



OUTCOME DOCUMENT¹

Recommendation of Participants of X International Forum “The Innovation Development through the Market of Intellectual Property”

Moscow city

April 20, 2018

The participants of the X Anniversary International Forum “The Innovation Development through the Market of Intellectual Property”, that was held within the framework of World Intellectual Property under aegis of the United Nations on April 20, 2018 in Moscow (Moscow Technological University (MIREA), representing WIPO, the SCO, the CIS, the EEC EAEU, Common State, public authorities, science and education institutions, business and public organization, mass media of all EAEU countries as well as Republic of Moldova and Republic of Bulgaria, including by way of videoconference on regional sites in the Russian regions (on the basis of the Siberian Federal University – SFU, Krasnoyarsk, Ural State Economic University – USEU, Ekaterinburg),

having discussed the experience and problems of transition to the innovative and digital economy through formation and development of the Eurasian intellectual property market, including the priorities of the antimonopoly regulation and protection from unfair competition, customs protection of intellectual property and fighting counterfeit within the framework of implementation of third stage (2016-2020) of the Strategy of economic development of the CIS, Strategy of the cooperation in forming up and development of the information society for the period till 2025 and Concept of the formation and development of the intellectual property market of the state members of the CIS (the Decision of the Council of CIS State Leaders as of October 28, 2016), as well as conditions and mechanisms of the commercialization, including crediting, capitalization of assets and taxation of intellectual property with a view to creation of a common financial market within the framework of the EAEU and the performing activities since January 1, 2025. under uniform rules in the service sectors (banking sector, insurance sector, services sector in the securities market);

noting, as positive changes over the past year, consideration and implementation at the intergovernmental and national levels of the recommendations of previous International Forums, including as part of the adjustment of innovative strategies, programs and policies at the national and corporate levels in the CIS countries and the EAEU in the field of intellectual property, the creation of the first in the post-Soviet space of the Interstate Technical Committee for Standardization of ITC-550 “Intellectual Property” and the expansion of the scope and responsibilities of a similar national technical committee in the Russian Federation, preparation and adoption of a package of interstate and national standards as “soft power” regulators in the conditions of protected legal contradictions in the CIS and EAEU countries;

taking into account the proclaimed priorities of Eurasian integration in accordance with the Main Directions of Industrial Cooperation based on the “Own Center of Power” and the main directions of the implementation of the digital agenda of the EAEU until 2025, where 30% of the markets of “future sectors” are allocated to the sector of information and communication technologies (ICT) in order to improve the level of coordination and interaction of all interested persons in the development of intellectual property market as a condition for ensuring digital leadership and competitiveness of EAEU countries in terms of economic and information wars and unfair competition from the USA and the EU countries;

¹ The Outcome Document has been discussed and adopted on the extended session of the Observatory and Scientific Council of RSRIIP with the participation of the members of the Scientific Council of the Moscow Technological University (MIREA) as well as on the plenary and sessional meeting of the X International Forum “The Innovation Development through the Market of Intellectual Property” within the framework of Intellectual Property Days under aegis of the United Nations, was taken as the basis by its participants on April 20, 2018, and following the public discussion finalized and sent to the international and interstate organizations (WIPO, WTO, UNESCO, SCO, CIS, EAEU, Common State) and national state authorities of the CIS and the EAEU.

welcoming the readiness of the Executive Committee of the CIS, EEC and national governments of Russia and other CIS and EAEU countries to use the recommendations of the Forum in preparation of the government decisions on the development of the intellectual property market; taking into account the discussion held unanimously take **the following decisions**:

I. To render public recognition to the leaders of international and interstate organizations (WIPO, SCO, CIS, EAEU, Common State), state authorities, national academies of sciences and organizations of Armenia, Belarus, Russia, Kazakhstan, Kyrgyzstan, and the Republic of Bulgaria for their greetings, attention and participation in the work of the Forum.

II. To held the XI International Forum “The Innovation Development through the Market of Intellectual Property” **on April 23, 2019** in Moscow, within the framework of the World Intellectual Property Days under aegis of the United Nations.

To invite the governing bodies of such international organizations as WIPO, SCO, CIS, EAEU, Common State, Eurasian Patent Organization, as well as national authorities, academies of sciences and specialized organizations of the EAEU and CIS countries, to member organizations of the Program Committee and Organizing Committee of the Forum to include in their work plan for 2019 the participation in preparation and holding of this event.

III. To recommend the Council of the Eurasian Economic Committee, as co-organizer of the Forum, in preparation of the decision of the Supreme Eurasian Economic Council “On the Main Directions of the International Activity of the Eurasian Economic Union for 2019”, in the framework of cooperation with the international business and expert community, to provide for direct interaction with the International Forum “The Innovation Development through the Intellectual Property Market” on topical issues of the development of Eurasian economic integration, including the formation and development of the Eurasian market of intellectual property.

IV. To adopt as a basis, the draft of the final document of the Forum. To entrust the Forum Directorate to post this document on the Forum's website, the Forum's Program and Organizing Committees - to finalize and adopt it taking into account the comments and proposals received on the results of its public discussion in April 2018, to inform WIPO and WTO, UNESCO and the European Commission of the EU, the SCO, the CIS Executive Committee, the Eurasian Commission of the EAEU and the Permanent Committee of the Common State, national parliaments and governments of the EAEU member states on the results of the Forum's work, its conclusions and **adopted the following recommendations**:

1. Eurasian intellectual property market and competitiveness in digital economy

In the conditions of the growing crisis of further globalization of political, economic and social relations in the world, the strengthening of the regionalization of such alliances, including the integration processes in the Eurasian direction (SCO, BRICS, the Eurasian Economic Union, created in 2015 on the basis of experience of international regional integration and accumulated cooperation potential within the CIS for 25 years).

With a world average R&D expenditure of 2.9% of GDP, R&D expenditures are: 0.64% of GDP in the Republic of Belarus, 1% of GDP in the Republic of Kazakhstan, and 1.16% of GDP in the Russian Federation. According to the Plan of Measures for the Establishment, Maintenance and Development of Integrated information system of the EAEU for 2017 - 2018 (Regulation of the Board of the EEC No. 8 as of January 24, 2017) with a financing volume of about 2 billion rubles, *intellectual property is included in the List of Priorities for the Implementation of General Processes within the framework of the EAEU.*

In order to successfully develop economic relations at the regional and national levels, incl. within the framework of innovative cooperation and safe development, it is necessary to take into account the established patterns, including:

- a significant increase (with the transition of development to the sixth technological mode and the digital economy) of the role and significance of intellectual property as a measure of the economic value of this intellectual creativity;

- the conditionality of further innovative development by the presence of a civilized market of intellectual property;

- the structure of world trade is changing in favor of the growth of the share of the “fourth basket” - the intellectual property market (currently more than 15% of GDP) in the restructuring of this sector of market relations, which in the conditions of the ongoing global crisis of the patent

system and the increase in the share of non-patent sales (in more than 80 percent) predetermines the need to change state policy in this area. The patent-for-patent policy, in conditions where the share of commercialization of intellectual property protected by patents is still negligibly small and amounts to 0.4% - 2% in the EAEU and CIS countries, every second patent with a validity of 20 years terminates a few years after its issuance, leads to a scientific and technical loss, economic losses and the preservation of import dependence.

Based on the analysis of legislation and law enforcement practice in the sphere of production, turnover and protection of intellectual property in the Russian Federation and other EAEU and CIS countries in 2015-2017, in the transition to the digital economy, **new challenges** have been identified:

- there is a direct interdependence between the growth of unfair competition and the lack of intellectual property market in the EAEU and CIS countries. In the transition to the digital economy, the share of added value from the intellectual property turnover in the pricing of manufactured goods, works / services and finance will only increase, which in turn will increase competition in this area, including unfair one;

- in the technical orders for the performance of works on the creation and modernization of state and corporate information systems, the computer programs contained in the Fund of Algorithms and Programs of IIS Foreign and Mutual Trade of the Customs Union and National Funds of Algorithms and Programs for Electronic Computers are still poorly used; however foreign software is actively used. When using foreign software for the development of domestic computer programs, based on the results of the examination of a portion of open licenses for computer programs located on the websites of copyright holders of software products, of so called free distribution and used free of charge by the contractor, significant risks were identified, including:

- an obligation to notify the relevant foreign right holders and the Free Software Foundation (in Boston) about the use of this software product and indicate in the relevant derivative software products the names of the authors and rights holders of the source programs that are used in this case;

- an obligation under the terms of an open license to provide, on a free-of-charge basis, a developed derivative program product to anyone who wants to purchase and use computer programs.

Comparative legal analysis of non-gratuitous license contracts (according to the sample) allows also to assert about their non-compliance with the requirements of international law and national legislation in terms of the form and content of such licensing agreements:

- granting of non-exclusive rights form the subject matter of the agreement, although according to international law there are personal non-property rights that are inalienable and exclusive (property) rights that are subject to valuation, turnover, sale and subject matter of the relevant contracts;

- parties to agreements with whom such contracts are concluded on behalf of foreign corporations (Microsoft, Oracle, etc.), are claimed to be the so-called official partners of these companies, being distributors for the provision of relevant services and distribution of the software product. At the same time, copies of license agreements between the corporation - right holder and its official partner, on the basis of which sub-license agreements should be concluded, are absent, and the status of the partner and the status of the licensee with the right to conclude sub-licenses do not always coincide;

- in the subject matter of the agreements, as a rule, no method of software use is identified, whereas, unlike the proprietary right, where everything that is not prohibited by law is permitted, in the right of intellectual property the absence of a prohibition does not mean the existence of consent. Consent must be expressed directly in a designated way in writing in the form of an agreement, otherwise there is again the risk of recognizing this product as counterfeit.

Considering that in the groups of innovative information and communication technologies products and services (more than 100), the main product of the “future industry” developments in the EAEU countries are computer programs, as part of the development in 2017 and the subsequent implementation of the concept of creating conditions for the digital transformation of industry and formation of a single digital industrial space of the Union, it is necessary to provide for priority measures to ensure information and economic security in this area.

Ratings and indicators. A significant risk that can negatively affect the implementation of most interstate programs and national state programs of innovative development in the CIS and the EAEU

is the lack of economic indicators for assessing the effectiveness of scientific research, since with increasing internal costs for research and development, the main indicator of their effectiveness is the information indicators of the so-called “knowledge economy”, including the number of publications by which we free of charge inform the world of the results of these studies.

In the XXI century, in all CIS and EAEU countries, there was a widespread substitution of scientific metrics for the evaluation of scientific organizations and the effectiveness of scientific research in bibliometric indicators, where the main publications are, including. In publications included in the world's databases (first - Web of Science and Scopus); quotation, including Hirsch index; the ratings of journals where the works are published, including the impact factor of the magazine, etc. These bibliometric indicators by the decisions of the Higher Attestation Commission of the Ministry of Education and Science of Russia are currently also applied to candidates for dissertational councils and for the evaluation of the activities of scientific organizations and members of the dissertational councils, and as of January 1, 2019 these requirements will be imposed to applicants for academic degrees in scientific specialties on the publication of at least 3 articles for applicants for the degree of Doctor of Science, and at least one article for applicants for the scientific degree of Candidate of Science in scientific publications included in the Web of Science, Scopus. At the same time, abroad (for example, in Great Britain), the main method of assessing the effectiveness is the expertise by the involved specialists, and bibliometric data is allowed to be used only as an aid in certain disciplines, but it is prohibited to use in 25 disciplines (mathematics, mechanics, engineering sciences and all humanities). At the same time, for all disciplines there it is forbidden to use any ratings of journals where the works are published, and first of all the impact factor of the journal.

Since the creation of the Eurasian Economic Union in January 1, 2015, this focus on free export of domestic developments in the form of “information raw materials” for the US and EU countries has been preserved. As a result, declaring the strategy of innovative development, in fact we are building an “original” economy based on the export of raw materials (information) and the import of technologies based often on our knowledge. So, Russia and other EAEU countries finance innovative development of foreign countries from the taxpayer's pocket, often to the detriment of their own national interests.

The consequences of applying the indicators of the “knowledge economy”. The main negative consequences of using as the main targets indicators of information openness (the number of publications and their citations, the number of patent applications and patents) for assessing the effectiveness of scientific activities in Russia and other CIS and EAEU countries, include the following:

- ***failure to achieve the key goals of innovative development and ensure the competitiveness*** of domestic developments and the innovative products created on their basis, national right holders and producers. Realization of innovative development tasks in accordance with these indicators fixes the policy of increasing import dependence in all basic sectors of the economy, imitating activity by the number of publications, applications for obtaining a patent and the patents themselves, without taking into account the level of commercialization of exclusive rights to these technical solutions in the innovation process;

- maintenance of the old structure of R&D spending with small business participation (with an increase in spending on R&D in Russia by 20 times (from 43 billion to 850 billion rubles - 8 place in the world), the share of R&D budgeting grew from 70 to 85%), while enterprises were and continue to be the main customer of R&D abroad (US - 69%, EU - 64%, China - 62%).

- ***high corruption in the sphere of public procurement for R&D***, both in the distribution of budgetary funds by state customers and state corporations, and in external transactions in the implementation of state investments in the modernization of domestic production. According to the parliamentary hearings, more than 40% of the budget allocated to R&D does not reach science, remaining with those who distribute them – “kickback”. The rest of the funds are distributed often among affiliated pseudoscientific organizations, whose reports on the results of such works are of little interest to science and business. Scientific reports obtained as a result R&D often have a low level of economic and scientific significance and high corruption potential that minimize the achievements of the real sector of the national economy and science. This predetermines the highest

level of corruption in this area (in fact, billions of dollars can be absorbed with impunity) and little business interest in co-financing of such works and using of the results obtained;

- a **“leaky” accounting policy regarding the results of R&D** created with budget financing, which leads to an increase in “grey” and “black” turnover and export of such intellectual property and rights to it. So, for example, in the single federal database of R&D projects conducted in the Russian Federation from 1982 to January 1, 2018, more than 1.3 million research and development projects have been registered, 186,000 of them were conducted during the period 2011-2017 and only 42,911 results were registered based on R&D results, thus, one obtained result of intellectual activity (potential intellectual property object) accounts for an average of 4.5 R&D projects. At the same time, the problem of accounting for intellectual property objects, where the rights belong to the state, is of particular relevance. Herewith in the Russian Federation, having six major systems of state R&D projects and its’ results (Treasury, Rospatent, Ministry of Education, Ministry of Communications, Ministry of Culture, Federal Property Management Agency) and financing from the budget over 85% of R&D projects there is no unified state accounting system for intellectual property objects, which creates the prerequisites for numerous abuses;

- **monopolization of activities aimed at assessment of the effectiveness of Russian science** (based on publications and its’ citations) in private campaigns, including in those located abroad, and the creation of a special business sector on this basis, often based on unfair competition.

Proceeding from the strategy of ensuring the world level of research and development by 2020 and global competitiveness according to national scientific and technological priorities, as well as national Strategies for the development of competition and antimonopoly regulation in the EAEU countries, a transition in the system of assessments and indicative indicators is urgently needed, including at the supranational, national, strategic, program, regional and corporate levels from information indicators (publications and patents through which we inform the whole world about our achievements free of charge), to the indicators of the economy of intellectual property. In accordance with GOST R 56825-2015, *publication activity can be attributed to the criteria and indicators for assessing the effectiveness of the scientific organization only under the condition of preliminary examination of the results of scientific research on the criterion of economic feasibility and information security, their legal protection as objects of intellectual property. At the same time, budgeting these processes in the interests of foreign campaigns, like BIG DATA rights holders, must be decisively stopped, and not encouraged.*

To increase the global competitiveness of national economies within the framework of the Eurasian Economic Union, to realize the priorities of economic development based on the effective interaction of national innovation systems in the integrated innovation space, the Intellectual Property Development Strategy and the special program for formation and development of the intellectual property market of the Eurasian Economic Union are needed as an integral part of the world intellectual property market and necessary basic conditions for technological modernization of the domestic industry.

2. Pricing, taxation and accounting of intellectual property in an innovative campaign

According to the global competitiveness rating of 137 countries for 2017-2018 (111 indicators in 12 groups) from the CIS countries Azerbaijan has 35th place, Russia – 38th, Kazakhstan – 57th, Armenia – 73rd, Tajikistan – 79th, Ukraine - 81, Moldova – 89th, Kyrgyz – 102nd. In many of these indicators the competitiveness of companies, the number of local suppliers, the level of development of clusters, the nature of the competitive advantage, the depth of the value chain, the competitiveness of the production process, the willingness to delegate authority) is an important component of intellectual property.

At the same time, the current toolkit for forming pricing taking into account the value of intellectual property has obvious shortcomings:

- the lack of the practice of isolating in the structure of the remuneration in an agreement for R&D of costs for carrying out patent search (including the investigation of patent purity), the inventorying of the results of intellectual activity and their legal protection;

- use of the actual cost method for the formation of value and the reflection of the cost of “prior” intellectual property received under free of charge license agreements;

- incompleteness of sources of pricing formation;

- the need for subsequent annual revaluation with a single use of the revaluation mechanism of the asset;

- lack of harmonization with existing valuation standards, including international ones.

At the same time, the structure of sales of intellectual property in the world in the 21st century has radically changed (over 80 percent of non-patent sales), which implies a significant adjustment of policies when choosing the method of legal protection (in favor of know-how, copyright and related rights) and subsequent commercialization of rights to them. When carrying out the project inventory, it is recommended to determine the way of legal protection of an intellectual property object, based on three main options for its' possible use:

1) *in own production* (objects of copyright - works of science, personal computer programs, databases, objects of related rights and secrets of production (know-how) with mandatory patent search before the conduct of R&D);

2) *within the national territory* (in addition to the first option - in the Russian Federation - a single technology);

3) *abroad* (in addition to the first option - patenting in the countries of the intended use of an IP object, which should be accompanied by the construction of a "patent landscape").

This will lead to a decrease in the formal indicators of patent offices, but will ensure the most effective legal protection of technology and the economic effectiveness of their use in the interests of national technological competitiveness.

Terms and model of the turnover of intellectual property should ensure the motivation of all participants of the innovation process (from the author - the owner of the right - to the customer - the investor) in the perfecting of the created technologies for the production and sale of competitive products. The use of prior intellectual property at all stages of the innovation process from R & D to R&D should be accompanied by the conclusion of a licensing agreement with the right holder (on a non-gratuitous basis - if an IP object is created from extra budgetary funds), which will enable intellectual property to be included in the pricing of the final product.

To recommend to supervisory bodies (antitrust and patent authorities, prosecutor's offices, financial supervision) and state customers when concluding a license contract for the use of prior intellectual property in the framework of state contracts for R&D with enterprises and organizations to pay attention to possible abuses (problems):

- correlation of documentation and IP object in the subject matter of an agreement and non-compliance with a number of essential conditions of the license agreement (the list of IP objects, their titles, authors, the beginning and term of legal protection, territory, methods and period of use);

- unreasonable expansion of the subject matter of a license agreement (inclusion in the subject matter of a license agreement of the issues of creation of new IP objects and securing rights to them, although this is the subject matter of a state agreement);

- the absence of isolation in the structure of the remuneration in an agreement for R&D of costs for conducting patent search, inventorying the results of intellectual activity and their legal protection;

- the fact that a license to use IP objects, where the rights belong to the state, is fee-based, for the execution of a state agreement for public needs, which leads to an increase in the cost of the final product and a decrease in its competitiveness (although gratuitousness is possible);

- gratuitous use of IP objects created without budgetary funds, where the rights belong to contractors and third parties, for the purpose of execution of a state contract, which reduces their innovative motivation for further improvement of the technology created.

At the same time, it is important to use not only the competitive advantages of the national economy of each state, but also the accumulated economic potential in the implementation of innovative programs and projects of the Common State, the EAEU and the CIS, which involves consideration of this issue at the level of the highest bodies of these interstate associations with a view to defining mechanisms for accounting and evaluation of rights to intellectual property objects, created at the expense of the budgets of these interstate entities at the national level and the organization of such interaction related to the disposal of exclusive rights to the obtained results of intellectual activity, including within the framework of the joint policy of import substitution.

3. Management of intellectual property in a credit institution and insurance of intellectual property risks in investment projects

In order to create a common financial market within the framework of the EAEU and starting from January 1, 2025, to perform activities under uniform rules in the service sectors (banking sector, insurance sector, securities services sector) and non-discriminatory access to the financial markets of the member states of the EAEU to confirm the relevance of the conclusions and recommendations of the participants of the IX International Forum “The Innovation Development through the Market of Intellectual Property” parliaments, governments and central banks of the EAEU countries to provide for in 2018:

- while developing the Concept and the program of the formation of the common financial market of the EAEU, special sections on the definition of the goals, principles and tasks of creating intellectual property management mechanisms in the banking sector, insurance sector and securities services sector until 2020;

- taking measures to harmonize the legislation with regard to general approaches to legal regulation in the field of intellectual property risk management, including the risks of the digital economy, the banking sector, the insurance sector and the services sector in the securities market in accordance with international standards (the fundamental principles of effective banking supervision of the Basel Committee on Banking Supervision, the fundamental principles of insurance supervision of the International Association of Insurance Supervisors, the principles of the International Organization of Securities Commissions, OECD standards and international standards of the Financial Action Task Force on Money Laundering (FATF);

- active participation in the discussion of the first drafts of national standards in the field of insurance of intellectual property risks, management of intellectual property in a credit institution, including the ones in the CIS and the EAEU, including when attracting investments in innovative projects on the security of intellectual property and on the stock market, with a view to the subsequent adoption of interstate standards for the CIS and Eurasian standards for the EAEU on their basis as mechanisms for “soft regulation”;

- consider expanding the functions of the Eurasian Development Bank (EDB) as an investment and innovation bank to provide for major pilot projects for lending intellectual property on bail in the EAEU countries.

4. Protection of intellectual property against unfair competition and antimonopoly regulation

Ensuring a balance between the interests of right holders of exclusive rights and public and private interests protected by the antimonopoly legislation is one of the real problems of the formation and development of modern competition law today. In the Russian Federation, within the framework of the National Plan for Developing Competition from 2018, in the legal science there has been introduced a new scientific specialty – “competition law”.

In the last decade, there has been a persistent contradiction between the patent monopoly on the results of intellectual activity and the opportunities for developing competition in the markets for goods, works and services using such objects of patent law. In conditions where not more than 1-2 percent of intellectual property protected by patents is sold annually in all EAEU and CIS countries, domestic patent owners stop paying patent fees and patents cease to exist after three years. As a result, the results of intellectual activity, often obtained with budgetary financing, with a possible term of legal protection of 20 years, go to free use in 2-3 years from the date of grant of a patent. This is often used by foreign companies, including TNCs, which, with minor improvements, are again patenting these technical solution in their names. Over the past 10 years, the entire increase in the grant of patents (in the Russian Federation - 5%) is provided only by foreigners. Every second patent owner in Russia today is a foreign entity, and this share is even higher for certain industries and technologies, up to 90%. At the same time, joint ventures are not created, license agreements with domestic manufacturers are not concluded, compulsory licenses are not issued, which leads to the ousting of domestic companies from national markets in favor of the interests of international and foreign TNCs. Such actions, when the legal monopoly of the right holder leads to an actual monopoly

on commodity markets, meet the criteria for unfair competition and imply the implementation of patent reform, including for the purposes of antimonopoly regulation, which is especially important in the interests of protecting public health and public safety.

Taking into account the experience of the Russian Federation in developing the competition policy and the role of the antimonopoly authorities in resolving socio-economic issues, in order to improve antimonopoly regulation and improve its effectiveness in protection of intellectual property, *to recommend the Eurasian Economic Commission (EEC), the CIS Executive Committee, the national parliaments and the governments of the member states, members of the EAEU in 2018-2019:*

- to extend antimonopoly regulation to the sphere of intellectual property connected with abuse and threat of exclusive use of the results of intellectual activity when introducing such goods (work, services) into turnover and turnover of intellectual property, which is especially important for the prevention of abuses on the part of customers when using the prior intellectual property at the subsequent stages of work within the organization of the innovation process, where the main object of the turnover at different stages of R&D-Design and Development work-TR-production can only be exclusive rights to IP objects created/used within this R&D;

- to consider in the EEC, the EAEU and the CIS countries the FAS Russia initiative to develop new approaches to the antimonopoly settlement with regard to the activities of digital aggregators in the framework of the adoption and implementation of the “fifth antimonopoly package”;

- following results of public discussion to support the draft of GOST R “Intellectual property. Antimonopoly regulation and protection against unfair competition”, prepared in the RSRIIP on the initiative of the FAS Russia, recommend that developers take into account comments and suggestions made during its preparation and adoption in accordance with the established procedure in 2018;

- taking into account the accumulated positive experience of standardization in the field of intellectual property within the framework of the national technical committee TC481, its cooperation with TC124 “Means and methods of fighting forgery and counterfeit”, TC323 “Aviation equipment”, TC66 “Evaluation of experience and business reputation of the enterprise” And the establishment of the ITC550 for the member states of the EAEU and the CIS, to recommend to the EEC and the CIS Interstate Councils on legal protection of intellectual property, antimonopoly policy, on standardization, metrology and certification, to support the practice of developing and implementing the fundamental standards in this field, the preparation and adoption of interstate documents on their basis, taking into account their importance for the settlement of similar issues in other countries of the EAEU and the CIS.

Parallel import. The globalization of world trade, the introduction of economic sanctions have actualized the legal problem of the exhaustion of rights to a trademark, which is a legal restriction of a legal monopoly on the use of the exclusive right to a trademark. Parallel import, which means importation of original goods marked with a trademark from abroad to the EAEU countries without tight holder’s permission, generates a conflict of interests between importers and right holders that claim absolute authority over the control of parallel import. In accordance with the Agreement on the EAEU (Appendix No. 26) and with the adoption and entry into force from January 1, 2018, of the new Customs Code, the regional principle of exhaustion of rights operates in the EAEU, whereas in the Russian Federation the legislation provides for the national principle of the exhaustion of rights (Article 1487 of the Civil Code of the Russian Federation), implying a ban on the import of goods with trademarks placed on them without the permission of the right holders. In these circumstances, the foreign right holder may use the exclusive right to a trademark in an unfair way and restrict the importation of specific goods to the domestic Eurasian market or implement the price policy consisting in inflating prices in this market. At the same time, the Agreement on Trademarks, Service Marks and Protected Designation of Origin of the EAEU and the Agreement on the Uniform Management of Copyright and Related Rights on a Collective Basis are of particular importance.

In order to ensure the uniformity of approaches to resolving conflicts of private and public interests in antimonopoly regulation and protection from unfair competition, taking into account the explanations of the Constitutional Court of the Russian Federation (Resolution No. 8-P as of February 13, 2018), *to recommend the Eurasian Economic Commission and the EAEU Court, as well as antimonopoly, customs, patent and judicial bodies of the EAEU countries:*

- in cases of unfair behavior of foreign rights holders, including creation of a threat of monopoly on commodity markets of the EAEU countries, to use antimonopoly regulation mechanisms and civil

legal institutions to counteract abuse of law in public interest consisting in the protection of competition, including state support for national producers;

- when deciding on the amount of responsibility of the importer, use a differentiated approach and take into account the actual circumstances of the case, depending on the nature of the violation of the right holder's right;

- exclude cases of applying the same civil liability to the importer importing the original products without the consent of the right holder, and to the importer importing counterfeit products (unless the losses from the import of such goods are comparable to the losses from the importation of counterfeit products);

- to destroy goods imported into the territory of the EAEU countries by way of parallel import only if they are of inadequate quality or for the purpose of ensuring safety, protecting life and health of people, nature and cultural values.

5. Customs protection of intellectual property and counteraction to counterfeiting in the EAEU

Illegal trafficking of counterfeit industrial products is an acute problem affecting the interests of the whole society and hampering the development of both individual sectors of national economies in the countries of the EAEU and the CIS and of industry as a whole. The high share of illegal products in the total turnover of industrial products adversely affects its quality, leads to tangible losses of budgetary systems in the form of under-received customs and tax payments and reduces the investment attractiveness of national economies. This problem is especially acute for food, consumer goods, pharmaceutical, fuel, automotive, chemical, machinery and children's goods industry.

The current situation is caused by the insufficient effectiveness of state control (supervision) and municipal control, the functioning of the judicial system, the high corruption risks and low incomes of the bulk of the population and, as a result, the low level of purchasing power and the underdevelopment of public control. The plurality of state regulatory agencies and authorities for supervision of compliance with the legislation in the sphere of production and turnover of goods, including in the border areas (for example, in the Russian Federation - more than 20 state bodies) demanded the creation of state commissions in the countries of the EAEU to counter the illegal circulation of industrial products (Russia, Armenia, the Republic of Belarus and the Republic of Kazakhstan). On May 26, 2017 at a meeting of the Council CIS State Leaders in Kazan signed an agreement on cooperation in the field of counteracting the production and distribution of counterfeit products.

At the same time, the results of the analysis of practice developed in 2010-2017 in the countries of the Customs Union of the EAEU shows that none of the tasks of customs protection of intellectual property has been effectively solved. In the conditions of the unified customs territory and the single economic space of the EAEU, the availability of national registries in each state with different approaches and procedures for their management and the actual absence of a single register creates prerequisites for growth in the turnover of counterfeit products and smuggling across a single customs border within the framework of the EAEU.

With a view to improving the mechanisms for identifying and prosecuting the infringers and implementing systemic measures to reduce the volume of illegal trade in counterfeit industrial products as a matter of priority, *to recommend to the Eurasian Economic Commission:*

- to accelerate the work on the introduction of marking systems for industrial products with control (identification) marks in all EAEU member states;

- to support the proposals initiated by the Russian Federation to amend the technical regulations of the Customs Union with regard to the elimination of conditions conducive to the implementation of illegal trafficking of industrial products, including the production and distribution of counterfeit products;

- to continue harmonization of the risk management system in the field of intellectual property and ensure its uniform application within the framework of customs control in the territory of the EAEU;

- regularly monitor and assess the situation in the EAEU countries and post its results on the official site of the EEC EAEU.

Following public discussion to support the draft of GOST "Intellectual property. Customs Protection" prepared in the RSRIIP in accordance with the Program of Interstate Standardization for

2018, to recommend to the authors to take into account the comments and suggestions made during its preparation and adoption under the established procedure of the CIS Interstate Councils for Standardization, Metrology and Certification with the participation of the Council of Heads of Customs Services of the CIS Member States in 2018.

To confirm the relevance of the conclusion of the International Association of Intellectual Property Institutions (IAIPI) that in order to prevent unfair competition under the guise of combating counterfeiting and the formation of a new, more rational international economic order, a unified transparent and generally accepted methodology and methods for measuring the level of counterfeiting in different countries is needed.

Objectivity of understanding of counterfeit and unfair competition in all its manifestations can be based only on a clear normative classification of offenses and the definition of their exhaustive comparable national lists (civil torts, disciplinary offenses, administrative violations and crimes) and unified statistical records regarding the illegal use of intellectual property in the turnover of goods, works, services, finance, as well as in the circulation of exclusive rights to results of intellectual activity, received during / used in the R&D, including within international cooperation. For an objective assessment of the situation with counterfeit in the Eurasian market, it is still necessary to harmonize the legislation on these issues and have a unified system of indicators reflecting the level of legal and illegal commercial turnover of goods and the use of intellectual property.

To recommend to the Economic Council of the CIS and the CIS Executive Committee, the Board of the Eurasian Economic Commission of the EAEU:

- to prepare a “road map” for the harmonization of the legislation of the EAEU and CIS member states in the field of protection of intellectual property against unfair competition and combatting counterfeit;

- when planning budget expenditures for 2018 to provide for the costs on research on the preparation of national and interstate standards for determining the level of counterfeiting in the Russian Federation and the EAEU countries, containing principles, basic criteria and indicators, institutions and mechanisms for measuring the level of counterfeiting by types of goods, works, services within the framework of the unified economic space of the EAEC; rating structure and monitoring bodies for measuring the level of counterfeiting as a powerful lever for suppression of unfair competition and ensuring priority development of national, Eurasian and regional intellectual property markets.

- consider this initiative for its implementation in 2018 -2019;

- conduct public discussion and public examination of the drafts of these documents within the framework of the next International Forum “Anti-Counterfeit”.

6. Management and Personnel for the Intellectual Property Market

The solution of many identified problems is related to the need to improve the management system in the field of intellectual property in the interests of innovative economic development.

Increasing the role and importance of state regulation in the development of the intellectual property market, in contrast to other trade sectors, implies further centralization and specialization in public administration of these processes at all levels (creation of unified interstate and state bodies with the combination of the functions of administering copyright, related, patent and other intellectual rights in relation to all major categories of intellectual property objects). Although this conclusion and recommendations for its implementation are annually contained in the final documents of the International Forum, and the public declaration of the goals and objectives of the Federal Service for Intellectual Property (Rospatent) for 2016-2018 provided for the formation of a “single regulator” in the field of intellectual property for the development of civil turnover of rights to the results of intellectual activity, Russia is still the only country in the world where the functions of state administration and regulation in the sphere of intellectual property are spread among more than 20 federal agencies, which significantly reduces the opportunities for the formation of a single market for intellectual property and the provision of competitive advantages when implementing the Strategy for Innovative Development until 2020.

Based on the analysis of regulatory documents on the authorities of EEC ministers (members of the panel), EEC departments and EEC advisory committees, it can be concluded that the established system for elaboration, adoption and implementation of decisions within the EEC, taking into account the status of the Chairman of the EEC Board and “relative independence” of the members of

this board, also contains the dangers of a narrow-sector approach to solving complex problems and requires improvement.

Most enterprises and organizations in the EAEU and CIS countries still lack a unified system for managing the life cycle of intellectual property from the selection of IP objects and their expertise to assessing, insurance and commercialization of exclusive rights to IP objects within the framework of the use of prior intellectual property at all stages of the innovation process and ensuring balance of interests and motivation of its participants.

Overcoming the formalism and increasing the role of boards of directors of companies and their effectiveness in resolving the problems of commercialization of intellectual property presupposes both decisions of the shareholders' meeting and the existence of appropriate regulations at the regulatory legal level, including such measures as:

- adjustment of strategies and programs for long-term and innovative development of companies, taking into account both national and inter-state sectoral strategies and programs, and regional documents in this sphere (strategy committee);

- creation of a system for identifying, assessing and managing intellectual property risks, including those within the framework of innovative, investment and budgetary policies (risk management committee, audit committee);

- change of key performance indicators (KPI) of the board of directors and management of campaigns (remuneration committee, nomination committee);

- empowerment to determine the policy of intellectual property management of an independent director and the creation of an ad hoc committee in the structure of the board of directors (the committee for the management of intellectual property).

In order to solve these tasks in the coming years for EAEU and CIS countries:

- to confirm the recommendations of the participants of the IX International Forum “The Innovation Development through the Market of Intellectual Property” regarding the monitoring of information on the work of national universities in this field, the creation of basic network special departments; formation and implementation of state orders in the field of scientific research in the preparation and defense of dissertations for the academic degree of a doctor and candidate of science, the work of graduate and doctoral studies with budgetary financing; dissemination of this experience through intergovernmental bodies, including the EEC EAEU, and specialized scientific journals, including “Intellectual Property Law”;

- to envisage the formation of state and corporate orders for training / retraining of personnel in the sphere of intellectual property in the framework of Eurasian, national, sectoral and regional strategies and programs for the development of the intellectual property market, as well as within the framework of the annual national programs for the upgrading of qualifications and retraining of civil servants and the judiciary and retraining and advanced training of teachers of intellectual property in universities of the EAEU countries.

The implementation of the stated strategic goals of the Russian Federation and other EAEU and CIS countries to become world leaders in selected sectors of the digital economy (production and turnover of goods, works / services and finance using digital technologies) presupposes a willingness to compete for such markets as sellers of intellectual property, rather than buyers as in the present capacity.