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ADMINISTRATIVE LEGAL STATUS OF THE PATENT OFFICE IN THE REPUBLIC OF BULGARIA

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Abstract. This study addresses a prevalent theoretical challenge stemming from the imprecise articulation of legislative texts. Numerous normative acts assert that a state body constitutes an administration yet simultaneously treat the body itself as the bearer of administrative powers in discussions on the status of the administration. This conceptual ambiguity is evident in the regulatory framework governing the Patent Office of the Republic of Bulgaria. By employing methods of analysis and synthesis applied to normative texts, this paper endeavors to reconcile the characterization of the Patent Office as an administrative entity with the notion of its Chairman as an executive body. The findings lay a foundation for future exploration into the role of experts who examine applications and resolve administrative disputes under the Act on Patents and Registration of Utility Models.

Keywords: Patent Office; chairman; administration; administrative authority

Introduction

The intellectual property field, particularly industrial property, has long captured the attention of scholars and practitioners from diverse disciplines, including law. Contributions from notable legal scholars (Borisov & Borisova 2015; Sarkisyan 2022; Sabev & Berchev 2020; Kacarov 2023; Pavlova 2000; Todorova 2020 etc.) underscore the interdisciplinary nature of this domain. From a legal perspective, it encompasses questions of both private and public law, addressing issues such as the emergence of legal relationships, the nature of subjective rights, the procedural nuances, and the characteristics of administrative acts issued by public authorities within the field of industrial property.

A central issue in public law, particularly administrative law, concerns the identification of the body vested with administrative powers. This raises subsidiary questions about whether the body functions within the executive branch or remains external to it, as well as its administration's status, structure, and composition. Resolving these matters is imperative, as they define the authorship of administrative acts, the procedures for legal recourse, and the effective realization of citizens' rights.

The relevance of this topic stems not from novelty but from the persistent lack of clarity in legal scholarship regarding the administrative-legal aspects of the Patent Office. Despite the significant body of literature on industrial property ranging from academic courses to monographs on specific topics a comprehensive analysis of the Patent Office's administrative-legal characteristics remains absent. Some scholars (e.g., Kacarov 2023; Pavlova 2000) have touched upon specific acts issued by the Office's Chairman, noting that they are neither administrative acts nor constitutive in nature, as evidenced by Article 12, Paragraph 2 of the Act on Patents and Registration of Utility Models (APRUM).

Accordingly, this study focuses on the administrative-legal characteristics of the Patent Office and its Chairman, to clarify the precise body vested with administrative powers and the nature of its administration.

1. Main characteristics of the Patent Office, according to the regulations.

The Patents Act was promulgated in the State Gazette (SG) No. 27 of 02.04.1993, laying the foundations for a significant reform in the field of industrial property (Nenova 2008). In 2006, the title of the normative act was updated and is currently called APRUM, where Chapter VII of the law is entitled "Patent Office". A historical overview of the regulatory framework and the development of industrial property protection in the Republic of Bulgaria is provided by (Nenova 2008).

The status of the Patent Office should be based on both the APRUM and the organizational regulations of the institution. According to Art. 79, para. 1. of the APRUM "*The Patent Office of the Republic of Bulgaria shall be a national state authority providing legal protection to industrial property and shall have its seat in Sofia*". Furthermore, according to Art. 2, para. 1 of the Rules of procedure of the Patent Office (RPPF): "*The Patent Office of the Republic of Bulgaria is an independent national state authority for the legal protection of industrial property objects*". From reading the two provisions, attention should be paid to several features: 1) the Patent Office as a **state Authority**; 2) the independent nature of the Patent Office; 3) the national nature of the Patent Office.

1.1. Patent Office as a State Authority

APRUM is another normative act that gives grounds for the misconception that the administration of a state authority is considered a state authority itself. For more information on the concept of "administration" and the different forms in which it is used, see (Kandeva 2007). A patent office is an administration that supports the holders of administrative powers who carry out Executive and Disciplinary activities. For more information on Executive and Dispositive activities, see (Staynov & Angelov 1963). If there is no explicit normative regulation, there are also employees (civil servants and employees) who support the state body and carry out Material and Technical activities in each administration. For more information on Material and Technical activities, see (Radev 2020). In conclusion, an authority

will be the bearer of authority, whether sole or collegial and the administration, in the narrowest sense, will be the set of employees who assist the authority in exercising its powers. Arguments for the thesis can be sought in a number of regulatory acts such as:

1.1.1. Art. 19 of the Administration Act (AA) lists the executive authorities, divided into central and territorial. Among those listed in para. 4 under point 4 are “*the heads of state institutions established by law or by a decree of the Council of Ministers, who have functions in connection with the exercise of executive power*”. From the provision so indicated, it can be assumed that an authority is the head of the institution, i.e. the Chairman of the Patent Office. The only thing that needs to be specified for the provision to be an argument is whether he has functions in connection with the exercise of executive power or in other words, whether the Chairman of the Patent Office is part of the executive power. In addition to the explicit indication in the commented provision, in order for him to be part of the executive power, it is sufficient to prove his subordinate position in relation to another body of the executive power, for example, the Council of Ministers, Prime Minister, Minister, etc.

1.1.2. According to Art. 79, para. 7 of the APRUM “*The Chairman of the Patent Office shall be appointed by the Prime Minister*”, which points to a hierarchical-subordinate relationship with an undisputed body of the executive branch.

1.1.3. The authority as the bearer of powers may transfer them, so according to Art. 81, para. 2 of the APRUM: “*The Chairman may delegate his competencies by a written order to a Deputy Chairman*”. Delegation is a generally accepted method of transferring powers by a state authority (Zinovieva 2018), which is characterized by the following features: 1) an explicit normative text that allows the delegation of powers; 2) it is delegated by a specific legal act – an order; 3) The delegating authority and the delegated authority exercise their powers simultaneously; 4) The authority to which powers are delegated acts on its own behalf. Delegation differs from substitution in powers, since in the second case: 1) It can always be implemented unless there is an explicit normative text that does not allow it; 2) The issuance of a specific legal act – an order is not required; 3) The holder of the powers is replaced when objectively he cannot exercise his powers due to leave, sick leave, business trip, etc.; 4) The substitute acts on behalf of the substituted. An interesting feature provided for in Art. 6, para. 2 of the RPPF is that “*the powers of the Chairman in his absence can be exercised by a deputy chairman, for which an order is issued for each specific case*”. That is, the mixing of delegation and substitution is regulated by law.

1.1.4. The Patent Office should definitely not be considered as a collegial body, there are no regulatory prerequisites for such an understanding. In fact, the collegial authorities make decisions by majority vote (Lazarov 2011), for which there is no regulation in the APRUM. An additional argument that the Chairman of the Patent

Office is a body of the executive power, and the office is its administration, can be sought in the manner of representation. The general situation is that the body represents the administration it manages. In this order, according to Art. 7, para. 1, item 1 of the RPPF the Chairman “*represents the Patent Office or authorizes persons to represent it.*”

1.1.5. According to Art. 12, para. 1 of the AA “*the activities of the administration are carried out by civil servants and persons working under an employment relationship.*” This situation can be found in a number of provisions in the RPPF, such as Art. 25, 28, etc. The main purpose of the administration is to support the activities of the state authority. The expression “supports” is legal and is found in a number of texts of the AA and is repeated in Art. 13 of the RPPF: “*The administration supports the chairman in the exercise of his powers and carries out administrative service activities for citizens and legal entities*”.

1.2. The independent nature of the Patent Office

The independent nature of the Patent Office is mentioned in Art. 79, para. 4 of the APRUM and in Art. 2, para. 1 of the RPPF. It is important to specify how this independent nature is expressed. In the Bulgarian administrative law theory, a monographic study examines independent administrative authorities (Pehlivanov 2016). First of all, there is a legal definition of administrative authority in § 1, item 1 of the Administrative Procedure Code (APC), according to which “*Administrative authority is the authority that belongs to the executive power system, as well as any holder of administrative powers authorized on the basis of law, including persons performing public functions and organizations providing public services*”. As specified above, the executive power body is the Chairman of the Patent Office.

According to the theory, only those who are not part of the executive branch and who are directly subordinate to the National Assembly or another state authority but have administrative powers can be independent administrative authorities (Pehlivanov 2016). The considered hypothesis of independence has another meaning, namely as an independent authority within the executive branch. This independence can be ensured by excluding the possibility of a higher executive branch to cancel, in cases provided for by law, acts issued within the framework of the activities carried out in the Patent Office. This situation is regulated in Art. 79, para. 4 of the APRUM “*The Patent Office shall be independent in its activities; its final decisions with respect to the protection of industrial property may be appealed in court under the relevant procedures.*”

1.3. The national character of the Patent Office

The Patent Office is an institution that protects industrial property within the Republic of Bulgaria. Each country has its own administration carrying out such activities, according to national regulations, which should be harmonized with international law and for EU member states with EU law too; for more on this issue, see (Draganov 2019).

1.4. Other features of the Patent Office

In Art. 79, para. 2, clause 1 of APRUM it is stated that the Patent Office is supported by the budget, which means that it is included in the system of public finances. Also, on the official website of the Patent Office www.bpo.bg It is stated that the institution is “*a secondary budget spending authority under the Ministry of Economy and Industry*”. A secondary budget spending authority means that the budget of the Patent Office is included in the budget of a primary spending authority (Dimitrov 2024), which in this case will be the Minister of Economy and Industry. The general rule is that “*the budget spending authority is the respective head of the budget organization, and in the case of collective authorities – their Chairman, unless otherwise specified in a regulatory act*” (Dimitrov 2024). As stated, the Patent Office is not a collegial/collective body, i.e., its Chairman will be the budget spending authority.

The institution’s income is collected from fees, rent, donations, and other income. In this regard, the Tariff for the fees collected by the Patent Office of the Republic of Bulgaria, adopted by Council of Ministers No. 242 of 27.12.1999, is in force.

Patent Office as an Administration

Chapter Five of the AA contains the regulations for the executive branch’s administration, which is divided into central and territorial. Accordingly, the central branch includes: 1) the administration of the Council of Ministers; 2) the ministries; 3) state agencies; 4) the administration of state commissions; 5) executive agencies, and 6) administrative structures established by a normative act, which have functions related to the exercise of executive power. The administration of the Patent Office falls into the last-mentioned group, for which there is no additional regulation in the Patent Law, as there is for the previous groups, for example. Therefore, information about the specific administration should be sought in the special law establishing it. In Chapter Eight of the APRUM, several provisions outlining the activities of the Patent Office are included, with additional regulation included in the RPPF. Several basic points can be outlined.

– Within the administration of the Patent Office, mandatory units are created: 1) expertise of industrial property objects; 2) disputes; 3) legal activities; 4) patent information and publishing activities.

– The Chairman of the Patent Office, through the approval of the organizational regulations, determines the structure and staff of the administration.

– The structure of the institution includes a chairman, who manages 1) deputy chairmen, 2) a financial controller, and 3) a general secretary, who, according to Art. 8 of the AA, “carries out the administrative management of general and specialized administration, organized in directorates.”

1.5. Structure of general and specialized administration and staff

The general administration, which consists of 33 full-time positions and is divided into two directorates: 1) the “Administrative, Legal, Financial and Economic Activities” directorate and 2) the “International Cooperation and Projects” directorate, which assists the Chairman in the exercise of his powers and create conditions for the implementation of the activities of the specialized administration.

The specialized administration, which consists of 77 full-time positions and is organized into three directorates: 1) Directorate “Examination and Protection of Inventions, Utility Models and Industrial Designs”; 2) Directorate “Examination and Opposition of Trademarks and Geographical Indications” and 3) Directorate “Disputes and Administrative Penalty Activity”.

In addition to the above-mentioned positions, the staffing schedule also includes 1 position for a financial controller, 1 position for a general secretary, and 2 positions for management - Chairman and Deputy Chairman. On the official government website <https://iisda.government.bg/> It is stated that out of a total of 114 planned positions within the Patent Office, 94 are for civil servants, 20 for employment, and as of January 2025, there are a total of 14 vacant positions – 12 for civil servants and 2 for employment.

A requirement under Art. 83 of APRUM for all civil servants/employees of the Patent Office is that they must be Bulgarian citizens only. Also, according to Para. 2, *“The state experts who make decisions on the applications for objects of industrial property or final decisions on disputes shall conform to the following requirements: university degree and post-graduate specialization in patent law; at least 3 years practice in the expertise and a passed examination at the Patent Office. The conditions and the order of performing the examination shall be determined by an act of the President of the Patent Office”*. Last but not least, several restrictions are set for civil servants/employees of the Patent Office in addition to the citizenship requirement: 1) they are not entitled to file applications for the protection of industrial property objects; 2) they are not entitled to be listed as inventors or co-inventors for one year after termination of the service or employment relationship with the Patent Office.

1.6. Regulatory framework

The regulatory framework that regulates the activities of the Patent Office should be examined at a minimum of three levels, as required by the general doctrine of the sources of law, provided for in the general theory of law – 1) Acts of EU law, which have supremacy over the national law of the EU Member States, are directly applicable and have direct effect, for more details see (Draganov 2012); 2) Acts of international law, which according to Art. 5, para. 4 of the Constitution of the Republic of Bulgaria (CRB) must be ratified, promulgated, and entered into force in order to be part of domestic law, and 3) acts of the domestic law of the Republic of Bulgaria, and we will only mention the laws related to the activities of the Patent Office, taken from www.bpo.bg:

- Act on patents and registration of utility models (APRUM);
- Trademarks and Geographical Indications Act (TGIA);
- Industrial Design Act (IDA);
- Act on protection of new plant varieties and animal breeds (APNPVAB);
- Act on the topology of the integrated circuits (ATIC);
- Administrative violations and penalties act (AVPA);
- Tax-insurance procedure code (TIPC)

1.7 Registers maintained by the Patent Office

The following registers are maintained within the scope of the Patent Office's activities:

- according to Art. 5a from APRUM **State register of patents;**
- according to Art. 5a from APRUM **State register of utility models;**
- according to Art. 5a from APRUM **State register of SPC;**
- according to Art. 72i, para. 2 from APRUM **State register of European patents;**
- according to Art. 91, para. 1 from APRUM **Electronic register of Representatives of industrial property;**
- according to Art. 91, para. 1 from APRUM **Electronic register of IPR Partnerships;**
- according to Art. 5, para. 1 from TGIA **State register of trademarks;**
- according to Art. 6, para. 1 from TGIA **State register of geographical indications;**
- according to Art. 8 from IDA **State register of industrial designs;**
- according to Art. 5a from APNPVAB **Electronic register of new plant varieties and animal breeds.**

2. Chairman of the Patent Office as an executive body

It was specified above that the Chairman of the Patent Office is the executive body. This position means that he is the bearer of administrative powers. Within the Patent Office, the Chairman is not the only bearer of such powers; they are also available to the experts from the unit under Art. 82, Para. 1, Item 1 of the APRUM and the experts from the unit under Art. 82, Para. 1, Item 2 of the APRUM, and this position can be deduced from the provisions of Chapter Five of the Disputes Act. A comprehensive examination of this issue requires a separate study, which will be the result of an extremely ambitious and laborious study.

Focusing on the role of the Chairman, it is pertinent to characterize this position as a singular, central, and appointive organ of the executive branch endowed with specialized competencies. Each of these defining attributes merits a concise yet nuanced examination:

2.1. Single-person executive authority

A sole-person body means that a natural person is constituted as a body through a method specified in a normative act – election or appointment. Its

material competence, i.e., the range of powers it has, is implemented through its sole-person orders – administrative acts.

2.2. Central body of executive power

Central authority means that the territorial scope of its competence extends to the entire territory of the Republic of Bulgaria and is not limited to a particular part of it.

2.3. Body with special competence

This competence will be special and extend to a certain sphere of state administration. It can be sectoral or functional, the latter being manifested in each individual sphere of state administration, for example, the Minister of Finance has such competence (Lazarov 2011). Given the above, the Chairman of the Patent Office will have special sectoral competence, which is developed in the sphere of industrial property protection.

2.4. Appointing authority

A direct argument for this situation can be derived from Art. 79, para. 7 of the APRUM: *“The Chairman of the Patent Office is appointed by the Prime Minister.”*

2.5. Other features

There is no explicit text commenting on the mandate of the Chairman of the Patent Office. This situation means that the powers can be withdrawn at any time by the body that appointed him by appointing a new individual as Chairman, as long as he meets the legal requirements. These are themselves specified in Art. 79, para. 6 of the APRUM: 1) to have worked in the field of industrial property for over ten years and 2) to have a higher technical or legal education, in short, to be an expert in the field.

3. Powers of the Chairman of the Patent Office

3.1. Regulatory

The regulatory authority of the Chairman of the Patent Office is derived from Article 81 of the APRUM and Article 7 of the RPPF. Without delving into exhaustive detail or enumerating the specific powers outlined in these provisions, it is sufficient to note that the Chairman is vested with authority to issue the RPPF, determine the organizational structure of the office, appoint personnel, enter into agreements with foreign patent offices, and issue administrative orders and certification documents, such as patents.

The Chairman is also empowered to delegate certain responsibilities to his deputies. In the event of the Chairman’s absence, these powers are exercised by the deputies, subject to the issuance of a specific order tailored to each individual case. This order combines the two institutes of delegation and substitution.

3.2. Control. Chairman of the Patent Office as the administrative sanctioning body

Article 47, Paragraph 1 of the AVPA defines the concept of an administrative sanctioning body. From this provision, it can be inferred that an administrative

sanctioning authority refers to the head of an institution tasked with the management and implementation of relevant regulatory acts and the oversight of their enforcement. Such an authority is empowered to impose administrative penalties on natural persons for administrative violations or, in cases specified by law, to impose property sanctions on legal entities or sole proprietors through the issuance of a penal decree. These powers are conferred upon the Chairman of the Patent Office under three specific legislative acts: 1) Article 108, Paragraph 3 of the APRUM; 2) Article 133, Paragraph 1 of the TGIA, and 3) Article 69, Paragraph 1 of the IDA.

Unless otherwise stipulated in those statutes, the procedural framework for the establishment of administrative violations, the imposition of administrative penalties, and the contestation and enforcement of penal decrees are governed by the AVPA. For further elaboration, see (Panov, Ilkova 2009; Sivkov 2021).

Conclusion

Legislative intervention and corrections in the normative acts are necessary to explicitly specify who the state body is and how its administration is named. It is necessary to refine the texts regarding the issuance of permits under the above-mentioned laws in order to identify the specific bearers of administrative powers and the characteristics of the legal acts. On the other hand, the regulation regarding the status of the Patent Office is extremely laconic and, in places, with an unreasonably high degree of abstraction. This leads to unclear provisions in the organizational regulations and the mixing of legal institutes without a justified reason.

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