

Abstract

Administrative Litigation seeking the Confirmation of the Nullity of Copyright Registration Disposition

- In addition to critical reviews on judgments of lower instances in Korea -

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As the frequency of utilization of copyright registration system is increasing, and the court has long ago acknowledged the disposability of copyright registration, in order to avoid restrictions on the period of litigation, recently several litigations about the confirmation of the nullity of copyright registration disposition have been raised. However, on the grounds that, in the dispute over the validity of copyright registration disposition, copyright registration disposition does not affect actual legal relations and can be settled by the civil procedure, it is common for the court to dismiss litigations by denying standing to sue of administrative litigations disputing on the validity for the disposition of copyright registration. However, this does not distinguish between the purpose of civil proceedings to clarify the legal relationship on copyright and the purpose of appeals suits to remove the binding force of registration. In addition, the Copyright Registration Authority does not have the authority to actually examine who the author is, so to reject the plaintiff's claim based on the fact that it only invoked formal review authority, it is legitimate to reject the plaintiff's claim based on such review because there are no flaws in the disposition of such review, and it should not be deemed that there is no plaintiff's capacity to reject the plaintiff's claim to verify the nullification itself. Because the defects of the registration disposition, must be grave and apparent to the point of absence in appearance in order to be received the cited judgment by requiring the confirmation of the nullity without limitation of the period of litigation at the stage of the merits, in case that

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the registration is disposed of even though it is clear by legal principles that the copyright ability is denied in relation to the essential entries of the copyright register, or, that, in the copyright register, the registration is disposed of even though there is a significant difference between the reproduced articles submitted with the specifications, as it is considered that there are important and clear defects, a claim for the confirmation of the nullity of registration disposition will be room to be quoted.

The amount of literature that has been approached from a civil legal perspective, including the range of ‘counterforce to the third parties’ as a prior study on copyright registration, is considerable. However, because the judicial precedents for the areas in which the validity of copyright registration disposition is disputed by administrative litigation have not yet been accumulated, it seems that the effectiveness of the research is not significant. But, as the judicial precedents have not yet been accumulated, it is not without the practical benefits of the research. And given that there is less burden on changing the legal principles, it would be desirable to form the sophisticated law logics from now on.

Keywords

Confirmation of the Nullity of Copyright Registration, Jurisdiction, Legal Act-Like Administrative Act, Notarization, Standing to Sue, Protective Benefit Based on Law, Korea Copyright Commission, Theory of Importance and Clearance

참고문헌

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