Jurnalul de Studii Juridice

Jurnalul de Studii Juridice

ISSN: 1841-6195 (print); ISSN: 2067-8509 (electronic)

Covered in: Index Copernicus, Ideas RePeC, EconPapers, Socionet, EBSCO

LICENSE AGREEMENT

Ion FLĂMÎNZEANU

Jurnalul de Studii Juridice, 2013, Volume 8, Issue 1-2, June, pp:77-81

The online version of this article can be found at:

http://www.journaloflegalstudies.info/

Published by:

Lumen Publishing House

LICENSE AGREEMENT

Ion FLĂMÎNZEANU[1]

Abstract

The License Agreement is a intuitu personae, consensual,commutative, sinalagmatic and with successive execution contract. In recent decades has seen tremendous expansion in trade relations and international economic cooperation.

Since the license agreement and its legal regime is a construction of the legal doctrine and jurisprudence, supplemented with some legal provisions contained in special laws, the license agreement could be defined as an agreement by which the owner concedes intellectual property right of another person, in whole or in part, the use of its exclusive right to operate in exchange for a fee.

In the case of the license agreement, there is a great influence of international law in configuring an uniform structure for this type of contract. The international law tends to bring both legal systems and legal cultures to a certain uniformity.

Keywords: *contract, license, goods, invention, benefit*

[1] Senior Lecturer, Ph.D., Spiru Haret University, Bucharest, scientific researcher IIIrd grade, „Acad. Andrei Rădulescu" Legal Research Institute of Romanian Academy

FLĂMÎNZEANU, I. (2013). License Agreement. Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 77-81

Starting from the etymology of the word "licence" "ab initio" we can say that it comes from the Latin (licence-ae) and french word license, generally signifies permission.

In DEX licensed understand among others "title obtained at higher graduation", based on appropriate studies made; exam to obtain this title, given the state of a person authorized to exercise special trade for import and export operations ". As for us, we understand the license agreement that judicial action by the holder of a patent gives anyone the right to exploit his invention (Pollzier, (1973), : 12).

Regarding its regulation into national law and in the European regret that the majority of the laws of missing regulations relating to this contract was subject to the rules of common law contracts. In recent decades, the license agreement has seen tremendous expansion in trade relations and international economic cooperation.

However, also in the case of license agreement, there is evidence of the influence of international law in configuring an uniform structure for this type of contract. The international law tends to bring both legal systems and legal cultures to a certain uniformity (Butculescu, (2009), : 443).

Romanian legislation includes sporadic regulations concerning this contract "in concreto" as these provisions of Articles 5, 41 paragraph 3 and 48 paragraph 2 of Law nr.64/1991 (Bodoaşcă, (2010), : 239)[1].

That we increasingly wide use of this agreement as it would require a codification of the rules of this contract, to transform it into a contract called (Roş, (2002), :372).

Since the license agreement and its legal regime is a construction of doctrine and jurisprudence sometimes supplemented with some legal provisions contained in special laws that have regulatory another object, we reproduce the definition that gives the contract doctrine, "an agreement by which the owner conceding intellectual property right of another person, in whole or in part, the use of its exclusive right to operate in exchange for a fee (Erhon, (1995), : 172). "

In French doctrine expressed the view that, unlike assignment, license no effect translational rights, only obligations being creative

[1] Law no. 64 of 1991, which was published in the Official Journal of Romania no. 212 / 21 October 1991 and re-published in the Official Journal of Romania no. 752 /15 October 2002, regulated by art. III of Law no. 203 / 2002 amending and supplementing Law no. 64 of 1991 concerning patents

FLĂMÎNZEANU, I. (2013). License Agreement. Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 77-81

(Schmidt-Szalewski, (1997), :52). Indeed, the licensee acquires no right to dispose of the patent and the invention remaining the exclusive right to the patent holder. This is why it is admissible concedarea an unlimited number of licenses on the same patent and patent holder can use the invention himself (Roş, (2002), : 405).

License can be conceded and its beneficial co-owner of a patent, because what is transmitted through license is the right to use the invention, while maintaining the exclusive right of exploitation (Schmidt-Szalewski, (1997), : 53).

As regards the legal nature of the contract, the qualified case it still qualifies as a contract legal nature of the tenancy, applying them in the absence of specific regulations, common law provisions relating to this contract. The legal development of the license agreement was significantly influenced by common-law and as such is subject to certain concepts of natural law (Butculescu (2011), : 603).

Unlike the case law, doctrine is more nuanced recent years, considering that the legal nature of the license agreement can not be analyzed globally and it is preferable qualification unnamed contract or sui generis (Frignani, (1979), : 97). This position is based on the changes experienced by the license agreement, became a tool for technical cooperation between the Contracting Parties likely to take various forms.

Thus in practice there may be situations in which to apply the contract law rules in terms of sales. In addition, existing doctrine revealed in the license agreement of elements of the contract. Regarding the legal nature in general has a contract onerous nature, this does not prevent the situation that under certain conditions, limited in number, take the form of a free.

License agreement is a consensual agreement, commutative, sinalagmatic, intuitu personae and sequential execution.

As in the case of an assignment, the license agreement may not be concluded for an indefinite period, given the limited duration of validity of the patent, the law implicitly conceded (Petrescu, Mihai, (1987), : 62-64).

Conclusion of a license agreement and terms that make up the content, are generally governed by the principle of autonomy of will. Freedom of contract in this matter may be limited by a number of restrictions.

FLĂMÎNZEANU, I. (2013). License Agreement. Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 77-81

imposed by antitrust law (if any) designed to protect freedom of competition, prevent monopolies (Burst, (1978), : 11).

On our right, recording the license agreement is required only to ensure vis third parties of the contract between the parties he and effects occurring independently of any record. Recording contract is with OSIM, as article 48 paragraph 3 of the Patent Act[2].

In the form of the contract in terms of rights under the contract is awarded, the license may be exclusive or nonexclusive simple (Păun, (2007), : 263-265).

The advantages of the license agreement reside (Mazilu, (2000), : 279-280) in the fact that both the licensor and the licensee receive several benefits through concluding such agreement, namely : easier market penetration by the licensee, through intelligent valuation of advantages offered by the inventions or innovations provided by the licensor, a rise in quality of products, while presenting them on the international markets, so that they will become more looked after and appreciated.

Other advantages are generally getting participants to the benefits achieved objectives. Boost exports of raw materials, machinery and equipment, removing competition, avoiding customs barriers and non-tariff measures restrictive nature (Chavanne et Burst, (1980), : 26).

As regards the licensor it is generally enjoys the following benefits: contribution to human and technical progress, the obtaining of better goods with less human effort (Tivescu, (1956), : 56), contribution to increasing exports and reducing imports products through inventions and innovations question - have become more competitive, the satisfaction that gives you your intelligence product, thus leading to the improvement of product improvement service.

References

Treaties, lectures, monographs

Bodoasca, Th. (2010) *Dreptul proprietăţii intelectuale*, Ed.Universul Juridic, Bucureşti.

Erhon, V., (2000) *Brevetul de invenţie – obţinere şi exploatare* - , Ed. Lumina

[2] Law no. 28 of 2007 amending and supplementing Law no. 64 / 1991 concerning patents, re-published in Official Journal of Romania no. 44 / 2007 and Government Decision no. 499 / 18 April 2003 for aproving the Regulation for enforcement of Law no. 64 / 1991, concerning patents, Official Journal of Romania, no. 348 / 22 May 2003

Lex, Bucureşti.
Mazilu, D., (2000) *Dreptul Comerţului Internaţional, Partea specială*, Ed. Lumina Lex, Bucureşti.
Păun, R., (2007), *Dreptul Afacerilor*, Ed.Fundaţiei România de Mâine, Bucureşti.
Petrescu, L. M., (1987), *Dreptul proprietăţii industriale. Introducere în dreptul proprietăţii industriale, Tipografia Universităţii Bucureşti.*
Delevze, J., M., (1964), Le contrat d engineering; H. Boccacio, Les problemes de garanties et de responsabilites dabs les contrats d engineering , Liege.
Pollzier, G., Langen, E., (1973), *International licensing agreemens*, The Bobbs-Merrill comp., New York.
Roş, V., (2002), *Dreptul proprietăţii intelectuale*, Ed. Global Lex, Bucureşti.
Szalewski, Schmidt, I., (1997), *Droit de la proprieté industrielle*, Paris, Dalloz.

Article

Tivescu, M., (1956), *Comerţul cu licenţe*, în Invenţii şi inovaţii nr. 2/1956.
Butculescu, D., C., (2009) *Rolul dreptului internaţional în uniformizarea culturilor juridice în Dinamica dreptului românesc după aderarea la Uniunea Europeană*,, Hamangiu, 2009.
Butculescu, D., C., (2011), *Consideraţii privind dreptul natural în spaţiul anglo-saxon, în Dinamica dreptului românesc după aderarea la Uniunea Europeană*, Universul Juridic.
Burst I.I.,(1978) *Raportul naţional francez la congresul de drept comparat,* Budapesta.
Aldo Frignani, *Raportul italian la Congresul de drept comparat,.*

Legislation

Law no. 64 of 1991, which was published in the Official Journal of Romania no. 212 / 21 October 1991 and re-published in the Official Journal of Romania no. 752 /15 October 2002, regulated by art. III of Law no. 203 / 2002 amending and supplementing Law no. 64 of 1991 concerning patents
Law no. 28 of 2007 amending and supplementing Law no. 64 / 1991 concerning patents, re-published in Official Journal of Romania no. 44 / 2007 and Government Decision no. 499 / 18 April 2003 for approving the Regulation for enforcement of Law no. 64 / 1991, concerning patents, Official Journal of Romania, no. 348 / 22 May 2003