

Report Q191

in the name of the Hungarian Group
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Relationship between trademarks and geographical indications

Questions

I) Analysis of current legislation and case law

- 1) *Do your country's laws have enactments or systems dealing specifically with GIs, e.g. a registration system for GIs? If so, what are the criteria of registrability? To which national authority must an application for protection be made? Does the applicant have the right to appeal against the refusal of the national authority to register a GI? If so, to which entity?*

In Hungary Law No. XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter: TA) contains provisions on the protection of trademarks and geographical indications.

Already the fact that in the title of the law the two forms of protection are figuring together and side by side is an indication that two important legal institutions of equal rank are concerned. Section 107 of TA contains provisions on the right to protection and the application for protection

Section 107

- 1) *The geographical indication shall be granted protection, if
 - a) *it fulfils the requirements laid down in Sections 103 or 104, and there are no grounds for exclusion on the basis of Section 105 and 106; and*
 - b) *the application for its registration meets the conditions set forth in this Act.**
- 2) *Protection of a geographical indication may be obtained by any natural or legal entity, or an unincorporated economic association, which produces, processes or prepares such products in the geographical area indicated in the product marking and said products use the geographical indication.*
- 3) *Geographical indication protection shall be granted jointly to those parties (hereinafter referred to as "proprietors") which produce, process or prepare products in accordance with Subsection 2).*
- 4) *Foreign entities shall only be granted protection of the geographical indication on the basis of an international treaty or reciprocity. In issues of reciprocity, the opinion of the Hungarian Patent Office shall be taken as a guideline.*

Section 108

- 1) *Protection of a geographical indication shall commence upon registration, effective retroactively to the application filing date.*
- 2) *Protection of a geographical indication is not limited in duration.*

In respect of the protection of geographical indications, too, the Hungarian Patent Office takes the necessary steps.

Section 112

- 1) *The following matters related to geographical indications shall fall under the jurisdiction of the Hungarian Patent Office:*
 - a) *registration of geographical indications,*
 - b) *revocation and establishment of termination of protection,*
 - c) *recording of geographical indications which have been applied for and registered,*
 - d) *official information related to protection of geographical indications.*
- 2) *The Hungarian Patent Office shall have competence in matters arising in connection with the application of the regulations relating to the Community protection of geographical indications and the international registration of designations of origin (Chapters XVII/A–XVII/B).*
- 3) *In proceedings before the Hungarian Patent Office the provisions of Chapters VII and VIII shall apply mutatis mutandis, with the departure that the Office shall proceed in panel in proceedings for revocation and establishment of termination.*
- 4) *The HPO can modify and revoke its decision – terminating the procedure – only on grounds of an appeal and until it is not sent to the court – in the following questions:*
 - a) *registration of the geographical indication,*
 - b) *cancellation of the geographical indication,*
 - c) *establishment of the termination of protection of the geographical indication,*
 - d) *forwarding of an application based on community regulation*
 - e) *forwarding of an international application for the designation of origin,*
 - f) *final refusal that protection of the international designation of origin registered by the International Office be extended to the Hungarian Republic.*
- 5) *The HPO can modify or revoke its decision – terminating the procedure – passed in points b) and c) of subsection 4) on grounds of an appeal and only in case if it states that its decision is violating law, or if the parties unanimously request that the decision be modified or revoked.*
- 6) *On the other hand in the proceedings before the HPO the regulations contained in the Chapters VII and VIII are to be applied with the remark that protection matters of geographical indications cannot be dealt on line electronically.*

The provisions on the court procedure are identical with the possibility of legal remedy to be applied when adopting a resolution in respect of filing a trademark application and its refusal and with the regulations in this field (Chapters XI and XII of TA)

In case of a refusal the way of the appeal is – like in case of trademark protection – starting from the Hungarian Patent Office to the Metropolitan Court and further to the Metropolitan Court of Appeal.

- 2) *What is the status of a GI in your country? Does the registration of a GI confer a property right? Who would be the rightholder of a GI? Can GIs be the subject of dealings such as assignment, mortgage and licensing?*

On grounds of the protection of the geographical indication the proprietors have exclusive right to the use of the geographical indication, they cannot give a licence for its use to a third person (Section 109 of TA)

The contents of this exclusive right is quite identical with the contents of trademark protection. This means among others that anyone of the proprietors may take steps against a third person e.g. in case of unlawful use, or danger of confusion.

Protection of a geographical indication may be obtained by any natural or legal entity, or an unincorporated economic association, which produces, processes or prepares such products in the geographical area figuring in the geographical indication and said products use the geographical indication.

This protection is jointly due to all of them mentioned in the foregoing.

Foreign entities shall only be granted protection of the geographical indication on the basis of an international treaty or reciprocity. In issues of reciprocity, the opinion of the President of the Hungarian Patent Office shall be taken as a guideline.

According to Hungarian legal regulation the object of ownership can be only a matter which can be taken in possession: money, securities and a natural force that can be utilized like a matter (Section 94 of Civil Code) This means that according to statutory law intellectual works/creations are not qualified to be object of ownership. Nevertheless, according to legal theory the intellectual creations are similar to ownership because they are exclusive rights of absolute character. Legal theory and practice of the Constitutional Court considers the intellectual products like right of ownership.

Due to the fact that this form of protection is especially bound to a place of a geographical area, it cannot be the object of an assignment, of a mortgage-contract and of a licence.

- 3) *Is the application for or registration of a GI made public in your country? Is it possible to oppose such application or registration or cancel such registration of a GI? If so, by whom and on what (absolute or relative) grounds (e.g. generic or descriptive term or prior trademark)?*

An important element of the procedure to obtain protection is publication. Applications are published in the Hungarian Gazette of Patents and Trademarks, and against an application observations can be made.

The possibility of opposition is granted by law only for trademarks, in case of geographical indications the possibility to submit observations remains. The reason thereof is first of all that this form of protection provides rather for the protection of public interest and less for the protection of the private interest.

The provision concerning protection of the earlier trademark of good reputation is, however, maintained which is also figuring in Section 14(3) of the 2081/91/EEC

Council Regulation and which is also now a relative ground of refusal.

Finally conflict with the name of a specimen of plant and animal entails also rejection of protection and the Hungarian regulation has taken it over on grounds of the Council Regulation, too.

Naturally in addition to these reasons – being absolute grounds for refusal – if the sign became the generic name of the product – it cannot be registered either, even if it originates of the place indicated by the geographical indication.

Section 105

A geographical indication may not be granted protection, if it has become the generic name of the product on the market.

- 4) *Must use requirements be satisfied in order to maintain GI protection? If so, is there any definition of what constitutes use? Are the legal rules established for appraising the maintenance of a trademark registration applicable to the appraising of the maintenance of GI protection?*

Protection of the geographical indications is valid for an unlimited time. Control of the use of agricultural products and of foodstuffs, further of geographical indications figuring in the turnover of commerce belongs to the competence of an authority appointed in a separate legal regulation (Ministry of Agriculture and Rural Development).

The TA contains, however, no provisions concerning the obligation of use, it does not contain provisions that lack of use might entail that protection of the geographical indication would cease. Further – contrary to trademarks – it contains no provisions concerning the criteria of the use of the geographical indications, like the genuine use criteria within 5 years.

The geographical indication in use cannot be chosen freely. This is why it is very important that use of the geographical indications be realized in respect of products related with the given territory because reservation of such a name by a person, or undertaking etc. belonging to another territory is generally not permissible.

This is why legislators have made efforts to determine the field of earlier rights on grounds on the basis of which the request could be rejected as narrow as possible.

The law qualifies only such earlier trademarks to be reasons that exclude registration, use, notoriety, good reputation or its permanent presence on the market of which would confuse the consumers.

This means that the regulation in force ceases /stops consideration of earlier trademarks, of earlier copyrights and of rights of industrial property protection as relative excluding reasons of protection in this procedure (Section 106 of TA).

Section 106

- 1) *The following shall be refused protection:*

- c) *with regard to a geographical indication that is identical or similar to an earlier trademark where, in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.*

- 5) *What is the scope of protection of a GI? Is it only protected against use of the name or also against use of elements of the specification of the GI (e.g. slicing, grating) or any other practice liable to mislead the public as to the origin of the product (e.g. use of same trade dress)? Are the legal rules established for determining the scope of trademark protection applicable to determining the scope of GI protection (e.g. in relation to reputed or well-known GIs, likelihood of confusion, infringing and non-infringing acts)? May rights in a GI be enforced even where a product which allegedly infringes those rights has been made purely for export?*

The aim of the protection of the geographical indications is that it should be the marking of products, production, processing, or preparing of which happens on the named geographical area.

Section 109 of TA regarding the contents of the protection defines the exclusive right of use and the cases of unlawful use. The main features and basic principles of these regulations are identical with those relating to trademark use and to infringement.

Thus, on basis of the exclusive right of use the proprietors may take action against any party which in the course of commercial activities uses false or misleading designations e.g. on the packaging, in advertising materials or in documents relating to the product in respect of the goods origin, character and essential features.

These provisions can be found in the Community Regulation referred to already under the issue of trademark protection and protection of geographical indications.

No exceptions of these provisions exist (not even regarding products made exclusively for the purpose of exportation.)

These provisions apply also for the exportation of goods.

6) *Can a GI be registered as individual trademark? If so, under what conditions?*

When acquiring trademark protection it is figuring among the absolute grounds for refusal if the sign is exclusively used to indicate the geographical origin of the goods and if it is liable to deceive consumers on grounds and in respect of the geographical origin.

The registered geographical indication may be a specified part of the trademark, too.

In case of vines the most frequent case is that the proprietors of the geographical indication apply for the trademark registration of the label of their product which contains the name of the product and at the same time also the geographical indication.

7) *Do your country's laws provide for collective or certification marks? If so, under what conditions can a GI be registered as a collective mark or a certification mark?*

The TA referred earlier in details contains provisions in respect of collective trademarks and certification trademarks.

On grounds of the provisions actually in force it is not possible to have a geographical indication registered like a collective trademark, or like a certification trademark.

8) *Does inclusion of a protected GI as part of a trademark qualify as legal bar to the registration of such trademark?*

According to Section 3(4) of the TA a sign shall be refused trademark protection if it consists of or contains geographical indications that are registered under the TA or Community law. This provision shall apply to goods that originate in a geographical location other than what is indicated, or for which the geographical indication cannot be used pursuant to the TA or Community law for any other reason.

As a consequence of the above if the product to which trademark protection refers to originates of a geographical place corresponding to the geographical indication, so the earlier geographical indication is not a ground for refusal in respect of the later trademark. Even practice shows that the proprietor of the geographical indication disposes also of trademark protection in more cases in respect of the marking to which the geographical indication refers (see point 6).

9) *Do your country's laws, e.g. trade or merchandise legislation, require the application of correct designations of origin/source on agricultural products and food-stuffs?*

Contrary to EU regulations geographical indications have no uniform symbol determined in advance in Hungary. Further it is not compulsory that the existence of the geographical indication be shown on the product.

- 10) *How are conflicts between trademarks and GIs resolved under your country's laws? Do they co-exist or does either the trademark or GI prevail? Is there a rule for determining whether the trademark or GI should prevail, and what are the criteria to take into account (e.g. the "first in time, first in right"-rule, the reputation of the geographic region or the reputation of the trademark, the length of time that the name has been used to indicate the geographic region and the extent of such usage, the length of time that the trademark has been used and the extent of such usage)?*

Relief from conflicts is regulated by means of the ability to protection. On the one hand trademark protection can be excluded by the geographical indication of earlier date, i.e. the earlier trademark of good reputation, the danger of misleading the consumers may exclude protection of the geographical indication of later date.

The relevant provisions are contained in Section 3(4) of the TA (see point 8) and in Section 106(1)c) of the TA (see point 4).

II) Proposals for adoption of uniform rules

The Groups are invited to put forward any proposals for adoption of uniform rules regarding the relationship between trademarks and GIs. More specifically, the Groups are invited to respond to the following questions:

- 11) *Should countries provide for registration systems dealing specifically with GIs? If so, what should the key features of such system be? Should a multilateral system of registration of GIs be established? If so, what should the key features of such multilateral system be? Specifically, which international body should be tasked with establishing such system? How should the application for or registration of a GI be notified/made public (either in your country or at a multilateral level) in order to avoid that a trademark may conflict with a GI previously unknown to the trademark owner?*

According to the Hungarian practice it would be useful if the countries would dispose of a registration system for geographical indications.

In the EU there is a community geographical indication system which is recommendable for acceptance by other countries.

The WIPO should be tasked with establishing such system.

The applications for geographical indication protection should be published either in a new gazette issued by the WIPO and edited for example in every month, or they should be published in Les Marques of WIPO and all the contracted states should be notified by the WIPO, furthermore also the states should publish the applications which concern the state as to the place of origin.

- 12) *Do you have any suggestions as to the acquisition, maintenance, scope and enforcement of GI protection? What should the scope of protection of a GI be? Should the legal rules established for appraising the acquisition, maintenance, scope and enforcement of trademark protection apply to the appraising of the acquisition, maintenance, scope and enforcement of GI protection?*

We recommend also this question on grounds of the experience of the Hungarian system.

The legal rules governing the geographical indication protection may be more or less similar to those governing the TM protection.

As to the description of the produce the acquisition of geographical indication protection should be supervised by a professional international committee.

The introduction of the renewal fee paid (e.g. ten-yearly) by the applicants or a safeguarding organization of the applicants' interest can be considered.

Scope of protection: Section 109 paragraphs (1) and (2)

The legal rules established for appraising the enforcement of GI protection should be similar to those applied to TMs.

13) *Should a protection of GIs by individual and/or collective or certification marks be possible?*

Protection of geographical indications by an individual mark should not be possible, however, protection by a collective or certification mark should be allowed.

The certification- and collective mark does not apply first of all to the geographical character, though both trademark types may certify in theory a geographical origin.

This means that overlapping with the protection of geographical indication is possible. Should a marking correspond to the conditions of a collective, or of a certification mark and at the same time to the conditions of protection referring to the geographical indication, then a parallel protection is possible, but its realization in practice would not occur often.

It is currently not excluded that the proprietor of a geographical indication should acquire protection for it as part of a trademark, too.

14) *How should conflicts between trademarks and GIs be resolved? Please propose a specific rule for determining whether trademark or GI should prevail, which is likely to be broadly accepted. If co-existence is contemplated, should such co-existence be limited to the country of origin or relate to the relevant markets?*

In case of registration of new geographical indications the principle "first in time, first in right" should be preferred.

As to the older and known geographical indications which are not registered at all, or which have been registered but the registration was done after that GIs had become known in the country where the place of origin exists, the GI should prevail over the TM.

Résumé

1) La loi No.XI de 1997 contient des dispositions concernant la protection de la marque de fabrique et de commerce ainsi que sur les indications géographiques.

Le fait que dans le titre de la loi les deux formes de la protection figurent l'une auprès de l'autre montre déjà qu'il s'agisse de deux institutions de droit équivalentes, régularisées dans la même loi.

Le critère de la régistration de l'indication géographique est que la demande déposée corresponde aux conditions prescrites par la loi. Toute personne naturelle, juridique et société économique peut s'acquérir une protection qui produit, prépare et transforme des articles sur le terrain géographique pour la désignation desquels

l'indication géographique est utilisée. La demande pour l'enregistrement doit être déposée auprès de l'Office Hongrois Des Brevets. Contre sa décision un recours a lieu auprès de la Cour Metropolitaine et puis chez de la Cour Metropolitaine d'Appel.

2) Quand une indication géographique est enregistrée sa demanderesse ne devient pas propriétaire, mais titulaire ayant le droit à l'utilisation. L'indication géographique ne peut pas être l'objet d'une cession, d'un contrat hypothécaire ou de licence.

3) Le dépôt pour l'enregistrement d'une indication géographique est publié même dans la Gazette officielle comme dans le cas d'une marque de fabrique . Contre celle seulement une "observation " peut être présentée – contrairement à la marque de fabrique où une opposition est admise qui est à soumettre auprès de l'Office Hongrois Des Brevets.

Une raison relative à l'exclusion est contenue dans la réglementation 2081/91/EGK 14 § (3) dans l'intérêt de la protection d'une marque de fabrique de bonne réputation de date d'enregistrement préalable.

- 4) Afin que la protection d'une indication géographique soit maintenue il n'est pas impératif qu'elle soit utilisée, pourtant son contrôle est confié à une organisation désignée.
- 5) L'utilisation légale de l'appellation d'origine donne une sûreté à l'acheteur et au public que le produit provient effectivement de la place géographique indiquée. Pour cette raison si l'indication géographique est partagée en éléments d'une manière créant une confusion dans l'esprit des utilisateurs c'est considéré comme contrefaçon même s'il s'agit exclusivement d'une exportation.
- 6) Étant donné que dans le cas d'une indication géographique on ne peut pas devenir titulaire individuel, on peut acquérir la protection sous forme d'une marque géographique communautaire (en copropriété) et comme marque certificative.
- 7) Voir point 6.
- 8) Si l'indication géographique enregistrée figure aussi comme la part d'une marque de fabrique, cela ne fait pas un obstacle juridique pour l'enregistrement.
- 9) Contrairement à la EU réglementation les marques géographiques n'ont pas en Hongrie un symbol uniforme désigné préalablement. Il n'est pas obligatoire non plus qu'il soit indiqué sur les produits agricoles et sur les vivres.
- 10) S'il y a un conflit entre les marques de fabrique et les indications géographiques l'habilité de protection est examinée pour passer une décision. Par exemple : – par l'existence d'une indication géographique disposant de priorité l'enregistrement d'une marque de fabrique est exclu – pourtant dans le cas d'une marque de fabrique enregistrée préalablement et jouissant de bonne réputation il est exclu que l'indication géographique pour laquelle la demande a été déposée plus tard – obtienne la protection tenant compte du danger de tromper les consommateurs.
- 11) Selon la pratique hongroise il serait utile si les autres pays aussi avaient un système d'enregistrement ressemblant pour appliquer concernant les indications géographiques.

EU dispose d'un système portant sur les indications géographiques communautaires.

On propose qu'il soit accepté aussi par les autres pays.

OMPI devrait être chargée d'établir un tel système.

Les dépôts pour la protection des indications géographiques devraient être publiés par exemple dans la Gazette officielle qui apparaît chaque mois ou dans la Gazette d'OMPI intitulée "Les Marques". Sa tâche serait aussi d'en notifier chaque pays avec lequel elle est en relation contractuelle et ces pays devraient aussi publier les dépôts qui affectent leur pays comme appellation d'origine.

- 12) Nous proposons que cette question trouve une solution sur la base des expériences du système hongrois. Les règles juridiques portant sur les indications géographiques devraient être en grandes lignes ressemblantes à celles des marques de fabrique et de commerce. L'acquisition de la protection d'une indication géographique devrait être sujette à la surveillance d'un comité international dont les membres sont des experts professionnels.

Il faudrait introduire que chaque dix année une taxe de renouvellement soit payée par le déposant ou par l'organe protégeant l'intérêt du déposant.

Les règles juridiques pour l'enforcement de la protection des indications géographiques soient semblables aux règles portant sur les marques de fabriques.

- 13) La réalisation de la protection d'une indication géographique ne soit pas possible comme marque individuelle que dans la forme d'une marque communautaire et comme marque certificative. La marque certificative et la marque communautaire ne s'adaptent pas en chaque cas au caractère géographique quoique chaque type de la marque peut certifier théoriquement l'origine géographique.

Si la marque correspond aux conditions des marques certificatives et des marques communautaires et si en même temps les conditions de la protection des indications géographiques sont aussi satisfait, alors une protection parallèle est possible. Néanmoins la réalisation de ce cas n'arrive pas souvent en pratique.

A présent il n'est pas exclu que le titulaire d'une indication géographique obtienne la protection pour une partie de celle faisant la partie d'une marque de fabrique.

- 14) Dans le cas de nouvelles indications géographiques on donne la préférence d'appliquer le principe "premier en temps, premier en loi".

Dans le cas des indications géographiques vieilles et bien connues, pas de tout enregistrées, ou même enregistrées mais cela est survenue plus tard qu'elles sont devenues bien connues dans le pays où la place d'origine se trouve – l'indication géographique doit prévaloir en face de la marque de fabrique.

Zusammenfassung

- 1) Das Gesetz Nr.XI. von 1997 verfügt über den Schutz von Warenzeichen und geographischen Herkunftsangaben. Bereits die Tatsache, dass die zwei Schutzformen im Titel gemeinsam und nebeneinander figurieren zeigt, dass es sich um zwei gleichgestellten Rechtsinstitutionen handelt, die im gleichen Gesetz geregelt werden.

Das Kriterium der Registrierung der geographischen Herkunftsangaben ist – dass der Antrag den gesetzlichen Bedingungen entspricht. Jede natürliche, oder Rechtsperson und Wirtschaftsgesellschaft die auf dem geographischen Gebiet, das in der Herkunftsangabe angeführt ist, Produkte produziert, verarbeitet, oder herstellt, für deren Bezeichnung die geographische Herkunftsangabe benützt wird, kann den Schutz erwerben. Der Registrierungsantrag soll beim Ungarischen Patentamt eingereicht werden. Gegen seinen Beschluss kann eine Berufung zum Hauptstädtischen Gericht und als Berufung zweiter Instanz zum Hauptstädtischen Tafelgericht eingelegt werden.

- 2) Im Falle der Registrierung der geographischen Herkunftsangabe erwirbt sich der Antragsteller kein Eigentumsrecht, sondern ein Benutzungsrecht d.h. Nutzungsbefugnis. Die geographische Herkunftsangabe kann nicht den Gegenstand einer Übertragung/Übereignung, weiters eines Hypothek- und Lizenz-Vertrages bilden.
- 3) Der Antrag für die Registrierung einer geographischen Herkunftsangabe wird im Amtsblatt veröffentlicht – so wie es im Falle von Warenzeichen üblich ist – aber dagegen kann man nur eine "Bemerkung" erheben – nur im Falle von Warenzeichen ist eine Opposition zulässig, die beim Ungarischen Patentamt eingereicht werden soll.

Ein relativer Ausschließungsgrund ist die Anwendung des 14.§ (3) der Anordnung Nr 2081/91/des EWG Rates im Interesse des Warenschutzes einer wohlbekanntten Marke von Priorität.

- 4) Der Aufrechterhaltung des Schutzes der geographischen Herkunftsangabe wird nicht die Bedingung gesetzt, dass sie benützt werde, die Kontrolle der Benützung gehört jedoch zur Kompetenz des dafür zuständigen Organs.

- 5) Der, auf den Herkunftsort hinweisende, rechtmässige Namensgebrauch bietet dem Käufer, bzw. dem Verbraucher-Publikum Sicherheit, dass das Produkt tatsächlich von dort stammt. Aus diesem Grund wird der irreführende Gebrauch der geographischen Herkunftsangabe – der durch die Aufteilung seiner Elemente erfolgt – auch im Falle eines ausschliesslichen Exportes als Missbrauch qualifiziert.
- 6) Nachdem man sich auf die geographische Herkunftsangabe in Form eines individuellen Warenzeichens kein Eigentumsrecht erwerben kann, ist die Bewerbung einer Befugnis nur als Gemeinschaftsmarke, oder als Beurkundungsmarke möglich.
- 7) Siehe Punkt 6.
- 8) Sollte die Schutz geniessende geographische Herkunftsangabe auch einen Teil einer Schutzmarke bilden, so kann das kein rechtliches Hindernis der Registrierung sein.
- 9) Im Gegensatz zu den EU Regeln haben die geographischen Herkunftsangaben kein voraus bestimmtes, einheitliches Symbol in Ungarn. Weiters ist es nicht obligatorisch dass die geographische Herkunftsangabe auf den landwirtschaftlichen Produkten und Lebensmitteln angeführt werde.
- 10) Der Konflikt zwischen den Schutzmarken und den geographischen Herkunftsangaben wird aufgrund der Schutzfähigkeit entschieden. Der Markenschutz ist im Falle einer, mit Priorität registrierten geographischen Herkunftsangabe ausgeschlossen. Im Falle einer früher registrierten wohlbekannteren Schutzmarke ist jedoch ausgeschlossen, dass eine später beantragte geographische Herkunftsangabe Schutz erwirbt, weil die Gefahr der Irreführung der Konsumenten besteht.
- 11) Laut ungarischer Praxis wäre es nützlich, wenn auch andere Staaten über ein ähnliches Registrierungssystem verfügen würden, das im Falle von geographischen Herkunftsangaben Anwendung finden könnte.
 EU verfügt über ein System bezüglich gemeinschaftliche, geographische Herkunftsangaben. Vorgeschlagen wird, dass es auch von anderen Staaten akzeptiert werde.
 Das Zustandekommen eines solchen Systems sollte zur Kompetenz von WIPO gehören. Die Anträge für den Schutz geographischer Herkunftsangaben sollten z.B. in einem neuen, monatlich zu publizierenden, öffentlichen Blatt, oder in WIPO's Blatt Namens "Les Marques" veröffentlicht werden. WIPO sollte auch die Staaten benachrichtigen mit denen sie im Vertrag steht. Diese Staaten müssten auch jene Anträge publizieren, wo die Herkunftsangabe den Staat berührt.
- 12) Unser Vorschlag ist, dass auch diese Frage aufgrund der Erfahrungen des ungarischen Systems gelöst werde. Die Rechtsnormen, die sich auf den Schutz der geographischen Herkunftsangaben und jene die sich auf die Schutzmarken beziehen sollen einander mehr oder weniger ähnlich sein.
 Die Erwerbung des Schutzes einer geographischen Herkunftsangabe bezüglich eines Produktes sollte mit Aufsicht eines Komitees erfolgen, dessen Mitglieder internationale Fachleute sind.
 Für die zehnjährweise fällige Erneuerung des Schutzes einer geographischen Herkunftsangabe sollte die Zahlung einer Gebühr eingeführt werden.
 Die Rechtsnormen bezüglich der Geltendmachung des Schutzrechtes der geographischen Herkunftsangabe und jene, die sich auf die Schutzmarken beziehen sollen ähnlich sein.
- 13) Der Schutz der geographischen Herkunftsangabe sollte als individuelle Marke nicht, sondern nur als geographische Gemeinschaftsmarke, oder als geographische Beurkundungsmarke möglich sein.

Die Beurkundungsmarke und die Gemeinschaftsmarke weisen nicht immer auch den geographischen Charakter auf – obwohl beide Marken-Typen theoretisch die geographische Herkunft bezeugen können.

Dies bedeutet, dass die Überlappung des Schutzes im Falle der geographischen Herkunftsangabe möglich sei.

Wenn eine Bezeichnung den Forderungen entspricht, die den Gemeinschaftsmarken und den Beurkundungsmarken gesetzt werden und gleichzeitig auch jenen, die beim Schutz der geographischen Herkunftsangabe bestehen, so ist ein paralleler Schutz möglich. Jedenfalls kommt es in der Praxis nur selten vor.

Zur Zeit ist es nicht ausgeschlossen, dass der Registrant der geographischen Herkunftsangabe den Schutz für einen Teil desselben als Teil einer Schutzmarke sich erwirbt.

- 14) Im Falle neuer Warenzeichen wird dem Prinzip " Das Erste in Zeit, das Erste im Recht" Vorrang gegeben.

Wenn es sich um alte und wohlbekannte geographische Herkunftsangaben handelt, die überhaupt nicht registriert sind, oder die man registriert hat, was aber viel später geschah als die geographische Herkunftsangabe in jenem Staat bekannt wurde, wo der Ursprungsort liegt – dort soll die geographische Herkunftsangabe gegenüber der Schutzmarke dominieren.