervisor or court supervisor). There might be doubts as to whether a given debtor's activity can be regarded as ordinary management or falls beyond its scope. I concur with the view that in order to dispel any doubts which might arise, the court supervisor may define which activities require their consent (thus falling beyond the scope of ordinary management). Within settlement proceedings (proper) and recovery proceedings, debtors are not free to manage their industrial property rights. As a rule, as the court opens the recovery proceedings, the debtor is deprived of the right to manage its assets. In exceptional circumstances, the court might decide that the debtor can manage some parts of its estate if its personal participation is necessary for exercising certain rights. Such a situation might occur, for instance, in respect of applying an invention in the indebted company's enterprise which requires the debtor's, or some of its representative's, expertise.

5. Other academic accomplishments

5.1. In my research work, I have focused on the following issues

- a) The legal aspects of marketing scientific research and development works
- b) Industrial property rights

- c) Copyright
- d) Archive law
- e) Civil law

5.2. The first field of my research is the subject matter of a monograph entitled *“Wyniki prac badawczych w obrocie cywilnoprawnym”* [*“Research work results in civil-law transactions”*] published by Wolters Kluwer in 2010 (428 pages). The publication is a modified and updated version of my doctoral dissertation which I defended in 2009 (entitled *“Cywilnoprawna problematyka realizacji prac badawczych”* [*“Civil-law issues in conducting scientific research”*]). This monograph is the first comprehensive Polish study on issues related to scientific research trade. Papers by W. Bagiński and L. Zalewski, published in the 1970s and 1980s, dealt with only one of numerous instruments used in trading in scientific accomplishments, namely research work agreements. In my book, I described the legal status of research results under intellectual property law, and such instruments of trading in research works as the aforementioned agreements, corporate arrangements, research work competitions and public procurement in the field of scientific research. The book takes into account the so-called “science-reform Acts” in force from 2010, which is one of the paper's greatest assets. The Acts have had a great influence on the shape of Polish science and higher education institutions.

Despite the changes in the law, the monograph *“Research work results in civil-law transactions”* is frequently cited in the literature on the subject. It was cited numerous times in the *Private Law System* (volume XIV[A]), *Commercial Law system* (vol. V), and also in commentaries and monographs.

I continued exploring issues related to the legal aspects of scientific research in the following papers: *“Ochrona wyników badań naukowych”* [*“The protection of scientific research results”*] in: M. Załucki (ed.) *Ochrona własności intelektualnej w Polsce. Podstawowe mechanizmy i konstrukcje* [*The protection of intellectual property in Poland. Principal mechanisms and structures*], Ius at Tax, Warsaw 2011, pp. 211-233; *“Granice wolności wypowiedzi w badaniach naukowych”* [*The boundaries of the freedom of speech in scientific research”*], in: W. Lis, Z. Husak (red.), *“Praktyczne aspekty wolności wypowiedzi”* [*“The practical aspects of freedom of speech”*] (series: *“Oblicza mediów”* [*“The faces of the media”*]), Wydawnictwo Adam Marszałek [Adam Marszałek Publishing House], Toruń, pp. 381-403 as well as in several other articles and chapters. In the articles, I analysed problems which had not been included in my doctoral dissertation. My doctoral dissertation did not include the subject of protecting research results, as it was focused on the issue of trading. In addition, my doctoral dissertation did not address the issues of limitations on freedom of speech in the context of scientific research.

A number of legal regulations which were amended after the book *“Wyniki prac badawczych...”* [*“Research work results...”*], op. cit. was published, were discussed in detail in a collective work edited by J. Sieńczyło-Chlabicz (ed.), *“Komercjalizacja i transfer wyników badań naukowych i prac rozwojowych z uczelni do gospodarki. Komentarz* [*“The marketing and transferring of research and development works from universities to business. A commentary”*], Warsaw 2017. I am the sole author of: Chapter 2 pt. I (pp. 19-29), Chapter 3, pts. I-III (pp. 62-89) and VII 9pp. 99-107, and Chapter 5 pt. I (pp. 259-288). Commentaries on most of the legal regulations included in the paper involve new issues which had not arisen during the preparation of my doctoral dissertation.

Together with Prof. Andrzej Szewc, I have presented the issues related to trading research results in the article entitled *“Wynalazczość pracownicza i komercjalizacja własności przemysłowej”* [*“Employee inventiveness and marketing industrial property”*], *Studia z Prawa Prywatnego 2017* [*Private Law Studies 2017*], issues 3-4. p. 34 et al. The article is not only an updated version of Prof. Szewc's text, I have also added a section devoted to the marketing of industrial property, covering not only the issues of agreements (direct marketing) but also the transfer of scientific research results to business through special purpose vehicles (indirect marketing).

5.3. Within my studies in the field of industrial property, I wrote a 400-page commentary to art. 24-101 of the Act on industrial property rights (see: *“Komentarz do art. 24-101”* [*“Commentary to art. 24-101”*], in: T. Demendecki, A. Niewęglowski, J.J. Sitko,, J. Szczotka, G. Tylec, *“Prawo własności przemysłowej. Komentarz”* [*“Industrial Property Law. A commentary”*], Wolters Kluwer, Warsaw 2015, pp. 99-509). The issues which I analysed in the commentary involved the issues of inventions and utility models. I also wrote articles on issues related to patent law. These include *“Zawieranie umów licencyjnych a dopuszczanie do obrotu produktów leczniczych”* [*“The Conclusion of Licensing agreements and marketing authorisations for medicinal products”*] in: w: M. Załucki (ed.), *“Rozwój prawa własności intelektualnej w sektorze farmaceutycznym”* [*“The development of intellectual property law in the pharmaceutical industry”*], C.H. Beck, Warsaw 2010, pp. 87 – 100 and *“Konwersja zgłoszenia wynalazku na wzór użytkowy.”* [*“The conversion of an application for an invention to a utility model application. Selected issues”*] in: M. Chrzanowski, A. Przyborowska-Klimczak, P. Sendek (ed.), *Pro Scientia Iuridica*, Lublin 2014, pp. 277-285.

I prepared part of a chapter devoted to issues of patent law for the students of a postgraduate course in the field of industrial property law, entitled *“Prawo wynalazcze”* [*“The law on inventions”*] in: G. Tylec (ed.), *“Zarys prawa własności intelektualnej. Skrypt dla słuchaczy studiów podyplomowych: »kształcenie kadry akademickiej do roli wykładowców przedmiotu ochrona własności intelektualnej«* (*“An outline of intellectual property law. A textbook for the students of a postgraduate course in: Educating university staff giving lectures on the protection of intellectual*

property”), Lublin 2012 (chapter II § 1, § 2 pt. 1, 2, 5, 6, § 4 pt. 1–4, bibliography), 35 pages. My publication on the subject was prepared mainly for educational purposes. It was well received by the students.

I prepared a chapter concerning the subject of classified technical solutions (inventions and utility designs) which was published in: R. Skubisz (ed.), *“System prawa prywatnego. Prawo własności przemysłowej”* [*“The Private-Law System. Industrial-Property Law”*], vol. XIV[A], C.H. Beck, Warsaw 2017, pp. 1080-1138 (the title of the chapter: *“Tajne rozwiązania techniczne”* [*“Classified technical solutions”*])). In this chapter, I discuss substantive-law and procedural issues connected with classifying technical solutions. I have also presented issues related to obtaining compensations from the State treasury in the event of classifying technical solutions.

The issues of protecting medical inventions are analysed in the chapter entitled *“Patenty w medycynie”* [*“Patents in Medicine”*]. It was published in: M. Sadowska, K. Kukuryk (ed.), *Prawo a technologie medyczne* [*The law and medical technologies*], Lublin 2017, the International Scientific Association for the Support and Development of Medical Technologies, pp. 87-102. The chapter involves detailed issues related to the protection of technical solutions in the field of medicine, including in particular the controversial patenting issues of new applications of medicinal substances, already included in the current state of the art.

In one of my most recent papers on patent law, I address the issue of the legal status of the patent buyer who has not been entered in the register kept by the Patent Office [*“Skutki wpisu przeniesienia prawa do rejestru patentowego. Zagadnienia wybrane”* [*“The outcomes of entering the transfer of the right to a registered patent, Selected issues”*], in: P. Kostański, P. Podrecki, T. Targosz (ed.), *Experientia docet. Księga jubileuszowa ofiarowana profesor Elżbiecie Traple* [*A Yearbook dedicated to Professor Elżbieta Traple*], Wolters Kluwer, Warsaw 2017, pp. 566-580]. I asserted the view that the legal status of an entity which purchased a patent, but has not revealed the fact in the register kept by the Patent Office, resembles the status of an inheritor who has not obtained a testament probate or a registered deed certifying the inheritance. Rights arising from patents do not depend on a register entry. However, in order to prove ones’ rights to third parties (e.g. claiming compensation for instances of breach) it is necessary to obtain the register entry at the Patent Office. In the event of the details of another person’s being entered in the register (e.g. to whom the seller tried to sell the patent again), the buyer should take legal action aimed at proving that he/she is entitled to the patent. Following a final and binding court judgement, the Patent Office will make the relevant changes to the register. I challenged the view that the Patent Office can make independent decisions in the case of disputes on who the patent holder is. The parties entitled to the patent should be identified by way of civil-law proceedings. A court judgement stating that a patent buyer

who has not entered his/her details in the register before an unauthorised person had, is the patent holder is binding for the Patent Office.

In addition to the patent law, I published two parts of chapters in *System prawa handlowego [The Commercial Law System]*, vol. III. (ed. K. Szczepanowska-Kozłowska and E. Nowińska, C.H. Beck Warsaw 2015). These are: *“Dobra niematerialne jako przedmiot stosunku cywilnoprawnego” [“Intangible assets as the object of civil-law relations”]* (ibidem, pp. 19-64) and *“Korzystanie z przedmiotu prawa” [“The use of the object of rights”]* (ibidem, pp. 508-536). In these papers, I presented a new cross-sectional approach to the notion of an intangible asset and its individual types. In my view, the elements of the notion of an intangible asset are not only its characteristic features (the essence of an intangible asset) but also the existence of its legal protection (it does not need to be performed by way of absolute rights. Protection under tort law which results in defining the rights in legal terms is also a tool for protecting intangible assets.) In the chapter devoted to the use of the object of the right, I presented the factual and legal Acts which fall within the scope of utilising intangible assets. The most extensively covered topic was the issue of licensing agreements and other legal Acts, under which intangible assets may be used (lease of rights, franchise agreements). I classified granting a licence as a binding act.

As far as the field of industrial property law is concerned, together with M. Poźniak-Niedzielska, I also wrote a comprehensive research paper entitled *“Używanie oznaczenia odróżniającego jako przesłanka ochrony w świetle prawa własności przemysłowej” [“The use of a distinctive mark as a premise for protection in the light of industrial property law”]*, in: A. Dębiński, P. Stanisławski, T. Barankiewicz, J. Potrzebski, W. Sz. Starzewski, A. Szarek-Zwijacz, M. Wójcik (ed.), *Abiit, non obiit. Księga poświęcona pamięci Księdza Profesora Antoniego Kościa SVD [A publication commemorating Rev. Prof. Antoni Kość SVC, Wydawnictwo KUL [KUL Publishing House], Wydawnictwo KUL, Lublin 2013, pp. 1251 – 1267.*

5.4. My achievements in the field of copyright includes mostly articles and glosses which are listed in detail in Appendix 4 to the Application. The most-significant papers in terms of their practical application include: *“Glosa do wyroku Sądu Apelacyjnego we Wrocławiu z 19 kwietnia 2012 r.” [“A gloss to the judgement by the Court of Appeals in Wrocław of 19 April 2012”]*, II AUa 244/12, *Ius Novum* 2012, No. 4, pp. 135-143. The gloss concerns the permissibility of concluding a contract for a specific task in respect of a series of lectures. In a judgement of 27 August 2013 II UK 26/13, LEX No. 1379926, the Supreme Court supported my view (expressed in the aforementioned gloss), which justifies the permissibility of concluding contracts for a specific task in respect of delivering lectures with the transfer of copyright. My opinions expressed in another gloss (*“Dzierżawa egzemplarzy utworu w świetle prawa autorskiego” – glosa do wyroku Sądu Najwyższego z 26 stycznia 2011 r.*

[*"The lease of a copy of a work in the light of copyright – A gloss to the judgement of the Supreme Court of 26 January 2011*], IV CSK 274/10, Glosa 2012, No. 2 pp. 94-100) have been cited by administration entities in order to justify their own legal positions (see Letter from the Social Insurance Institution (ZUS), Ref.: WPI/200000/43/230/2016 on the lack of the obligation to pay social insurance contributions on account of economic copyright lease agreements). The next gloss concerning the legal consequences of failing to include a provision expressly transferring economic copyright is frequently cited in the legal doctrine (see *Glosa krytyczna do wyroku Sądu Najwyższego z 15 listopada 2012 r. [A critical gloss to the ruling of the Supreme Court dated 15 November 2012]*, V CSK 545/11, *Państwo i Prawo* 2014 [State and Law 2014], No. 11. Pp. 130-136).

As part of my research work on copyright, I dealt with the issues of orphan works during the time when the works on implementing relevant EU regulations were still unfinished (see. *Directive on certain uses of orphan works and its significance to Polish copyright law, Private Law Transformations* 2013, No. 3 pp. 77 - 95). I studied the issue of orphan works as part of a grant, in which I was the research performer. The outcome of the studies is a paper written together with M. Pożniak-Niedzielska entitled *"Orphan works - new challenges for Polish copyright law"*, *Zeszyty Naukowe Uniwersytetu Jagiellońskiego [The Jagiellonian University Research Bulletin. Papers of the Intellectual Property Institute* 2013, No. 122, pp. 5-22. In the paper, we presented, i.a., the results of comparative law research and our own postulates concerning changes in Polish copyright law.

Between 2010 and 2013, as part of the grant, I dealt with issues of copyright in the operation of cultural institutions, with particular attention to libraries. The outcome of these works is the research paper entitled *"Prawnoautorskie aspekty udostępniania utworów w działalności bibliotek"* [*"Access to works in the activities of libraries from the perspective of copyright"*] The Jagiellonian University research bulletin. Papers of the Intellectual Property Institute 2012, No. 115, pp. 68-90, and chapter II in a book entitled: A. Niewęglowski, M. Pożniak-Niedzielska, A. Przyborowska-Klimczak, *"Ochrona niematerialnego dziedzictwa kulturalnego"* [*"The protection of intangible cultural heritage"*], Wolters Kluwer, Warsaw 2014 (pp. 116-149). In this chapter, I analysed not only the theoretical and legal aspects of using the objects of copyright by libraries (including the rental and lending of copies of copyright works by the libraries, the use of the digital copies of the works, and liability for crossing the boundaries of permitted use of the copyright work), I also presented and critically analysed the results of empirical research carried out as part of the project in over seventy Polish libraries.

Within my research activities, I elaborated on issues of copyright on the Internet, including liability for breach of copyright, and issues related to creating blogs and fan art. The outcome of the work was summarised in a monograph entitled *"Internet and copyright"* edited by myself and M. Chrzanowski (Lublin, Wydawnictwo UMCS [UMCS Publishing House], 164 pages). The monograph

includes a comprehensive substantive introduction written by myself, which is over 10 pages long. In addition to breach of copyright on the Internet, I have also been dealing with the issue of illegal borrowing from works by other authors. I devoted a lot of attention to the topic in a paper entitled *“Dozwolony użytek utworów w orzeczeniach sądowych i materiałach urzędowych. Czy sędzia może popełnić plagiat?”* [“The permitted use of works in court rulings and official materials. Can a judge be guilty of plagiarism?”] in: W. Lis, G. Tylec (ed.), *“Działalność naukowo-dydaktyczna w świetle prawa autorskiego”* [“Scientific and educational activities in the light of copyright”], Wydawnictwo KUL, Lublin 2015, pp. 193-296. It involved the issues of using works protected by copyright by judges without indicating the scope of the borrowing, the author, or the source of the original work. It asked the question of whether a judge found guilty of an illegal borrowing can be held accountable for a breach of moral copyright.

As far as the subject of copyright is concerned, one of the most important publications which I prepared with M. Poźniak-Niedzielska was a paper on the notion of a work in *System Prawa Prywatnego. Prawo autorskie* [The Private Law System . Copyright], Vol. XIII, C.H. Beck, 2013 issue (pp. 7-31) and 2017 issue (pp. 8-34). The works include a description of the distinguishing features of a work from the perspective of two conflicting trends in copyright. These are the development of statistical originality theory and “small change” theory. Threats related to the two approaches were presented in the Private Law System, op. cit. The notion of a work is also referred to in a paper written together with M. Poźniak-Niedzielska entitled *“Pomysł jako przejaw twórczości w świetle prawa autorskiego”* [“An idea as a manifestation of creativity in the light of copyright law”, in: A. Matlak, S. Stanisławska-Kloc (ed.), *Spory o własność intelektualną. Księga jubileuszowa dedykowana Profesorom Januszowi Barcie i Ryszardowi Markiewiczowi*, [Disputes over intellectual property. A Yearbook dedicated to Professor Janusz Barta and Ryszard Markiewicz”] Wolters Kluwer Polska, Warsaw 2013, pp. 841 – 860.

5.5. The next field of my research interests is archive law. This field of study is a relatively new object of legal interest. However, it is an important and topical issue. As far as this subject matter is concerned, together with M. Konstankiewicz I prepared the first commentary to the Act on national archival resources and archives in the history of Polish jurisprudence. The commentary was published by the Wolters Kluwer publishing house under the title *“Narodowy zasób archiwalny i archiwa. Komentarz”* [“National archival resources and archives. A commentary”], Warsaw 2016. My contribution to the commentary amounts to a total of 301 pages. I dealt with both issues in the field of civil law (trade in personal archives, and pre-emption right to archival materials), and commercial law issues (running a business activity by persons storing and disclosing personal and payroll files).

My accomplishments in the field of archive law also include research papers listed in Appendix 4 to the application. They were published in a renowned journal entitled "Archeion" and in the "Archiwista Polski" quarterly ["*Polish Archivist*"]. They were devoted to, i.a., the legal status of archival materials and classifying the materials pursuant to the provisions of the Act on Found Property and the amended Copyright Act.

The relations between archival materials and such products of intellect as maps, private correspondence, and recorded images are described extensively in Chapter three of a book entitled "*The Protection of Intangible Cultural Heritage*", Wolter Kluwers 2014 (pp. 78-115). I am the sole author of points 2-8 of the chapter, which constitute a separate entity in terms of content (point 1 written by M. Poźniak-Niedzielska is devoted to museums). The above part of the chapter is the first statement on archive law of its kind in Poland. The text not only describes the status of archival materials, from the perspective of copyright and substantive rights, but also the legal status of archives, as a specific type of organisational unit. The analysis facilitated the definition of the rights and obligations of archives (mainly state archives) in the field of using and disseminating archival materials. It also enabled me to present issues related to the publishing activities of archival units.

5.6. As far as the civil law is concerned, I published nine chapters in a monograph entitled "Non-Code commercial contracts" published by Wolters Kluwer in 2013. My contribution amounted to a total of 229 standard pages. In the book, I dealt with contracts in the field of transport law, consulting, construction work investments and intellectual property. Due to the great popularity of the book among readers, the publishing house decided to release a second edition. During the preparation of the summary of accomplishments, I submitted an updated and changed version of the nine chapters for printing. In a study entitled "*Kodeksowe umowy handlowe*" ["*Code Commercial Contracts*"] (Wolters Kluwer, Warsaw 2014, pp. 118-210), I included a 90-page chapter devoted to agreements on the supply of agricultural products.

My accomplishments in the field of civil law also include glosses which I published in renowned legal journals. They mostly include my own views on the subject which emerged in the practical application of the law of obligations. They concern liquidated damages (*Orzecznictwo Sądów Polskich. (Rulings of Polish Courts 2012)*), No. 7-8, pp. 517-520, *Ius Novum* 2011, No. 1 pp. 187-192) and the outcomes of withdrawing from a reciprocal agreement (*Ius Novum* 2011, No. 4, pp. 136-143). In addition to this, I devoted a separate space to issues in the fields of obligations and indemnification liability in the event of such incidents provided by law as: incorrect prognoses under consulting agreements (*Rejent* 2011 No. 7-8, pp. 159-172), failure to properly perform medical procedures (*Prawo i Medycyna [Law and Medicine]* 201, No. 1, pp. 132-144) and the legal classification of such unnamed agreements as an agreement for the development and supply of an IT

system, (*Przeгляд Sądowy [Judicial Review]* 2010, No. 6, pp. 105-114) or outsourcing agreements (*Glosa* 2011, No. 1 pp. 47-52). This part of my work is characterised by comprehensive issues in the field of performing obligations and the legal outcomes of non-performance. My intention was to focus on issues which are not typical, and for that reason not studied extensively (consulting, outsourcing). Detailed bibliographical data concerning the above glosses is listed in Appendix No. 4.

Moreover, I am the co-author of three glosses which dealt with issues in the field of broadly understood civil law, such as the boundaries of the right of a family to decide on the place of the burial of a deceased person (*Rulings of Polish Courts* 2011, no. 10, pp. 742-745. Co-author: G. Tylec), the problem of dividing the provision of services under construction work agreements (*Państwo i Prawo [State and Law]* 2011, No. 9, pp. 122-127). Co-author: A. Goldszewicz) and the criteria for evaluating the similarity of agreements in the light of the provisions of the Code of Commercial Partnerships and Companies (*Glosa* 2012, No. 1, pp. 43-48. (*Glosa* 2012, nr 1, s. 43-48. Co-author: M. Dumkiewicz). Detailed bibliographical data concerning the above glosses is listed in Appendix No. 4.

In addition to the glosses, I devoted several research papers to civil-law issues. One of the topics which is the object of my research into the field of obligations is the problem of competitions. I analysed them from two points of view. Firstly, I compared the institution of a competition as referred to in the Civil Code, and a competition which is a new form of awarding public-procurement contracts [see the two-part research paper entitled "*Konkurs w ujęciu kodeksu cywilnego i w świetle prawa zamówień publicznych*" [*Competitions referred to in the Civil Code and the Public Procurement Law*"], *Zamówienia Publiczne. Doradca [The Public Procurement. Counsellor]* 2009, No. 5, pp. 68 – 75 (part I); *Zamówienia Publiczne. Doradca [Public Procurement. Counsellor]* 2009, No. 6, pp. 60 – 64 (part II)]. Secondly, I dealt with the issue of the legal status of templates (terms and conditions applied by the competition organisers). The above research papers were cited in commentaries, e.g. Volume II of the commentary to the Civil Code edited by M. Gutowski C.H. Beck, Warsaw 2016 and in the Commentary to the Civil Code edited by K. Osajda, Vol III[B], C.H. Beck, Warsaw, 2017, in papers and monographs.

In the article entitled "*Modifications to lapse periods in agreements concluded by entrepreneurs. Remarks on the draft of Book I of the Civil Code*" (*Transformacje Prawa Prywatnego [Private law transformations]* 2012, No. 4 pp. 67-84), I analysed the issue of proposed legal regulations allowing changes to lapse periods in professional commercial activities. I also pointed to the flaws of the new regulations, which disregarded numerous substantial legal issues (e.g. the impact of withdrawing from agreements on the lapse periods laid down in agreements). Although the legal regulations concerning the changes in the lapse periods in professional commercial activities have not yet been adopted, my paper was cited in the literature on the subject (i.a. in *System Prawa Prywatnego [The Private Law System]*, vol. XX[B] and in vol. II of *Komentarz do KC [A*

Commentary to the Civil Code] edited by K. Pietrzykowski, CH. Beck, Warsaw, 2015) and some of the authors concurred with my observations.

6. A detailed list of research papers published by myself and original works created in the course of my professional activities, and information on my educational achievements, supervision over student research, activities popularising science and academic cooperation, are presented in Appendix 4 to the Application.

Lublin, 21 November 2017


/Adrian Marcin Niewęglowski, Ph.D./