



## ***The IPReport*** **August – September 2009**

The Coalition for Intellectual Property Rights (CIPR) is pleased to offer select updates on pertinent IPR developments in Russia, other countries in the region and around the globe. Please let us know if you have questions or suggestions.

### **RUSSIA**

**Is Russia's WTO Accession Back on Track?** – The political leadership of Russia appears to again be seeking membership in the global trade body as an individual state, but is still urging the United States, EU and other World Trade Organization (WTO) member states to simultaneously consider Kazakhstan and Belarus's membership candidacy.

Last June Prime Minister Putin's unexpected announcement that Russia would apply to become a WTO member as part of a Customs Union with Kazakhstan and Belarus received an underwhelming response from the WTO and its member states. President Medvedev's comments made shortly afterwards downplayed the Customs Union option and raised questions about a policy disagreement between the President and his Prime Minister.

Both Russian leaders have denied that a policy rift exists and blame the U.S. for using politics to delay Russia's 16-year effort to accede into the WTO. Russia often cites that the U.S. has yet to nullify the Cold War-era Jackson-Vanik Amendment that imposes trade restrictions. Prime Minister Putin said earlier this month that the U.S. should also eliminate other Cold War-era restrictions on transfers of high technology to Russia.

On Monday, September 21<sup>st</sup> Russian First Deputy Prime Minister Igor Shuvalov told *The Wall Street Journal* that Russia wants to finish the negotiations for WTO membership in 2010. He said that WTO negotiations for its Customs Union partners, Kazakhstan and Belarus, should be conducted simultaneously, but acknowledged that the political leadership of Belarus and Kazakhstan will need to decide on this matter. A week later, Shuvalov was quoted saying, "And how this will be executed [entering the WTO]— on a bilateral basis or with the Customs Union or with the Customs Union and on a bilateral basis — is a technicality," he said. He has acknowledged that differences with the U.S. in several areas need to be resolved, such as intellectual property, subsidies for state owned enterprises, pork and beef imports and barriers to imports of encryption equipment.

The three countries have formed a unified negotiation group in charge of the WTO membership process, which will be headed by Maxim Medvedkov. Medvedkov is currently the head of the Russian WTO negotiations team. This unified negotiation group will be vested in with all

powers to hold talks both on behalf of the Customs Union and national governments over the admission to WTO. The Customs Union is expected to come into force in 2010.

CIPR remains hopeful that Russia is in fact again ready to take the initiative to seriously address all outstanding WTO issues in IPR and in other trade areas. If yes, Russia will indeed become a WTO member and take another step towards integration into the international community. We will continue to update you on emerging developments.

**Federal Customs Service Concerns about the Customs Union** - Earlier this month, Vladimir Ivin, head of the analytical department at the Russian Federal Customs Service (FCS) was quoted by Interfax saying that the lack of mechanisms for the distribution of export tariffs is hampering the creation of the Customs Union with Kazakhstan and Belarus. The three countries have not yet resolved the question of exports regulation: in Russia there are exports tariffs on hundreds of different products, while there are practically none in Belarus and Kazakhstan. According to Ivin, the terms of the Customs Union are too general: “It’s written that exports taxes will be collected, but there is no clarity as to who will do it, in what manner and at what rates.”

Ivin is concerned that this lack of clarity on export tariffs could threaten the interests of Russian producers. The Ministry of Finance shares his concerns. The Director of Department for Tax and Customs Policy at the Ministry of Finance Ilya Trunin was quoted as saying that “the Ministry is carefully studying this question – any losses to the budget would be highly undesirable.”

The head of the Department of Economic Development at the Russian Ministry of Finance, Alexei Likhachev claims that the mechanism for distributing export tariff revenues will be developed during the second phase of the union’s creation, starting in 2010 and notes that the exports agreement between the countries postulates that tariffs should be received by the country of origin of the raw materials.

While it appears that this is a not major setback for the Customs Union, it indicates that not every government group supports the Union and will not support it unless these issues are resolved in a way that benefits Russia.

## **UKRAINE**

**Ukrainian Parliament Considers Amendments to IP Protection Laws During Fall Session** – Ukrainian lawmakers will review draft legislation that would bring more transparency to the patent and trademark application process as well as establish procedures for third-parties to contest applications for industrial model patents. These changes are included in the Draft Law on Amending Certain Legislative Acts on Intellectual Property that was introduced in late July 2009.

The Draft Law recommends that the Law of Ukraine on the Protection of Rights to Industrial Models be amended to mandate that all applications for industrial models be available to the public for review. This would be a major step forward for both Ukrainian and foreign patent rights holders by introducing more transparency in the patent application process and protecting existing registered patents from willful or accidental infringement.

A procedure for contesting applications for industrial models is included in the Draft Law. A more robust dispute resolution process will be a welcome addition to the legal regime for patent protection and will be another incentive for innovators and patent holders to register their inventions and technology in Ukraine. CIPR views this legislative initiative as another step towards Ukraine's objective of bringing its laws on patent protection in line the EU Community Patent.

A similar step to improve the level of transparency of the application process for trademarks and to oppose a trademark application are proposed in the Draft Law. All trademark applications would be available for public review. The draft amendments will also establish an opposition procedure process for rights holders to contest a trademark application at the Chamber of Appeals. If passed, this would be a significant victory for rights holders. CIPR has long advocated for opposition procedures in Russia and other jurisdictions in the region to reduce the number of bad faith registrations and unnecessary litigation expenses.

CIPR and other IPR stakeholders will continue to work with Ukrainian government officials and lawmakers on the Draft Law to strengthen existing language or to add amendments to: clarify rules around the destruction of seized counterfeit goods; 2) border protection measures; and, 3) copyright protections. We will update you on key emerging developments.

## **KAZAKHSTAN**

**IP Amendments Signed Into Law** - As mentioned in July's IPReport, Kazakhstan's Parliament passed legislation that introduced amendments to the country's intellectual property legislation. The president signed the law on August 7, 2009, bringing it to force. The amendments aim to bring the law "On Copyright and Allied Rights" in accordance with the Bern convention for the protection of literary and artistic works. One of the amendments provides a better, corrected definition of "authorized body." Other amendments broadened copyright and allied rights.

**Enforcement** - According to the Almaty Department of Internal Affairs' press relations service, 8,000 counterfeit items were confiscated during a five-day police raid. The raid was targeted at suppressing counterfeit products trafficking, increasing the fight against the dissemination of counterfeit products, and developing prevention measures in the consumer market and improving protection of consumer rights.

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