



The IPReport ***April 2009***

CIPR is pleased to provide select IPR updates in Russia, other CIS countries and related international developments. We welcome your comments and suggestions.

RUSSIA

Meeting of the U.S.-Russia IPR Working Group during the Week of March 23 in Moscow

Last month marked the first gathering of the U.S.-Russia IPR Working Group in more than a year. The U.S. delegation characterized the meetings as meaningful steps towards reinvigorating the U.S.-Russia IPR Working Group process. A key factor was the appointment of Deputy Minister of Economic Development Stanislav Voskresenky to lead the Russian delegation. He was described as knowledgeable about IP issues and engaged in the WTO negotiation process.

The two days of meetings covered the full range of the IPR commitments set forth in the U.S.-Russia Bilateral Agreement signed in 2006 and focused on specific topics, such as Internet IP crimes. On outstanding IP obligations in the US-Russia bilateral agreement, the Russian side pointed to progress made on legislative amendments to Part IV of the Civil Code and to give customs officers ex officio authority that are under consideration by the Parliament, as well as increased enforcement activities. But when pressed by the U.S. about completing the already late timelines for these items, the Russian side provided assurances that these issues would soon be completed, but no deadlines were mentioned.

The Russian side was described as very interested in receiving information on U.S. policies on Internet IP crime and made the point that the U.S. also struggles with this issue. The American side responded by sharing its experiences on the challenges of addressing Internet IP crime and other IP issues and described the process of enacting IP legislation, using the Pro-IP Bill as an example. The U.S. and Russia agreed to continue discussing more law enforcement cooperation on this pressing issue, and Russia recommended that MOUs be signed between U.S. and Russia customs and PTOs. Both sides agreed to conduct full delegation meetings twice a year and small group meetings in between to address specific issues. Despite the lack of clarity on timing for completing key IP obligations, the American delegation expressed cautious optimism that the IP dialogue had reestablished some momentum.

Of special note to CIPR, the U.S. delegation noted that the Russian delegation specifically indicated that Russia is having working discussions with the People's Republic of China on product counterfeiting and piracy issues on the Russian-Chinese border.

In the wake of Porsche decision by Supreme Arbitrazh Court, will there be changes to Russia's laws on parallel imports?

The RF Supreme Arbitrazh Court's recent reversal of the court of first instance and appellate level rulings on the Porsche case has added fire to the already hot public debate on whether Russia's IP laws should be changed to allow parallel imports freer access to the Russian marketplace. The proponents and opponents of grey imports have been debating the high court's decision and whether or not this will result in substantive changes to Russia's IPR legal regime and possibly weaken protections for rights holders.

The lobbying effort of proponents and opponents continues to gather momentum. As reported last month, RF Supreme Arbitrazh Court Chief Justice Anton Ivanov said the parallel imports issue would be addressed in the joint high court review of Part IV of the Civil Code after the high court decision on the Porsche case was rendered. At this writing, the high courts have reportedly completed the Part IV review, but have not included an opinion on the parallel imports issue.

The Russian government is reportedly divided on the issue. According to our sources, a proposed amendment that would change Russia's exhaustion of rights standard from national to international has been circulated to the relevant ministries for comment. The Federal Anti-Monopoly Service supports the change on the grounds that existing law encourages anti-competitive practices by IP owners at the expense of Russian importers and consumers. Opponents such as Russian Customs say such changes will reduce its capabilities to interdict against fake goods at the border. Key Russian and international business associations, such as RATEK (a domestic trade group representing producers of electronic goods), Rusbrand and the Association of European Businesses in Russia have publicly opposed any changes to the law. CIPR is proactively meeting with RF officials on this matter and will report on any substantive developments on this critical issue as they emerge.

RF Supreme Arbitrazh Court Chief Justice Anton Ivanov Comments on the State of Russia's Judicial System

In a candid assessment of Russia's courts, Chief Justice Ivanov told an audience of rights holders and government officials in Washington, DC that Russian citizens have a low level of trust in the court system. Citing opinion research, Ivanov point out that most Russians feel the court system will favor government over citizens in any legal action. He said the lack of trust in the judicial system must be reversed if Russia is ever to become a rule of law society. To accomplish this, he emphasized that corruption and state interference in the courts must be addressed. Ivanov also noted that larger salaries for judges and true independence from the state are vital to reducing undue monetary and political influence. Compliance to existing ethical standards by judges, prosecutors and lawyers is another vital step, he added.

Two Major International Copyright Treaties Enter Into Force

The WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty entered into force on February 5, 2009 and eliminated a long-standing major criticism of the Russian government by the rights holder community. Acceding to both treaties was required in the IPR Side Letter of the U.S.-Russia Bilateral Agreement. Russia now joins several other CIS and EU

states, China and the U.S. in guaranteeing copyright protections for literature, artistic works, performances and computer software.

Part IV of the Civil Code, Ex Officio and Other Pending Amendments

Key IPR amendments still await legislative action before going to President Medvedev's desk for signature. A date for the third and final legislative reading of the Part IV amendments has yet to be announced. Similarly, the second reading for the Ex Officio amendments has been postponed until questions regarding financial responsibility for seized fake goods are resolved. In a non-WTO accession related legislative action, the State Duma is considering amendments to the RF Criminal Procedures Code with respect to the use of evidence in counterfeiting and piracy cases. We will inform you of any major developments.

RF Ratifies the Patent Law Treaty (PLT)

The PLT is an international treaty and aimed at harmonizing and streamlining the national and regional patent application process, including standardizing filing dates, application forms and incorporating the requirements for both national and international applications through the Patent Cooperation Treaty (PCT). This is a positive step forward for patent law in Russia and is expected to increase the number of patent filings through a more user-friendly process.

UKRAINE

Amendments to Unfair Competition Law Passed

Earlier this year policymakers gave competition authorities more powers to prosecute and levy heavier fines and sanctions against violators. Unfair competition was defined as "any actions in competition which contradict rules, trade and other fair customs in commercial activity" but was broadened by eliminating "rules" from the language. Other important changes to note are that a company can be held responsible for anti-competitive activities as defined by law undertaken outside the borders of Ukraine, if such activities influence competition relations in Ukraine. Rights holders should pay particular attention to the language in the law that makes it easier for registered trademark owners to be charged with unfair competition and the expanded powers given to competition authorities to seize goods using unauthorized trademarks. According to our Kyiv-based colleagues, the impact of the legislative changes on rights holders will be known as they are applied in practice. For further information, please contact, Yuliya Kolchenko of Baker McKenzie at 380-44-590-0101 or yuliya.kolchenko@bakernet.com.

AZERBAIJAN

State Customs Committee Submits Amendments to Fulfill WTO Customs Requirements and Acknowledges that Fulfilling IP Requirements are Necessary before WTO Accession

Azerbaijani media reported that the proposed plan would transition the country's multi-level customs tariff system to a three-tier system that would lower customs tariffs and take Azerbaijan a step closer to WTO accession. It also acknowledged that fulfilling outstanding IPR requirements is the last major step to WTO accession. (April 8, 2009 - www.capital.trend.az)

INTERNATIONAL

Despite Economic Downturn WIPO Study Showed Record Levels of Trademark Registrations Using the Madrid System in 2008

The bullish worldwide economic marketplace in the first half of 2008 encouraged record numbers of trademark applications under the Madrid system, but the momentum dropped as the global economy began to slow. Russia and other countries of the former Soviet Union recorded increases in the total number of trademark applications filed by contacting parties in their countries, with Russia having the largest increase of nearly 34 percent over 2007 results. Other countries that had increases were Ukraine, Latvia, Lithuania and Belarus. Estonia dropped by nearly 8 percent while other former Soviet republics showed no change from 2007.

In the category of most favored countries designated by contacting parties, China retained the top position with Russia in second place with an 8.5 percent gain over 2007. Other former Soviet republics that had gains included Belarus, Kazakhstan, Latvia, Lithuania and Moldova. The full report is available at http://www.wipo.int/pressroom/en/articles/2009/article_0004.html.

Few Surprises in *Forbes Annual “The Best Countries for Business, 2009”* Survey for Countries in the Region

The fourth annual survey examined business conditions in 127 countries around the globe during the worst economic downturn since The Great Depression of the 1930s. The rating process looks at corporate governance, corruption, stock market performance, promotion of free trade and low inflation, investor confidence in a recovery, tax levels on income and investment and intellectual property rights.

The Baltic States were in the top fifty countries with Estonia topping the list (#17), Lithuania (#42) and Latvia (#45 from #32 in 2008). The next fifty countries included Georgia (#64), Kazakhstan (#71), Azerbaijan (#87), Kyrgyzstan (#90), Armenia (#94 from #63 in 2008) and Ukraine (#97). The last twenty-five countries included Russia (#103) and Tajikistan (#123). Not rated were Moldova, Belarus and Uzbekistan. The full study is available at www.forbes.com.

###