

Overview of the activities in IPR commercialization and protection in Belarus

1. Recent experience gained on IPR commercialization

It is worth noting that favourable use of the intellectual property rights in the market economic relations has become more and more significant in the recent years, rather than a mere fact of their creation and obtaining protection. Orientation to innovation economy has essentially changed place and role of intellectual property in modern economic life, and IPR commercialization became an important factor of the market development. Namely for this reason the problems, pertaining to creating an efficient system of IP commercialization, effective transfer and distribution of intellectual property rights, to transforming R&D outputs into intangible assets of the enterprises are so acute. The said problems are not novel, however, there are especially pressing at present stage for Belarus, with its young system of IP protection.

A primary task for our state is to create legal and economic conditions for an IP effective commercialization. To expand the export potential of individual enterprises, and that of the national economy as a whole, the mastering of advanced progressive methods of intellectual property management is of great significance.

The statutory legal acts on the assessment of intellectual property rights, IPOs registration as intangible assets for accounting purposes, promotion of processes of IPs development, protection and commercialization have been adopted during ten years of the IP system functioning in the Republic of Belarus.

The years 2001-2002 saw the adoption of provisional measures aimed at granting tax privileges with regard to IPO operations, including those operations to indicate intellectual property (IPs) in the accounting reports of an entity property status. Funds, released from levies due to tax credits granted, were invested in financing research work and obtaining new IPRs. As an outcome of tax credit practice, the innovation activity of legal entities gained new impetus.

Nevertheless, the problems related to inventory, documentary registration and accounting of intellectual property as entity tangible assets are most complicated and least explored in practice. The accounting, assessment and depreciation policy, conducted by the legal entities, which are involved in developing and enjoying IPRs, requires revision and improvement.

Currently, the work is in progress to develop a system of economic incentives, including those of tax privilege nature, primarily for the enterprises, actively involved in IP commercialization, use of innovation, and also for investors. In this line of activity, a package of high priority organizational and legal measures is likely to be implemented. They are aimed, first of all, at:

- 1) raising a regulatory role of the system of taxation, including granting direct tax privileges on operations related to IPOs;
- 2) improving depreciation policy in the part, pertaining to granting option to legal entities to determine the own efficient mechanisms of depreciation of expenses, spent on IPO development;
- 3) encouraging crediting institutions to invest in innovations by exempting to allocations made from taxis, and by setting up insurance foundations to secure their innovation investments;

4) granting the most preferential, customs regulations for importation of technologies, as well as materials, instruments and equipment to carry out perform research work.

At the present stage it is important to raise awareness of the significance of IP commercialization as one of the key trends, both to raise competitiveness of the goods of individual producers, and to enhance the growth of economy of the state as a whole. Unfortunately, a majority of company managers, chiefs of organizations, establishments, business representatives have little knowledge of IP commercial use. Therefore, it is essential, that the society should have understood the importance of participation of both IP creators and businessmen in the establishing well functioning market of intellectual property.

To this end, maximum attention is paid to the development of appropriate structural divisions, primarily, at high schools, academic institutions, which perform a role of a link between science and market, and the introduction of organizational measures, aimed at encouraging commercial use of intellectual property.

Promotion of IP outputs to the market, especially to the foreign market, requires special economic knowledge, marketing skills, including knowledge and skills in IP commercialization and technology transfer. It led to a large-scale experts' training, professional skill upgrading and advanced staff retraining in the field in question during recent years.

The integrated approach to handling issues, related to IP commercialization, will result in raising appreciation, on the part of managers of various levels, private sector and society as a whole, of significance of using IP assets as a tool of economic development and, thereby, providing for favorable conditions to increase competitiveness of the national economy and develop export deliveries, facilitate for import of advanced technologies and intensify investment in domestic economy.

2. Existing legal frameworks, policies and business practice in the field of intellectual property, including assessment of the effectiveness of national systems

By now Belarus has developed national system of IP protection. The appropriate legislation has been adopted and the appropriate infrastructure has been set up. The Republic of Belarus actively cooperates with other countries and international organization in the field of intellectual property.

The IP-related policy is a constituent of the state socio-economic, scientific and technical and innovation policy. Its basic provisions have been secured by the Constitution of the Republic of Belarus. Thus, according to the article 51 the state guarantees freedom of artistic, scientific, technical creativity and protection of the rights of inventors, IP creators and right owners. The intellectual potential of the nation is recognized to by a determinant factor of socio-economic development of the country.

According to the Program of Social and Economic Development of the Republic of Belarus for 2006 - 2010, approved by the President, an innovation way of development of the economy is determined as one of the priorities of the national socio-economic growth. The IP protection and management is the essential requirement and the effective mechanism of the country's social and economic growth.

The legislation of the Republic of Belarus on intellectual property, constitutes an advanced system of statutory legal acts, elaborated in cooperation with the World Intellectual Property Organization (WIPO) and in conforming with international standards and trends, including the TRIPS Agreement. It permits to protect such outputs of intellectual activity, as copyrights, including software and databases, related rights, inventions, utility models, industrial designs, non-disclosed information, including technology secrets (know-how), trademarks and service marks and designation, geographical indications, topographies of integrated circuits, plant varieties, and also provides protection against unfair competition.

The Republic of Belarus also participates in many international agreements on intellectual property protection which are administered by WIPO. Our country is also a party to a number of IP agreements, concluded within the framework of the Commonwealth of Independent States (CIS).

The Belarusian legislation lays down a principle of direct effect of the rules of international agreements and treaties and accepts priority of the conventional principles of the international law in the sphere under consideration.

In the Civil Code and special laws are reflected in full scope the substantive provisions of the TRIPS Agreement, which relate to the scope and contents of appropriate intellectual property rights.

To ensure that the provisions of substantive law are implemented, the statutory procedures have been established. The Civil Code and the Civil Procedure Code provide for the methods of protection of exclusive rights, provisional measures and measures for security of claims, related to IPR infringement. The Customs Code provides for procedures related to border measures. To enforce intellectual property rights, the Criminal Code and the Code on Administrative Violations provide for criminal and administrative penalties to be applied in cases of infringement of patents, copyright and related rights.

The IP legislation provisions are implemented through an appropriate infrastructure, where the National Center of Intellectual Property is a central element fulfilling the functions of the national IP office. There are the institute of patent attorneys, the institute of administrative settlement of disputes – the Board of Appeals, that provides for administrative hearing of disputes on the matters of protectability of industrial property subjects, specialized patent court – the Patent Collegium of the Supreme Court of the Republic of Belarus, the organization of collective management of copyright and related rights – the Belarusian Authors' Society and others.

To enforce IPRs and prevent abuse of intellectual property rights, a Commission on IPR Protection and IP Violation Control was set up under the government. The Commission considers the issues of countermeasures against IPR violations and IPO illegal turnover, governmental incentives to facilitate processes of creating, legally protecting IPs and effecting IP commercialization, improving the system of IP protection and management, the international cooperation in the sphere of intellectual property.

Comprehending the importance of effective and adequate IP protection, the Republic of Belarus continuously undertakes measures to improve the national IP protection system so that it conforms to advanced international standards, and to raise the efficiency and counterfeiting.

Much attention is paid to issues of personnel training in the field of IP protection and management. An intellectual property training center was established under the National Center

of Intellectual Property. To provide for training of IP specialists, training course entitled “Management of Intellectual Property” has been introduced at higher education institutions since 2006. Further measures are currently being taken to develop qualified intellectual property education, and also the international cooperation in the human resources sphere, including the implementation of the project to set up a regional intellectual property training center in the Republic of Belarus with the support of the World Academy of the WIPO.

The state policy on IP commercialization involves the use of legislative and economic mechanisms to develop innovation activity, by, in particular, attracting investments in science-intensive high-tech industries.

The major purposes of the state in IP commercialization are to raise the living standards of the population on the basis of development of competitive domestic products, to increase export potential of the national economy, and provide for defense, technological, economic and ecological security of the Republic of Belarus.

The analysis of all the aspects of the intellectual property protection system of the Republic of Belarus shows a certain imbalance between the intellectual property legislation, complying with international standards, and the efficiency of its practical application by national entities. It is a lack of understanding of importance of using IP assets, and also a lack specialized IP management services, qualified specialists in government institutions and at enterprises.

The economic efficiency of IP commercialization depends on the improvement of IP legislation, and IP divisions, human resources, and on the understanding of the importance of using intellectual property assets in commerce. To this end, a number of measures aimed at raising public and economic significance of issues related to IP development, protection and management should be taken.

To implement the state policy in the sphere of intellectual property and innovation activity, further step-by-step improvement of IP protection and management is planned, taking into account world experience and in close co-operation with international organizations, comprising:

- setting up of a wide network of IP commercialization centers;
- improving the mechanisms of incentives to facilitate IP commercialization as one of the major factors of increasing efficiency of the economy, developing competitive products;
- developing new institutional and organizational forms of innovation activity.

Along with providing conditions for legal R&D outputs turn-over, it is important to ensure protection of the rights of creators, investors, and to take measures to prevent intellectual property infringements.

The realization of the state policy in the sphere of intellectual property is to help IPRs owners to work out their own strategy of IP protection, and also safeguarding it against illegal actions.

3. Ways and means of commercializing of IP assets and establishing of well functioning markets for such products

The legislation of the Republic of Belarus grants the exclusive rights to the owner of IP rights to use them at his own discretion in any form and in any ways.

The owner's IPRs may be transferred by him totally or in part to other person under contract, and may also be acquired by legal inheritance or succession the rights owner which is a legal entity.

The IPOs may not only be sailed and purchased or assigned under license agreements, but also pledged, or contributed to investment fund.

The practice of the Appeal Board of the NCIP and the collective management of copyright and related rights, a growing rate of applications and requests received from government bodies and legal entities by the national patent office show the development of the IP market.

The statistics show that:

- inventions are most claimed IP objects to use in investment funds of organizations;
- trademarks are more often transferred under license contracts and assigned;
- undisclosed information (know-how) makes a big ratio in license agreements;
- rights are mainly assigned under non-exclusive license contracts, and between national legal subjects.

According to the legislation of the Republic of Belarus license contracts, assignment contracts and pledge agreements, and also franchise agreements are to be registered with the National Center of Intellectual Property.

However, despite that methods of IP commercialization and legally enacted and certain positive trends can be seen, it must be conceded that the national market of IP does not function effectively.

At present the work is in progress to provide such conditions for large-scale enterprises, and for SMEs so that they can fully enjoy the benefits resulting from IP assets, accumulated by them and license contract to transfer of IPRs.

The work is continuously carried out to combat violations in the sphere of intellectual property and illegal turnover of counterfeit products, especially those coming through the customs border of the Republic of Belarus.

The marketing of goods, comprising copyright and related-rights objects has been regulated. The marketing by control stamps of phonogram and audio-visual products (i.e. audio and video cassettes, compact discs, etc.) has been considered.

Nevertheless, the issues, pertaining to protection of intellectual property rights from various kinds of violations under conditions of growing activity at IP market require the adoption of further effective measures to solve multiple problems in the area in question.

To that end, it is envisaged to establish a system of monitoring and regulation of IP market that will permit to reduce violations in the sphere of intellectual property, to ensure an efficient protection of the IPRs holders, to raise the level of protection of the rights of authors and related rights owners by significantly lowering of piracy and counterfeiting.

To regulate import and sales of IP-comprising products in the Belarusian territory, to bar distribution of counterfeit product, it is required to study the existing international experience in applying technical means of protecting the objects of copyright and related rights and to consider opportunity of their application in the Republic of Belarus.

In future, it is required to consider the establishment of:

an Internet-enabled IP Access Exchange to effectively facilitate the IP market formation and intensification of innovation activity in the country. The Internet-enabled IP Access Exchange operation will be directed at promoting the Belarusian R&D achievements to world and domestic innovation markets by applying advanced information technologies;

a fund to promote IP commercialization in order to centralize human, financial and material resources for financing further development and use IP assets.