

TWO YEARS OF THE INTELLECTUAL PROPERTY COURT

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Operating in Moscow since July 2013, the Intellectual Property Court was expected to raise the level of professionalism in the resolution and adjudication of intellectual property disputes, increase transparency of the decision-making, and boost confidence in the Russian IP system among domestic and foreign IP owners.

It acts as a court of first instance, reviews regulatory acts of the Federal Service for Intellectual Property (Rospatent) and decisions of the Federal Antimonopoly Service, and handles disputes over the ownership of IP rights and claims to invalidate the registration of IP rights (except copyright and related rights). In its second role as a cassation instance, the court reviews cases of IP rights infringement between legal entities and individual entrepreneurs.

An infringement lawsuit still has to be first filed in a regional commercial court (called an arbitrazh court). Decisions of the first instance can be appealed to arbitrazh courts of appeal. The IP Court, with its 18 specialist judges, only steps in if a further appeal is permitted and filed; a panel of three judges will review the appealed decisions.

As a court of first instance, in 2014 it received 783 appeals, 40% of which were accepted and led to the appealed decision being reversed or modified. There were 293 appeals of Rospatent's decisions relating to grant or cancellation of exclusive rights (28% of the appeals accepted) and 435 claims to cancel a trademark on the grounds of non-use (the trademark being cancelled in 52% of the cases). During the first half of 2015, the corresponding numbers were 365 (35%), 109 (14%) and 235 (46%).

In 2014, a foreign party outside the Commonwealth of Independent States (CIS) region was involved in 207 of 783 appeals, and 46% of said appeals were accepted. During the first half of 2015, 143 of 365 appeals involved a foreign party outside the CIS region, and 34% of the appeals by the foreign party were accepted.

It's not very surprising that the majority of the claims in the IP Court concern trademarks, in particular cancellations of a trademark based on non-use. These cases seem to keep the IP Court quite busy. As for patents, there were only 31 requests filed by a patentee in 2014 to review a Rospatent decision to revoke a patent and in only four of those cases (13%) was the decision overruled by the IP Court. In the first half of 2015, there were only eight such requests, and only one Rospatent decision was overruled.

As a court of cassation, the IP Court received 1,820 appeals in 2014, 1,578 of which were accepted for a review while 1,390 appeals were actually reviewed during the same year. A foreign party outside the CIS region was involved in 221 of the 1,390 reviewed appeals and in 70 of those cases (32%) the appeal was accepted. In total, 1,096 decisions issued by the first instance courts and appeal courts were reviewed; as a result 336 decisions were cancelled (31%), in these decisions 249 cases were returned to the lower instance courts for a new consideration.

The IP Court also reviewed 294 of its own earlier decisions, including 264 decisions issued as a court of first instance (cancelling 62 decisions,

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ie, 21%) and 30 decisions issued as a court of cassation (cancelling eight decisions, ie, 27%).

During the first half of 2015, 527 decisions issued by the first instance courts and appeal courts were reviewed, of these decisions 102 (19%) were cancelled. The IP Court also reviewed 189 of its own decisions, of which 163 decisions were issued as a court of first instance and 26 decisions issued a court of cassation. The number of appeals involving a foreign party outside the CIS region was 83 and 17 of those appeals were accepted (24%).

Allowing the possibility to appeal against Rospatent's decisions to a competent independent body, the IP Court is no doubt a development for the better. Launching the IP Court and its web portal (<http://ipc.arbitr.ru/>) has also improved the transparency of official decision-making, as the decisions given by the IP Court can be easily accessed. The success rate in appeals seem to be similar for both domestic and foreign parties, which is a very encouraging sign for IP right owners, investors and importers from outside the CIS region. ■

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