

Ewelina Jarosz-Zgoda  
Institute of Law Studies  
Polish Academy of Sciences

### **Utility model – the subject matter of protection**

(a summary of a doctoral dissertation drafted under the supervision of Prof. INP PAN dr. hab.  
Helena Żakowska-Henzler)

Utility models are minor technical solutions that do not meet the prerequisites of patentability (the novelty and/or inventive step requirements under the patent law). The rationale of their protection is the subject of controversy in both Polish and foreign literature, mainly due to doubts as to whether protection of such minor innovations is needed and how the subject matter of protection should be defined.

Given the controversies and doubts arising in this matter, the essence of the research problem concerns the question of what is the underlying objective of utility model protection and whether the Polish utility model protection regime, and in particular the subject matter of this protection, makes it possible to achieve such an objective, and if not, whether other intellectual property rights can provide such an objective.

As a result of the analysis of the research problem so posed, the following theses of the dissertation were formulated and verified: (1) The utility model protection under Polish law is not consistent with the declared purpose of its protection i.e. support of technical progress in the area of minor, incremental innovations, due to the type of technical solutions included in the category of utility models and the selection of requirements of their protection; (2) The purpose which is served by the protection of utility models can only partly be achieved by means of other legal instruments, including the industrial design protection regime.

The first chapter aims to answer the question of what are the assumed and declared objectives of utility model protection, as well as the purpose and functions it is to fulfil. It was also analyzed whether the objectives and functions of utility model protection in Poland coincide

with the objectives and functions formulated for utility model protection in foreign legal systems.

The second chapter looks at how different concepts of a utility model and models of its protection have been adopted in various legal systems to achieve similar objectives (i.e. to promote the progress in the field of small innovations).

The purpose of the third chapter was to determine what is the subject matter of protection - a utility model under Polish law. These considerations made it possible to state that the subject matter of protection (utility model) has not changed significantly over the last 100 years of utility model protection in Poland, despite the significant development of technology, emergence of new forms of industrial activity and new challenges formulated in relation to technical progress in the 21st century, and therefore is no longer adequate.

The fourth chapter discusses the requirements for utility model protection. The analysis in this chapter provides the basis for findings on the inadequacy of the model of utility model protection for its underlying purposes.

The fifth chapter sets out considerations concerning the utility model protection grant procedures. Its aim was to examine whether the examination system adopted in Poland makes it possible to obtain utility model protection in a simple and uncomplicated, effective and fast way, and thus adequate to the subject matter of protection (a utility model), which by definition is likely to be superseded by other incremental innovations in a shorter period of time compared to invention.

Considerations included in the sixth chapter concern the scope of the exclusive right granted to the owner of a utility model. The analysis contained in this chapter allowed for further conclusions as to the ability of the existing model of protection to fulfil one of the functions of utility model protection, i.e. to protect the interest of the inventor.

The seventh chapter aims to answer the question of whether utility models can be protected under other, selected intellectual property rights regimes. It also discusses whether the general objective underlying the protection of utility models could not at least partly be achieved by means of other exclusive rights or rules for combating unfair competition, and if not, whether it would be justified to make legislative changes in this respect.

The eighth and last chapter of the dissertation comprises a summary of the analysis of the previous chapters, concluding that both theses of the dissertation are accurate, and formulates *de lege ferenda* postulates.