



Received: 12 June 2018
Revised: 12 June 2018
Accepted: 15 June 2018
Published: 30 June 2018

**PATENT NA NIEPODLEGŁOŚĆ. PRACE NAD
PRAWEM O OCHRONIE WŁASNOŚCI
PRZEMYSŁOWEJ DLA PRZYSZŁEJ POLSKI
W KOŃCU PIERWSZEJ WOJNY ŚWIATOWEJ**

**INVENTING INDEPENDENCE. NEGOTIATING
THE INDUSTRIAL PROPERTY LAW
FOR FUTURE POLAND AT THE END
OF THE FIRST WORLD WAR**

Sławomir Łotysz

dr hab., Ludwik and Alexander Birkenmajer Institute for the History of Science,
Polish Academy of Sciences in Warsaw, Poland

* *Corresponding author:* e-mail: s.lotysz@gmail.com


Streszczenie

Wkrótce po odzyskaniu niepodległości przez Polskę w listopadzie 1918 r. Naczelnik Państwa Józef Piłsudski podpisał dwa dekrety wprowadzające prawo patentowe w kraju i ustanawiające Urząd Patentowy Rzeczypospolitej Polskiej. W najnowszej literaturze wprowadzenie obu dekretów zostało uznane za punkt wyjścia do prawnej ochrony patentowej w niepodległej Polsce, podczas gdy w dużej mierze zapomniano, do kogo należało przypisać całą pracę przygotowawczą. Projekt prawa patentowego podpisany przez Piłsudskiego został opracowany na długo przed listopadem 1918 r. przez Ministerstwo Przemysłu Tymczasowej Rady Państwa Królestwa Polskiego, quasi-niezależny organ zarządzający ustanowiony przez okupację niemiecką i austro-węgierską siły. Niniejszy artykuł próbuje zrekonstruować współczesny dyskurs na ten temat, jednocześnie wyjaśniając powody, dla których uchwalone prawo było bardzo niedoskonałe. Praca ta opiera się głównie na autentycznych dokumentach z tamtej epoki, a ponieważ wykorzystuje zarówno pisma prawne, jak i techniczne, jest to nowa próba rozwiązania tego problemu. Artykuł niniejszy dowodzi, że uchybienia w pierwszym polskim prawie patentowym wynikały z niemożności lub, być może niechęci Ministerstwa Przemysłu do szukania porad od ekspertów w dziedzinie prawa patentowego - prawników i rzeczników patentowych, niewątpliwie najbardziej predysponowanych do tego zadania.

Słowa kluczowe: prawo patentowe, własność przemysłowa, II Rzeczpospolita

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

Abstract

Shortly after Poland regained its independency in November 1918, the Chief of State Józef Pilsudski signed two decrees introducing the patent law in the country and bringing the Polish Patent Office into existence. In recent literature, the introduction of both decrees has been acknowledged as the starting point of legal patent protection in the independent Poland, while it is largely forgotten to whom the whole preparatory work should have been attributed. The draft of the patent law signed by Pilsudski has been worked out well before November 1918, by the Ministry of Industry of the Provisional Council of State of the Kingdom of Poland, a quasi-independent governing body established by the German and Austro-Hungarian occupying forces. This article attempts to reconstruct a contemporary discourse upon that issue, while explaining at the same time the reasons that made the enacted law very much imperfect. This work is based mainly on authentic documents from that era, and, since it uses both legal and technical writings, it is a novel attempt to address this issue. This paper argues that deficiencies of the first Polish patent legislation resulted from inability or, perhaps, unwillingness of the Ministry of Industry to seek advices from the experts in patent law – lawyers and patent agents, unquestionably being the most predisposed to this task.


Keywords: patent law, industrial property, the Second Republic of Poland

Introduction

The decree on the Polish Patent Office, issued by the Chief of State Józef Pilsudski, is considered the beginning of patent protection in Poland. The decree came into force on 28 December 1918 and defined the main tasks of the new office, its organisational scheme and its place in the structure of state institutions as a unit subordinate to the Minister of Industry and Trade (Temporary decree). Shortly after, Pilsudski signed another Decree on patents for inventions which was adopted on 4 February 1919 (Patent decree). This law was modelled on the Russian regulations, similar to German laws which were considered to be the worst in Europe, among others, for the duration of proceedings (*Ochrona własności przemysłowej...*, p. 83). Ultimately, although these two Decrees laid the foundations for the protection of industrial property in Poland, in practice the Patent Office's normal activities proved so difficult that for almost the first five years of its operation it did not issue any patent. It was the Act of 1924, together with subsequent amendments, that provided a fully modern patent law in Poland (the Act of 5 February 1924).

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

The history of Polish patent legislation has been relatively well recognized, especially by researchers of the legal history studies, but the literature so far does not explain satisfactorily the course of the discussion that preceded those events (M. Słomski, L. Górnicki, pp. 5-24; T. Dolata, pp. 109-118). Both decrees were drafted during the existence of the Provisional Council of State of the Kingdom of Poland in the years 1917-1918 (S. Łotysz p. 37-53).

Based mainly on documents from the epoch, this article recalls the chronology and tries to explain the dynamics of events which resulted in the adoption of the first patent law in Poland. In this way, it fills a gap in the existing literature on the subject. The article also argues that the imperfection of the law established at that time resulted from the government's disregard for the only experts in the field of industrial property protection, i.e. lawyers and, above all, patent agents.


New law for the new state

At the beginning of 1917, on the territory of the former Kingdom of Poland conquered by the central states, under the aegis of the German occupation authorities, a substitute of the Polish state was reactivated. Although it was a unit with limited autonomy, the establishment of the Provisional Council of State gave many people hope of regaining full independence. As the initially precarious political and military situation in Europe did not allow to predict when it would have occurred, in various circles this awaiting time was used to prepare the legal and organisational structures of the future state.

This was the case with the question of patent legislation. This was an important matter because as Kazimierz von Ossowski, a patent agent of Polish origin, noted in Berlin in 1918 "after being detached from Russia, the protection of industrial property (patents, utility models, senses and trademarks) came about [in Poland] as well as in other fields, to the extent that the Russian laws which had been in force so far have lost their validity, but have not yet been replaced by new ones" (K. Ossowski, *Ochrona praw własności...*, p. 7). Of course, this does not mean that a complete anarchy prevailed in this respect. The German occupation authorities, "due to the wishes and in the interest of German industry", incorporated the Kingdom into

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

their legislation so that only patents issued by the Berlin office were in force, where Polish inventors were "compelled" to file their patent applications. Apparently, however, the legal situation was not as clear as Ossowski saw it, because in October 1918, and therefore practically on the eve of Poland's full independence, Dr Marian Kryzan, later the first President of the Patent Office, stated that the Russian law of 1897 "is actually still in force in Poland" (M. Kryzan, p. 367).


In the light of the preserved documents and relations, it seems that Ossowski should be considered as the initiator of the discussion on the issues of industrial property protection in the revived Poland. He was an engineer and founder of one of the first international patent offices. The company's headquarters were located at Potsdamerstrasse in Berlin, where he lived, and its St. Petersburg branch was located at the Wozniesiński Prospekt. He has widely published both interpretations of Russian regulations (C. von Ossowski, *The patent law*) and statistics on patents issued in Russia (C. von Ossowski, *Versuch einer*, p. 3). He was also probably the first to familiarise the western - in this case German - reader with the main principles of the new Russian law which came into force in 1897 (C. von Ossowski, *Die wesentlichsten*, pp. 162-164). His commentary on these regulations seems to indicate that he remained in contact with one of their co-founders, Włodzimierz Kowalewski, head of the Trade and Industry Department in the Petersburg government, considered to be one of the fathers of Russian protectionist policy. Characteristically, Ossowski was initially of good opinion about that law, pointing out that it was a big step forward in relation to the old provisions. He also stressed its fundamental convergence with the current German provisions (introduced in 1891).

In the Polish press, he was involved in polemics about the theory and practice of patent jurisprudence and regularly reported on such events as fairs and industrial exhibitions (*Przegląd Techniczny*, p. 230-231; K. Ossowski, *Uwagi nad artykulem...*, p. 196-200.). He also wrote a lot about the latest developments in the Western European and American technology, and he even wrote a column entitled "News from the Patent Office of Kazimierz Ossowski in Berlin" in "*Przegląd Techniczny*" where he described more interesting cases from his professional practice.

His practical knowledge of German and Russian patent legislation made Os-

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 / Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

sowski a particularly valuable voice in the discussion on the issue of legal protection for industrial property in a revived Poland. As early as May 1917, when publishing in "Przegląd Techniczny", he drew the attention of the "young government of the Polish State" to the need to regulate that issue by enacting a relevant law, even calling it "unnecessary" to "consider the economic significance of the law on the protection of inventions" and convincing anyone of its great influence on the industry development. At the same time, Ossowski stated quite authoritatively that "not only in Poland, but almost all over the world, there is a unanimous belief that the national industry, if it wants to compete with foreign countries and stop the powerful import of foreign machinery itself, and so on, cannot exist without patent law" (K. Ossowski, *Jak ukształtuje się...*, p. 123).


The theses presented in "Przegląd Techniczny" were repeated by Ossowski during the Extraordinary Congress of Polish Technicians which took place in Warsaw on 12-15 May 1917 (W. Chromiński (ed.), p. 475-479). Thanks to him, the recommendation for the "competent authorities" to undertake work on patent legislation was considered in the final resolutions of the Congress. That proposal, formally submitted by Ossowski and Feliks Wiślicki, was among such recommendations as the unification of measures, the introduction of the construction law and road code or the establishment of sanitary protection of air, soil and water (W. Chromiński (ed.), p. 76).

In January 1918, also through "Przegląd Techniczny", Ossowski published his "Comments on the Polish patent law draft ". (K. Ossowski, *Uwagi w sprawie...*, pp. 3-12). This time, however, instead of just appealing to the authorities to take actions, he proposed his own draft. In a quite long paper, he discussed the basic issues that such legislation should address, referring extensively to foreign experiences. Commenting on the advantages and disadvantages of solutions applied in individual countries, Ossowski pointed to a certain extent the direction in which Polish patent legislation should go.

Significantly, Ossowski did not recommend any rush to adopt patent laws in Poland. In his opinion, introducing legal protection of inventions in a country so damaged and economically weakened could have a negative impact on the industry

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

development. He believed that the conditions of the time "were such that it was doubtful whether anyone would find in them encouragement and excitement [to] pore over inventions". If the patent office had been established in Poland at such a time - he argued - the number of foreign applications would have been incomparably higher [than domestic ones], and this would have been "a result that no one could consider compatible with the Polish interest, since it is clear that Polish industry would thus become dependent on foreign countries" (K. Ossowski, *Ochrona praw...*, p.11). Ossowski based his predictions on the small scale of national patent applications on an analysis of the pre-war Russian statistics. Since before the war Polish inventors from the Kingdom of Poland obtained 60-80 Russian patents annually, in his opinion this result would be even lower in the new conditions (K. Ossowski, *Ochrona praw...*, p.11).


Michał Łempicki (1856-1930), a member of the Provisional Council of State and at the same time an experienced engineer and industrialist, considered the discussion on the introduction of patent protection in Poland to be premature, although for completely different reasons. He doubted the meaning of the debate on "protection of patents for inventions that nobody does, protection of trademarks when goods are not produced". (Report pages 10-11). He considered the steps taken towards establishing the Patent Office which had been taken for some time by the Ministry of Industry and Trade, to be of secondary importance, as they were - in his opinion - too far into the future, while the priority should be to rebuild the economy, as Jan Steczkowski's government announced in the exposé of 5 April 1918. However, the reasons for this work were obvious to him. Łempicki understood that as long as the political situation remained unexplained, the activities of the Provisional Council of State could only be "academic, almost scientific and preparatory work for a very distant future, and government work (...) would also remain in the field of theory".

Germanic or Roman law model?

While the question "whether or not" legal protection of industrial property in Poland should be introduced did not raise any doubts, and the question "when" caused only a few voices arisen, the issue of the model on which such a law should

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

have been based provoked a truly lively discourse.


In the 18th and 19th centuries, two patent systems were developed in the industrialised countries of Europe and America - the so-called "filing system" in which the country only registers the submitted invention and a system assuming preliminary examination by the office of whether it is indeed an innovation in relation to the existing state of the art. The first model, developed in France and adapted in Italy and in the Iberian and Latin American countries, has become Roman. The second model, the so-called Germanic, was created in the United States of America, after which it became popular in German and Scandinavian countries, and later in Great Britain. It was also used - although in a slightly changed form - by the tsarist Russia.

Such a different definition of the state role in the two models had a considerable impact on the value of the issued patent and, consequently, on the development of economic relations at the national level. A characteristic feature of the Roman system, in which the state limits its role to the tasks of registration and possible control of whether the application meets formal requirements (e.g. whether the invention is clearly described), without verifying the novelty of the invention declared by the applicant, is the lack of protection certainty. The State will not guarantee to the inventor that, during the period of validity of the advantage conferred on him, he will not be challenged by the holder of an earlier patent for a similar innovation. In such a case, the dispute between the parties shall be settled in court. Moreover, lack of application initial examining causes the possibility that quite a few seeming or unnecessary innovations may be included in issued patents. It is therefore not surprising that patents issued under the Roman system have relatively little value for potential licensees; they have much lower value than patents obtained for inventions examined by offices working under the German model.

In this model, the state guarantees that the patented idea is a real novelty both in terms of priority (and therefore no one has previously been protected for the same solution) and the level of technical advancement (protection is granted only to solutions that offer the binding of existing parameters, e.g. cheaper, faster or more accurate method of production, more reliable operation of the device, etc.). Of course, such a study is expensive and usually lengthy. Moreover, it requires the in-

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

volvement of a large number of specialists representing various technical departments and those who are up to date with the latest developments in a given field.

The discussion on the superiority of any of these models has been going on in Europe for decades and in many environments the solutions contained in the Germanic system have been considered as significant progress in the area of patent legislation. This view seemed to be confirmed by the fact that more and more countries (e.g. the Netherlands) were still replacing the previously used Roman model, and the discussion on its introduction continued in Hungary, and even in France itself, the cradle of the reporting system.


Kazimierz Ossowski was also aware of these controversies. As a patent agent active in Berlin and St. Petersburg, he had experience mainly with the system of preliminary examination, which was all the more significant that he strongly recommended basing the Polish patent law on the Roman model. First of all, as German experience has shown, the preliminary examination procedure did not eliminate court proceedings; moreover, Ossowski observed a growing "strange phenomenon" in this country, which in a way consisted in re-examining an invention that had already been patented.

Very often, German patent proprietors filed complaints for infringement of patents and demanded patent protection to the extent that they themselves considered it appropriate. At that time not only experts but, above all, lawyers "incompetent in technical matters" participated in civil court proceedings to examine whether a given "invention at the time of filing was new in size, as the owner claims, or whether its novelty appeared only within the borders tightened by the infringer" (K. Ossowski, *Jak kształtuje się...*, p. 151). As a result, the invention was somehow re-examined, the more difficult, however, it was retrospective. According to the Pole, this phenomenon revealed the weaknesses of the preliminary research model, although the fact that it appeared just "in places where they passionately deal with a rather fruitless philosophy and speculators" did not surprise him rather (K. Ossowski, *Jak kształtuje się...*, p. 151).

Ossowski quoted a judgement - probably a synthesis of a broader discussion in Germany - that the observed trend led to a breach of the certainty of the protection

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 / Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)


offered by the German model. "From now on," he stated, "every patent holder in Germany may be, in the course of infringement proceedings, proved that the patent, according to the courts, which are not now concerned with the outcome of the Patent Office's investigations, must be assessed not in terms of inventive thinking, but to a more limited extent, so that the patent holder is suddenly completely defenceless against immense competition". (K. Ossowski, *Jak kształtuje się...*, p. 151). In other words, he could have learnt from the trial that his patent was not valid.

In the consideration of the advantages of both models, Germany was the best example: with regard to patents for inventions, the Germanic system had been in place since 1877, while the Roman system, which had previously been applied to all types of industrial property in the country, had been maintained for the protection of models. Referring to statistics on reported models and the number of processes in progress, Ossowski described it as relatively small and not significant from an industrial point of view. He was convinced that the known drawbacks of the notification system were not as damaging as the supporters of the testing system had claimed. It was also not convincing to compare the development of industry in the Roman and Anglo-Saxon countries, because on this line there was a general division between the model of reporting and preliminary research of inventions. Although such a comparison was generally in favour of the latter, Ossowski considered that the reasons for this were 'probably more in the national nature and natural conditions of each industry than in patent law'. (K. Ossowski, *Jak kształtuje się...*, p. 151). In turn, he considered the visible defects of the research system to be the effect of introducing this model "in a false direction through malicious violation of the law and unilateral views of inventors, as well as the ambition of lawyers towards the Patent Office". (K. Ossowski, *Jak kształtuje się...*, p. 152).

Transferring these observations and experiences to Poland, Ossowski recommended the adaptation of the Roman model as the most appropriate one for an economically weak country. Above all, the procedures limited to formal registration did not introduce excessive delays in the availability of a given invention, which was of great importance to the recovering industry; as well as the cheapness of patents, which was characteristic for the Roman model that reduced costs for entrepreneurs

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

and encouraged the dissemination of technical progress. In the situation of a country recovering from war damage, it was also not without significance that the Patent Office, operating in the accordance with this model, was easier to organize and cheaper to run.


Ossowski warned that the choice of a Germanic model and the consequent need to examine each application would require the creation of a "huge machinery". From the outset, a huge amount of patent and general technical literature would have to be collected and 'an abnormal relative number of officials' would have to be recruited. To this end, most of them would have to complete technical education. In his opinion, however, Poland could not "afford to put a large part of its most outstanding technicians to deal with such a one-sided occupation to the detriment of industrial movement". (K. Ossowski, *Jak kształtuje się...*, p. 152). Ossowski was of the opinion that at least in the first few years of his independent existence, instead of examining inventions at the Patent Office, "every scientifically educated technician would be needed in practical life. That's where, in trade and communication, in construction and industrial offices, in workshops, now there's room for every technician to work".

As early as January 1918, Feliks Szenwic (Schoenwitz), an assistant professor in Roman law at the Free Polish University in Warsaw and a civil law theorist, spoke in the same spirit. He also believed that if the German model had been adopted, the young state would not have had enough money and not enough "talented technicians who could have been called to the role of expert officials". He warned that "placing the office not in complete perfection will at the same time be a burying of the whole system". (F. Szenwic, p. 15).

Like Ossowski, Szenwic believed that patent trials, which were becoming more and more common in Germany, had undermined the principle of public faith which had so far been considered the most important advantage of the German model. While in principle it is not possible to undisputably state the innovation of an invention and thus guarantee public faith, the use of a preliminary study makes no sense. Moreover, citing bizarre examples of casuistry found in the judgments of the patent office and the local courts, Schoenstatt was thundering: "Let's hope that future Polish patent law avoid introducing this to us" (F. Szenwic, p. 16).

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

In his opinion, however, the main argument for the adaptation of the Roman model was its democratic character. In this system, the initiative of verifying the innovation of the submitted invention is left to "the most appropriate persons, namely, competitors, i.e. private persons and those interested in it". (F. Szenwic, p. 15).


The government does not need experts

In the end, the whole discussion turned out to be pointless, because in March 1918, i.e. during the government provisional period of Professor Aleksander Ponikowski (1878-1949), a lecturer of surveying at the Warsaw University of Technology and its subsequent rector, the Ministry of Industry and Trade, presented its own drafts of laws on the protection of industrial property, which it had been working on for some time. On 12 March the text was sent to the Association of Industrialists of the Kingdom of Poland with a request for an opinion, and three days later, before the Association replied, it was presented at a meeting of the heads of ministries, although ultimately it was not in progress at that time (Archive of New Files (hereinafter ANF), Presidium, mf 20045, k. 415. A handwritten transcript, illegible in this part, does not allow to learn the reason for withdrawal of the Ministry's application, however, draft laws were included in the transcript).

So far, it has not been established to whom the decision to proceed with these laws should be attributed. Throughout March 1918, the post of the Ministry of Industry and Trade head was filled by a vacancy in the Ponikowski provisional government after Antoni Kaczorowski, who had been appointed to the post, died on the day of his appointment (Until the dissolution of the cabinet at the beginning of April 1918, at the meetings held by the heads of ministries twice a week, that ministry was not represented by anyone). The only two-week period that elapsed between the establishment of this temporary cabinet and the submission of the final draft of patent laws allows us to put forward the thesis that it was still an initiative of Jan Zaglenicz (1866-1931), Minister of Industry in the government of Jan Kucharzewski (1876-1952), operating since the beginning of December 1917. It was the time when the Ministry of Industry and Trade, converted from the Department of Social Economy, was established to deal with industrial matters, including the preparation of the rele-

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

vant laws, within the existing Executive Department of the Provisional Council of State. It is almost certain that this department had not dealt with patent laws before the reorganisation of power structures, and the reports summarising its activities remain silent (ANF, the Provisional Council of State in Warsaw, file no. 8).


The draft law, which was announced in March 1918, was the third in a row to be created by the Ministry. Such a large variability of the concept was not a result of searching for the best solution, but - as already in 1924 was noted by Edmund Mioszowicz (1898-1987), a lawyer and the later Head of the Administration Department in the Sejm Office of the Republic of Poland - the political conditions of the country. In his opinion, the "original" draft, modelled on Russian regulations, was initially postponed because the government "considered current political relations and accepted the German system". (E. Mioszowicz, p. 7). Only later, "when the necessity of issuing a patent law was confirmed in further developments", made the original project be returned, entrusting its detailed development to Marian Kryzan, later the first President of the Patent Office. It was Kryzan who introduced the principle of preliminary examination into the bill, but only those inventions about which protests were lodged within a certain period. This was a clear mixing of the principles of the Germanic and Roman models and later became one of the reasons for criticism of Polish patent law.

It seems doubtful that the Ministry's employees consulted any of the earlier versions of the draft law with patent agents or lawyers, or at least with those of them who, like Ossowski or Szenwic, have been discussing the future of invention protection in Poland for months in the professional press. It seems that in the first months of 1918, both experts were not aware that the Ministry was in the process of drafting any such bills, and this seems to indicate the tone of their publications at that time.

This was the case, among others, with the outline of the draft law, published by Ossowski in March in "Przegląd Techniczny" (K. Ossowski: *Uwagi wstępne*, p. 73-74). At the time, the patent agent announced that this was only an introduction to a more extensive study on the subject. Indeed, his brochure titled "Draft Acts on the Protection of Industrial Property Rights in the Kingdom of Poland" was published shortly afterwards. The censorship of the German occupation authorities in Warsaw

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

approved this publication on 19 March). Also, in this article, Ossowski did not refer to the ministerial project, probably not knowing it. He did so only in a brochure titled "Criticism of the projects developed by the Ministry of Trade and Industry concerning the introduction of Russian laws (patent law, drawings, models and trademarks) in the Kingdom of Poland", which he published by himself shortly afterwards in Berlin (K. Ossowski, *Ochrona praw własności...*, op. cit.). Apart from the suggestion that patent law should not be introduced in Poland in a hurry, Ossowski included in this study a detailed analysis of the ministerial project, article by article, pointing out all the weaknesses of the proposed regulations. In his criticism, he did not remain baseless, and each time proposed more beneficial solutions, in his opinion, often referring the reader to his own draft law which was annexed to the publication.


However, Ossowski directed his main criticism towards the Ministry not for the haste in introducing the laws, or even for the defective solutions contained in individual articles, but for basing the Polish patent legislation on Russian law - the worst variant of the Germanic model (of the three versions of the Act, only the second one was inclined towards German experience). The first, third and last ones were directly derived from the regulations functioning in the Congress Kingdom before the war). This sticking with the invader's legacy caused Ossowski's bitterness:

"Poland therefore chooses Russian patent law, which, as is well known, is considered the worst and the most undeveloped in the world and wants to inherit it from Russia. This decision will, if implemented, be the source of great grudges for Poland. For Russian patent law has gone bankrupt during its twenty years of existence: it has come to light in every respect at that time that it was worthless". (K. Ossowski, *Ochrona praw własności...*, op. cit., p. 8).

The fact that the Association of Industrialists of the Kingdom of Poland, with whom the Ministry consulted on the draft law, recommended its adoption without changes, stating that it was always of the opinion that Polish law "should give priority to the research system over purely registration" (Copy. The Association of Industrialists of the Kingdom of Poland, Warsaw, 16 March 1918. To the Ministry of Industry and Trade, in: K. Ossowski: *Ochrona praw własności...*, op. cit., p. 45), did not calm him down at all. Moreover, Ossowski directly questioned the qualifications

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 / Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

of this body to assess the draft law and challenged both arguments put forward by the Association in support of its adoption. The first one, who said that the application of the law modelled on the Russian one "presents relatively the smallest difficulties", asked rhetorically about "what more difficulties are to arise if a law other than the Russian one is introduced in Poland". He argued that "patents issued in accordance with Russian law to citizens of the Kingdom of Poland before the war retain their legal validity in any case". For a possible argument that Polish inventors were "familiar with" that law, he cited a small number of patents they had received in Russia (K. Ossowski, *Ochrona praw własności...*, op. cit., p. 15). According to Ossowski's calculations, there were barely between 200 and 300 of patents, but he believed that after the establishment of the independent Polish patent office, the office should take over the legal protection of these inventions in order to "avoid Polish inventors, their successors and various entrepreneurs who hold such privileges (...) to be hindered during the manufacture of inventions". (K. Ossowski, *Uwagi w sprawie projektu ...*, op. cit., p. 3).

In a much more confrontational tone, Ossowski commented on the Association's assertion that the ministerial amendments were supposed to eliminate the flaws of the Russian original. Ossowski called the final result "a castrated law" and announced "disastrous consequences" for the national economy in case of its implementation" (K. Ossowski, *Ochrona praw własności...*, op. cit., p. 8). These catastrophic consequences, as can be seen from the diagnosis of practices found in Russian industry, are such phenomena as "assassination of factory secrets, theft of factory secrets, bribery". (K. Ossowski, *Ochrona praw własności...*, op. cit., p. 8).


Concluding his criticism of the ministerial project, Ossowski asked in a rather dramatic way: "Does the government want to take responsibility to its own people for introducing a new law on inventions and trademarks that is in accordance with slavishly followed, the worst patterns in the modern world? (K. Ossowski, *Ochrona praw własności...*, op. cit., p. 9)".

Decrees are entering into force

Ponikowski's temporary government survived for just over a month. After

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 / Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

the government of Jan Steczkowski was appointed on 4 April 1918, Bohdan Bro-niewski took over the role of Minister of Industry and it was he who continued to work on the laws on industrial property protection. Speaking at the meeting of the Council of State of the Kingdom of Poland on 26 June, Prime Minister Steczkowski announced the completion of work on the bill and announced its imminent submission for "legislative treatment". (*Stenography report of the 2nd meeting of ...*, p. 5).


Ultimately, however, these laws were not passed until the government re-signed in October 1918. After the transfer of power to Józef Pilsudski by the outgoing Provisional Council of State on 14 November 1918, Jerzy Iwanowski, Minister of Industry in Jędrzej Moraczewski's government, finished work on the draft laws on industrial property, and it was during his term of office that both decrees were issued - on the establishment of the Patent Office, signed by Pilsudski on 13 December 1918, and on patents for inventions, dated 4 February 1919.

The Patent Office barely became operational and before the Patent Decree was signed by Pilsudski, there was a wave of criticism of the new regulations in the legal press. At the beginning of January 1919, Józef Kaczkowski, writing in "Gazeta Sądowna Warszawska", gave a temporary act on the patent office as an example of a law created without a plan, when "there are mixed various rules that are mutually exclusive". However, he blamed the fact that the work on the draft law did not include the opinions of legal experts. As it stated, the Ministry of Industry did not have its own lawyers and did not consult the Ministry of Justice on the draft. As he noted, the Patent Office Act of 13 December included - introduced by Kryzan - principles typical for the Germanic and Roman models, which he did not treat as advantages. Kaczkowski thought that the worst deficiency of this act was the failure to indicate which general provisions of law the office should follow in its proceedings (J. Kaczkowski, no. 1, p. 3).

The Decree on patents for inventions, which came into force on 7 February 1919, was almost identical to the project consulted with the Association of Industrial-ists of the Kingdom of Poland in March 1918. Minor changes in the final form of the Act were in line to some extent with Ossowski's demands, however, it is difficult to determine today whether the legislator was guided by his comments or whether the

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

change resulted from the legislator's own analysis of the potential effects of a specific provision introduction. In principle, however, the opinions of Ossowski and Szenwic, who strongly advocated the Roman model and rejected the Russian model, were ignored.

After the patent law came into force, Ossowski did not stop criticising it. On the contrary, he continued to publish his analyses of the introduced regulations and suggested how to improve them, or he directly suggested his own bills to be used.

Conclusion


Establishing the Patent Office and introducing legal protection of inventions in Poland 100 years ago was an important element of building a modern state, which the reborn Republic of Poland wanted to become. The decrees of the Head of State Józef Pilsudski, introducing patent law, crowned many months of legislative work that began in the first months of 1918, and thus still during the period of government of the Provisional Council of State of the Kingdom of Poland.

However, the first Polish patent law was very imperfect, mainly because the opinions of the legal community were omitted in the process of its creation and, above all, the experience of specialists in this special field - patent agents - was not used. Whether this was the result of the conviction inherited from years of Russian rule that the government was omnipotent and infallible, or whether the voice of the public did not reach the ministry - this is not known.

Following the example of creating a new law based on Russian regulations, the Polish legislator was not only unable to leave the circle of "slave imitation", but also failed to prepare the Republic of Poland for the challenges of the new, post-Soviet world order. Most of the predictions about the adverse effects of introducing the law in such a form proved true, which only confirmed the professionalism of experts, whose experience the then government did not use.

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336


[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)

References:

1. CHROMIŃSKI W. (red.), (1917), *Pamiętnik Nadzwyczajnego Zjazdu Techników Polskich w Warszawie w roku 1917*, Warszawa.
2. DOLATA T., (2012), *Początki polskiego ustawodawstwa z zakresu ochrony wynalazków, wzorów i znaków towarowych w dwudziestoleciu międzywojennym*, *Acta Universitatis Wratislaviensis. Prawo* 2012, NR 314.
3. GÓRNICKI L., (2006), *Rozwój idei ochrony praw własności intelektualnej do II Wojny Światowej*, *Zeszyty Naukowe Wyższej Szkoły Informatyki i Zarządzania 'Copernicus' we Wrocławiu* 2006, NR 3.
4. KACZKOWSKI J., (1919), *Ustawodawstwo a prawnicy*, „*Gazeta Sądowa Warszawska*”, T. 47:1919, NR 1, S. 3.
5. KRYZAN M., (1918), *Ustawodawstwo patentowe w Królestwie Polskim od 1817 do 1867 r.*, „*Gazeta Sądowa Warszawska*”, T. 46: 1918 NR 40.
6. ŁOTYSZ S., (2017), *Prace nad przygotowaniem ustaw patentowych w okresie Tymczasowej Rady Stanu Królestwa Polskiego, 1917-1918*, *Analecta: Studia i Materiały z Dziejów Nauki*, 2 (2017).
7. MIEROSZEWICZ E., (1924), *Ustawa o ochronie wynalazków, wzorów i znaków towarowych*, Warszawa.
8. Ochrona własności przemysłowej w Polsce, „*Przegląd Techniczny*”, T. 57:1919, NR 17-20 S. 83.
9. OSSOWSKI VON C., (1896), *Die wesentlichsten Punkte des neuen russischen Patentgesetzes*, „*Elektrochemische Zeitschrift*”, T. 2:1896, NR 7.
10. OSSOWSKI VON C., (1898), *The patent law of Finland, Berlin 1899; tenże: Rules of Practice relating to Patents, Trade Marks and Designs in Russia*, Berlin 1898.
11. OSSOWSKI VON C., (1903), *Versuch einer Statistik der Patenterteilungen in Russland*, „*Gewerblicher Rechtsschutz und Urheberrecht*”, T. 8:1903 NR 1.
12. „*Przegląd Techniczny*”, T. 23:1897, NR 14.
13. OSSOWSKI K., (1917), *Jak ukształtuje się w Polsce kwestya ochrony wynalazków. Cz. I*, *Przegląd Techniczny*, T. 55:1917, NR 17-18.
14. OSSOWSKI K., (1917), *Jak ukształtuje się w Polsce kwestya ochrony wynalazków. Cz. II*, *Przegląd Techniczny*, T. 55:1917, NR 19-20.
15. OSSOWSKI K., (1918), *Ochrona praw własności przemysłowej w Królestwie Polskiem, z. 2. Krytyka opracowanych w Ministerjum Handlu i Przemysłu projektów dotyczących wprowadzenia rosyjskich ustaw (prawa patentowego, rysunków, modeli i znaków towarowych) w Królestwie Polskiem*, Berlin.
16. OSSOWSKI K., (1917), *Jak ukształtuje się w Polsce kwestya ochrony wynalazków* [W:] W. Chromiński (red.), *Pamiętnik Nadzwyczajnego Zjazdu Techników Polskich w Warszawie w roku 1917*, Warszawa.

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Lotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)


17. OSSOWSKI K., (1897), *Uwagi nad artykułem p. Piotrowskiego „O prawie patentowem”*, *Przegląd Pechniczny*, T. 23:1897, NR 12.
18. OSSOWSKI K., (1918), *Projekty Ustaw o ochronie praw własności przemysłowej w Królestwie Polskiem*, Warszawa.
19. OSSOWSKI K., (1918), *Uwagi w sprawie projektu Polskiego prawa patentowego*, *"Przegląd Techniczny"*, T. 56:1918, NR 1-4.
20. OSSOWSKI K.; (1918), *Uwagi wstępne do projektu o ochronie wzorów użytkowych*, *"Przegląd Techniczny"*, T. 56:1918, NR 9-12.
21. SŁOMSKI M., (1997), *Historia rzecznictwa patentowego w Polsce*, Kraków.
22. SZENWIC F., (1918), *Systemy prawodawstw patentowych a przyszłe Polskie prawo patentowe*, *"Gazeta Sądowa Warszawska"*, T. 46:1918, NR 2-3.

Sources of law:

23. ARCHIWUM AKT NOWYCH (dalej AAN), PREZYDIUM RADY MINISTRÓW, mf 20045, k. 415. AAN, Tymczasowa Rada Stanu w Warszawie, sygn. 8.
24. DEKRET TYMCZASOWY O URZĘDZIE PATENTOWYM z 13 grudnia 1918 r., Dz.U. 1918, nr 21 poz. 66.
25. DEKRET O PATENTACH NA WYNAŁAZKI z 4 lutego 1919 r., Dz.Pr.P.P. 1919, nr 13, poz. 137.
26. SPRAWOZDANIE STENOGRAFICZNE z 2. posiedzenia Rady Stanu Królestwa Polskiego z dnia 26. czerwca 1918 r.
27. USTAWA z dnia 5 lutego 1924 r. o ochronie wynalazków, wzorów i znaków towarowych, Dz. U. 1924, nr 31, poz. 306.

ISSN 2543-7097 / E-ISSN 2544-9478

© 2018 /Published by: Międzynarodowy Instytut Innowacji Nauka-Edukacja-Rozwój w Warszawie, Polska

 This is an open access article under the CC BY-NC license
(<http://creativecommons.org/licenses/by-nc/4.0/>)

Łotysz S. (2018). Inventing Independence. Negotiating The Industrial Property Law For Future Poland at The End of The First World War. *International Journal of Legal Studies*, 1(3)2018: 319-336

[DOI 10.5604/01.3001.0012.2182](https://doi.org/10.5604/01.3001.0012.2182)