The Russian court system has recently been supplemented with the Court of Intellectual Property—a welcome change for IP practitioners and owners of Russian patents. A federal law introducing changes into selected legal acts with regards to the new IP court was adopted by the Federation Council in late 2011, but the court did not start its actual work until spring 2013. It is located in Moscow and is the first specialised commercial court in the country.

In the past, the Russian judicial system has had challenges relating to the enforcement of patent rights in court. The new system brings in changes and improvements for patent litigation.

Jurisdiction of the IP court

As part of the commercial court system, the IP court’s authority is mostly in lawsuits between businesses on economic matters, including administrative but not criminal cases. The court does not handle disputes over copyright and related rights. Three categories of IP cases falling under the court’s jurisdiction can be distinguished: contested regulatory and statutory acts; disputes on grant or invalidation; and all disputes relating to infringement rights, licensing and assignments.

In the first two categories the IP court is a first and second instance court, while in the third category it acts as a court of cassation. This means that infringement cases are still brought at a district commercial court and court of appeal in the first and second instances. However, it is possible that the jurisdiction of the IP court will widen in the future to cover patent and trademark infringements as a second instance court of appeal.

A further function of the IP court is to review and regularise court practice, prepare suggestions on amendments to current laws and other regulatory acts, and provide court statistics.

Problems and solutions

When considering patent protection in Russia, a natural question may come to mind: “Once a patent is granted, what can we do with it?” Infringements, invalidation attacks, licensing issues and other challenges for one party are always an opportunity for another. Patent strategies aside, there are universally important factors for anyone who might get involved in patent litigation.

Apart from an established patent law and court system, these factors also include the reliability of courts, consistency of case law and intelligible court statistics. Unfortunately, some of these areas are not entirely clear in Russia and trial parties often have to rely on the experience of lawyers.

That is not to say that Russia has no case law at all. Occasionally the Supreme Commercial Court Presidium has come out with reviews of recent case law, clarifying certain issues and creating precedents for interpretation of rules. For example, in the review of 2007 detailed explanations were given on the topics of prior use and a strict separation between patent infringement and invalidity disputes was made. In fact, certain statements of the presidium have caused criticism among Russian practitioners as serving bureaucracy rather than efficient litigation. With the new IP court, however, many problems like this are likely to become irrelevant because its jurisdiction covers both invalidation and infringement disputes, as well as other IP-related cases. Additionally, better organised case law and court statistics are expected to become available in the future.

The reliability of Russian commercial courts in patent disputes has also been questioned over the years. Judges have been overloaded with cases in different areas of law, and experts usually needed in complex patent cases have been provided by both parties to be chosen by the court. At times this has resulted in biased expertise and rushed court decisions. In contrast, the IP court employs judges specialising in the field of IP, and it is the first commercial court that is allowed to send requests to, and consult with, professionals in different technical fields not directly or indirectly involved in the case. This essentially introduces *amicus curiae* into Russian patent litigation.

Future expectations

Russia has taken several steps towards harmonising its IP law and practice with the rest of the world in recent years as demonstrated, for instance, by joining the World Trade Organization in 2012. Establishing a specialised IP court shows the clear intention of the Russian government to improve the quality and consistency of judgments in this area of law. High expectations of the court are not groundless, but its actual efficiency remains to be seen.

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