

Court regularly stressed that patent expert opinion is vital to establish of equivalence of inventions and, therefore, such expert opinion constitutes mandatory evidence. Remarkably, many cases reviewed by the Russian IP Court and returned to the lower courts for re-consideration related to termination of trademark protection as a result of its non-use.

To sum up, the increasing recognition of the Russian IP Court by IP right holders is naturally based on the competence of judges and their proactive approach in performing a critical review of the rulings of the lower courts. The new court seems to aim at elaborating unified approaches to IP dispute resolution in Russia – which should also be beneficial for the consistency of court practice. While it remains untested yet, how efficient the Russian IP Court will be in serving as a court of second appeal for cases earlier considered by the Russian IP court as a court of first instance, the Russian IP community believes that the new court will operate to the best expectations of IP right holders and further persuade foreign IP practitioners in the fact that smooth IP enforcement may be achievable in Russia.

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Kosovo

The State of Play in Kosovo



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Despite being the least developed country in Europe, Kosovo offers a decent and competitive investment environment. To enable a smooth transition from the previous economic and legal system, the Kosovo Government has implemented a number of economic, legal and institutional reforms. As a result, the

World Bank rated Kosovo as the most dynamic reformer among Central and Southeast European countries in its Doing Business Index 2013 report.

The Kosovo Investment Promotion Agency's statistics show that a number of industrial and business sectors, such as agriculture, wood processing, information technology and telecommunications, construction, mining and energy, and textile are very well developed. The Kosovo Central Bank Report showed foreign direct investment (FDI) increasing significantly during the first nine months of 2013, reaching a value of EUR 205.4 million, an increase of 15% compared with the same period in 2012. These investments were mostly in the real estate, energy, financial services, transport and telecommunication, construction, production, and minerals sectors, which make particularly intensive use of intellectual property rights (IPRs). This article aims to provide investors with a brief and practical explanation of the current state of IPR protection and enforcement in Kosovo.

Legislation

The first set of IP laws was enacted only in 2004. But soon after ratification, it appeared that significant amendments were needed. In 2011, three new IP-related laws were adopted and entered into force. The Laws on Trademarks, Patents, and Industrial Designs were supposed to bring Kosovo IP legislation in line with Acquis-Communautaire.

The new IP legislation was also aimed at reducing burdensome IP-rights protection procedures, which could have raised serious

concerns regarding the protection of potential and current FDI in Kosovo. As one example, an applicant of a patent application which had been published in the Official Bulletin had previously to make sure that a request for grant of the patent had been filed within six months from publication date. The 2011 Patent Law provides for the publication of granted patents only. Hence, the requirement of a request for grant of patent has been removed. Kosovo is not a member state of the Patent Cooperation Treaty (PCT) or the European Patent Convention (EPC). Therefore, the only certain way to obtain Kosovo patent protection at this time is to file a national patent application with the Kosovo IP Agency (the "Agency") within the 12-month Paris Convention priority period. The regular PCT national phase or European Patents extension is not possible.

The 2011 Law on Trademarks also introduced important changes concerning trademark acquisition. Trademark rights are only acquired through registration with the IP Agency. Unregistered well-known trademarks could be claimed against the registration of confusingly similar trademarks. However, enforcement of unregistered well-known trademarks before competent courts is no longer possible. Because Kosovo is not a member of the World Intellectual Property Organization (WIPO), it is not possible to extend an International Registration trademark to Kosovo, and it is therefore strategically important that owners register their most important trademarks with the Agency.

Administration of IPR

Industrial property rights in Kosovo are acquired through registration with the competent authority. The registration procedure for administration of patents, trademarks, industrial designs, topographies of integrated circuits, and geographical indications is under the competence of the Agency. The number of applications has risen considerably since the Agency opened in November 2007. About 20,000 applications have been filed with the Agency so far. Because Kosovo has not ratified any of the international treaties or conventions, foreign right holders can protect their rights through the national route only.

Establishment of a Trademark Database and digitalization of data for thousands of applications increased the efficiency of the Agency. A registration certificate can now be obtained in less than two years. Moreover, an accelerated examination procedure can be approved for trademark owners whose rights are being infringed. The new IP legislation also introduced an Appellate Commission as the second instance administrative authority, empowered to review and rule on the Agency's decisions.

Enforcement

The Kosovo Customs and the Market Inspectorate are the institutions responsible for administrative enforcement of IPR. The Kosovo Customs will apply border measures as provided by the Law on Customs Measures, acting in cases of import, export, transit, customs warehouses, inward processing of products, customs supervision, and temporary importation placed in the free customs zone. Most infringing goods, particularly counterfeits, are imported. Thus, filing a Customs Watch Application with the Kosovo Customs is the recommended action. The Law on Customs provides a fast-track procedure for destruction of detained goods, making it worthwhile for the client to invest time and money into enforcement.

On the other hand, the Market Inspectorate has, among other things, competences to inspect Kosovo commercial and produc-

tion premises in order to ensure consumer protection, industrial property rights protection, and copyright protection.

IPR-related crimes are also punishable under the Criminal Code. The Department for Economic Crimes and Corruption within the Kosovo Police, the State Prosecutor's Office, and local courts with territorial jurisdiction are responsible for enforcing IPRs in cases concerning intellectual property infringement, including copyright violation. Only a few criminal IPR cases have been adjudicated since protection of IPRs entered the Criminal Code.

In cases of trademark, patent, or design infringement, an owner is also entitled to institute civil proceedings. Several remedies are available to holders. The holders may request that the court confirm the existence of the infringement and prohibit future infringement acts and they may further ask the court to order seizure and destruction of the infringing products. They may also claim damages, request publication of the ruling, or ask the court to order the infringer to identify third persons involved in the production or distribution of the infringing goods or services and channels of distribution. Provisional measures of evidence preservation, property preservation, preliminary injunctions, and unwarranted *ex parte* injunctions are also possible.

The Commercial Matters Department within the Basic Court of Prishtina has competence to adjudicate industrial property infringement cases. A professional judge will hear these cases. Actions before the courts may take up to two years to be decided. The judicial system lacks expert judges. There is no specialized court or unit to handle IPR-related matters only. Only a small number of cases actually gets to the court, while the remaining infringement cases are settled through alternative dispute resolution mechanisms, mainly negotiations.

Looking Forward

The adoption of the IPR Strategy 2010-2014 showed that the Kosovo Government understands that weak IP protection in IP-sensitive areas discourages FDI, and that low IPR protection leads foreign firms to focus on distribution rather than local manufacturing. Even though not bound by any treaty, Kosovo has established very good IP legislation. Institutional progress was also noted and acknowledged in several international reports. However, great challenges remain: enforcement of IPRs, the low level of public IPR awareness, building of technical and professional capacity for IPR administration and enforcement institutions (including specialized courts), accession of Kosovo to IP-related international institutions, and ratification of IP-related international conventions.

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Moldova

Overview of Moldovan IP Legislation and Procedures



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The Republic of Moldova, a former USSR country, became an independent state on August 27, 1991. Subsequently, the Republic of Moldova has become a member-state of the United Nations, a member of the Commonwealth of Independent States ("CIS"), and a full-fledged member of the international community. Currently, the Republic of Moldova promotes the EU

integration vector in its external policy, and it initiated the EU Association Agreement on November 28, 2013.

As a member of international and European societies, the Republic of Moldova has always promoted best practices and legislation, including those applying to intellectual property ("IP"). Currently, the Republic of Moldova is a party to the Paris Convention for the Protection of Industrial Property (which it signed onto in 1993), the Madrid Agreement Concerning the International Registration of Marks (1993), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1997), and many others.

Based on its international undertakings and for the purposes of better administration and application of the IP legislation, on September 13, 2004, the State Agency for Intellectual Rights Protection and the State Agency for Copyrights merged into one entity: The State Agency on Intellectual Property of the Republic of Moldova ("AGEPI"). AGEPI is vested with the right to control, register, supervise, and enforce compliance with the provisions of applicable IP legislation. In addition, AGEPI represents Moldova in its relations within the international treaties it is party to, as well as promoting and supervising the issuing of new IP legislation and any necessary changes to relevant IP laws.



Roman Ivanov

Since AGEPI's establishment, the following key IP legislation has been passed: (1) The Law on Protection of Industrial Designs no 161-XVI dated July 12, 2007: The framework piece of legislation that governs the procedure of creation, criteria of novelty, registration, and protection of industrial designs; (2) The Law

on the Protection of Trademarks no 38-XVI dated February 29, 2008: Providing for the criteria of existence, novelty, and the moment of apparition of a right over a trademark, their registration, the period of protection, as well as rights and obligations of a trademark owner and third parties; (3) The Law on the Protection of Inventions no 50-XVI dated March 7, 2008: Providing the criteria an invention has to comply with to be protected, the procedure, terms and conditions of registration of an invention, as well as the limits of its protection; and (4) The Law on Copyright and Related Rights no 139, dated July 2, 2010 (the most recently approved law): Transposing the provisions of EU directives governing copyright protection.

As the Republic of Moldova is a member of various international IP organizations and a party to key international IP treaties, the procedures for the registration and protection of IP in Moldova are clear, transparent and in full compliance with applicable international rules. For example, the procedure for registering a trademark in the Republic of Moldova usually does not exceed 12 months from the date of filing, with basic registration fees of approximately EUR 450 (they vary depending on the type of trademark and classes of the product to be registered). The protection of a trademark is for 10 years from the date of its registration, while its renewal is subject to a separate filing procedure to be initiated at least 6 months prior to the initial registration's expiry date.

The registration of an IP right may be done personally by the IP-right holder only if he/she/it is a resident of the Republic of Moldova. Applicants who are non-residents (i.e. foreign individuals or legal entities) may only register IP rights via authorized Moldovan