

Russia

– Better than its Reputation

The system for protecting intellectual property rights in Russia has improved. Companies operating in the country are in a better position to protect their rights.

20

 The list of concerns of companies operating in Russia includes cumbersome administration and widespread corruption. When it comes to intellectual property rights, however, the country is better than is generally thought. This is the view of **Riikka Palmos**, a trademark lawyer and senior partner at Papula-Nevinpat, who has long experience of the intricacies of the Russian system.

– IPR is now much more widely appreciated in Russia. For example, the customs authorities have become more active in exposing counterfeit goods, Palmos points out.

Alex Belotcerkovskii, a patent specialist with Papula-Nevinpat, says that significant changes have been made to the protection system in recent years both in terms of legislation and application of the law.

– Much progress has been made in harmonizing legislation with Europe and the rest of the world. In a few years Russian IP law will be even more in line with international practices. And that's good news for companies operating in the country or planning to enter the market, Belotcerkovskii says.

Russia's accession to the World Trade Organization (WTO) and consequently the TRIPS agreement on trade-related aspects of IPR has also brought stability to the operating environment.

– For example, foreign patent applicants may no longer be charged higher fees than Russians.

Registrants must be aware of special features

Despite the harmonization that has taken place, it is important to be aware of the details in Russian laws and practices, and that requires local expertise. Palmos thinks the biggest problem is cultural differences, which often cause surprises for IPR applicants.

– The system itself works well and it is easy to register rights. However, the practices are sometimes tough and change a lot.

Palmos says it is worthwhile protecting

rights because the Russian system is based on registrations. The first party to register a trademark is the right holder, even if the registration is done in bad faith.

– It pays to initiate the registration process as soon as companies plan to enter the Russian market. Any delay may lead to someone else registering a trade mark unlawfully. Whilst this can be overturned, the process takes time and money.

There are plenty of special features in the Russian system which trademark applicants ought to be aware of. For example, registration of a mark written in Latin characters does not automatically afford protection for the mark in Cyrillic characters and vice versa.

– It is best to register both versions to get the broadest possible protection, Palmos advises.

The Russian authorities are particular about trademarks being used in the form in which they are registered. It is important to have proper documentation on their usage.

– A mark must be taken into use within three years of registration. If this doesn't happen, somebody else may try to cancel the registration on the basis of non-use and in the worst case obtain the registration for themselves. In this type of situation the holder of the trademark must prove that the mark has been used. The provision of evidence is subject to strict requirements, Palmos says.

Licensing agreements with resellers must also be registered at the patent office in order to be valid against third parties. It is also advisable to make a written agreement with resellers on the use of a mark. According to Palmos, most problems arise from the lack of an agreement or inadequate agreements.

New patent court to start up

Companies worry about how to oversee their intellectual property rights in this vast country. Most doubts relate to how to defend their rights in court.

Relief is on the way, because this year a special IP court is inaugurated in Russia. It will deal with all IPR cases with the exception of copyright. Up to now cases have been heard by local lower commercial courts.

– The judges at this special court have been trained in judging issues relating to intellectual property rights. They are also supported by technical experts in a variety of fields, Belotcerkovskii says.

The new IP court will also gather information on court cases that can be of assistance in solving similar cases. At present there is no compendium of such information.

Belotcerkovskii says that this represents a significant improvement. The lower courts don't have the time or expertise for a rigorous examination of complex cases. There will also be fewer openings for corruption.

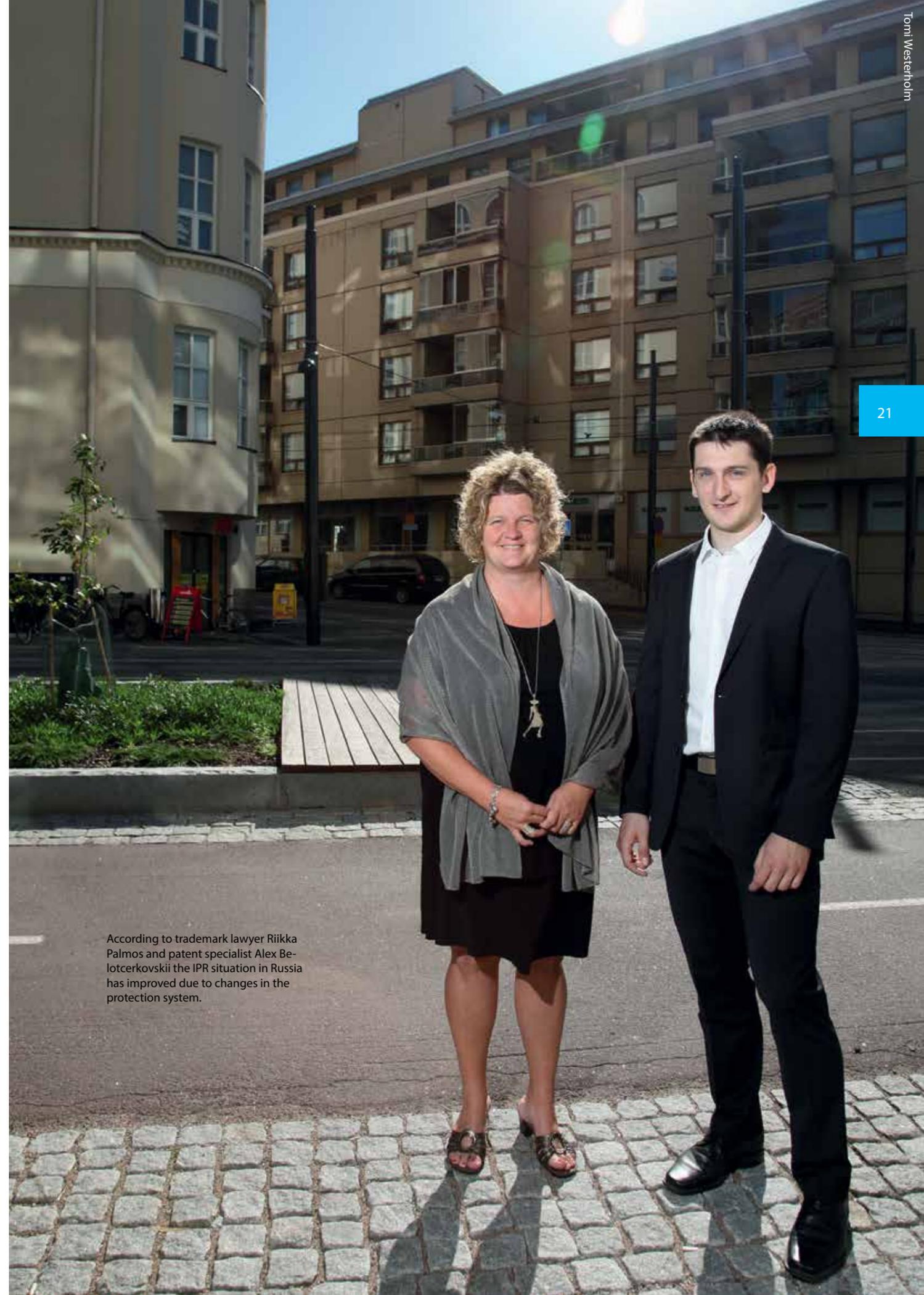
– Bribery is not a big problem in intellectual property rights. But problems can surface, for example when local courts consult the experts hired by the parties. The court decides whose views it attaches most weight to. The special court will improve this aspect since the court has its own independent experts and may ask for third party expertise.

Defending rights does not have to entail a visit to court; in most cases contacting the offending party and sending a warning letter can do the trick. According to Belotcerkovskii, infringements of intellectual property rights often result from ignorance.

– Generally companies cease their infringement once they have been informed. In most cases infringers are unaware of the legal consequences of infringing others' rights. ■

Matti Remes
Translation Andrew Lightfoot

21



According to trademark lawyer Riikka Palmos and patent specialist Alex Belotcerkovskii the IPR situation in Russia has improved due to changes in the protection system.