

INTELLECTUAL PROPERTY AND EURASIAN FINANCIAL MARKET



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Unfortunately today in public and corporate policy issues of intellectual property commercialization are often replaced by the issues of legal protection of the results of intellectual activity and its accounting.

VLADIMIR LOPATIN

Academic advisor in The Republican Scientific Research Institute of Intellectual Property (RSRIIP), General director of Intellectual property corporation RSRIP, Chairman of interstate (MTK-550) and national technical committee on standardization «Intellectual Property» (TK-481), Doctor of Laws, Professor, honored scientist of Russia, expert of RAS

FUTURE EURASIAN INTEGRATION IMPLIES SINGLE FINANCIAL MARKET PENDING IN 2025 ACCORDING TO THE DECISIONS OF EURASIAN ECONOMIC COMMISSION (#146 DD. 27.09.2016) AND THE SUPREME EURASIAN ECONOMIC COUNCIL. WHAT DO WE HAVE TO DO TO SEE EAEU CREDIT, INSURANCE AND FOREX MARKETS IN 7 YEARS IN LINE WITH MARKETS OF GOODS, SERVICES AND LABOR? AND WHAT IS THE ROLE OF INTELLECTUAL PROPERTY (IP) HERE CONSIDERING GLOBAL RULES AND SPECIAL FEATURES OF CIS AND EAEU COUNTRIES WITHIN THE DECLARED DIGITAL AGENDA?

Global trade rules

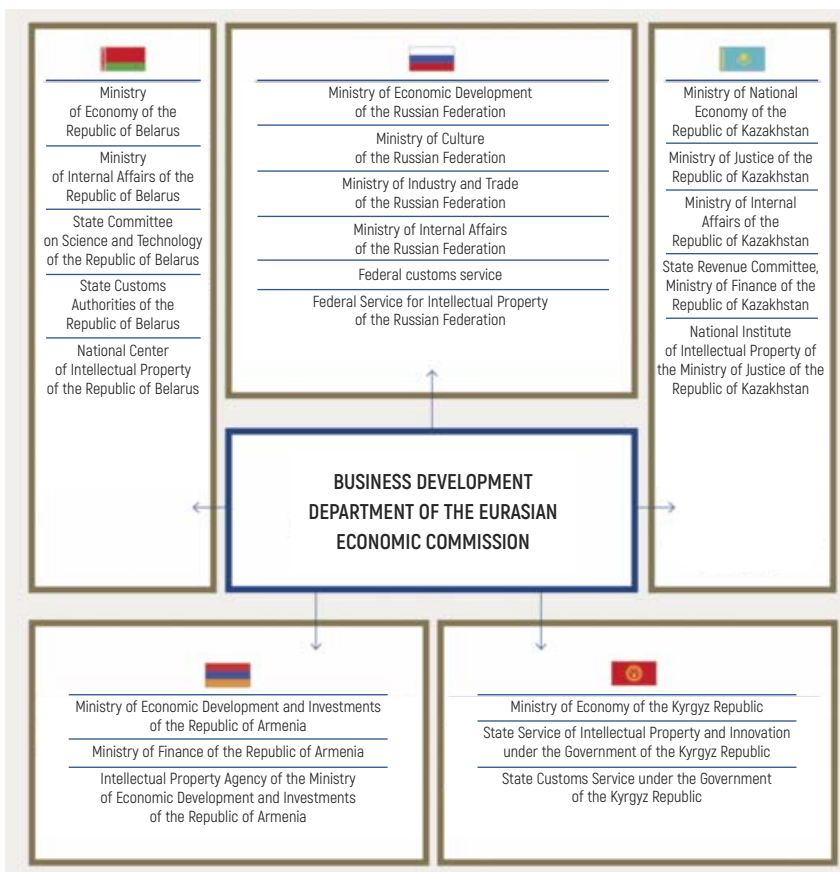
In order to develop successful economic regional and national relations, including innovative cooperation, it's necessary to take into account the global trade rules.

First, with IP market (fourth basket) being restructured, its role in the world trade in the 21st century is growing (from 4 to 15% of GDP). The world crisis of patent system is still on, and the share of unpatented sales has grown by several times (today it's more than 80%), which doesn't need a patent or mandatory public registration of deals. The share of commercialization of intellectual property secured by patents in EAEU and CIS is near zero and accounts for only 0.4 to 2%, besides every second patent valid for 20 years terminates after several years of its issue. In 25 years only 1.2 million patents were issued in the EAEU, only 350 000 of them are valid, and only 1-2 percent are sold per year. It evidences the ongoing crisis in the patent policy (a patent for the sake of a patent). The efficiency of the economic leverages of IP sales in Russia and other EAEU countries is far from great. According to the President of the Russian Federation «the added value contribution of IP turnover to Russia's GDP is less than 1 percent. It's not just little, it's very little. In the USA it accounts for 12 percent, in Germany – for 7-8 percent, in the neighboring Finland – for 20 percent».

The most important thing here is profitability analysis of RIA (results of intellectual property) where the rights belong to the government. With six main public accounting systems for R&D and their results (Treasury, Russian Federal Agency for Intellectual Property, Ministry of Education and Science, Ministry of Communication and Mass Media, Ministry of Culture, Federal Agency for

State Property Management) and with 85 percent of public financing of the common accounting system, the state has no rights for RIA. It gives background for corruption. «Leaky» accounting policy provokes corruption, «grey» IP turnover and industrial spying in favor of private companies and foreign states.

During a project inventory the Republican Scientific Research Institute



Interaction of the Business Development Department with the authorities of member-states
Source: «Intellectual property within Eurasian integration» – www.eecommission.org



XXth meeting of Business-Dialogue headed by EEC Minister V. Nikishina, September 20, 2018

of Intellectual Property (RSRIIP) recommends to define the type of legal protection of RIA with regard to three main variants of its use:

1) for domestic production (copyright items — works of science, IBM PC, data bases; objects of related rights and know-how with obligatory patent search before R&D);

2) within national territory (in addition to the first variant — in Russia — common technology);

3) abroad (in addition to the first variant — patenting in the countries of anticipated use of RIA, accompanied by a «patent landscaping»).

These measures will lead to lower official figures of patent bodies, but will ensure better effectiveness of legal protection for technologies and profitability of their use in favor of national technical competitiveness.

Second, obviously there can be no innovations without intellectual property, they are interrelated and interdependent. According to WIPO Instruction on IP strategy work-out in emerging economies «IP strategy should be installed in the general development and be connected with current policy of economic, scientific and cultural development». Suc-

cessful examples in foreign countries confirm the idea.

National strategies of innovative development and intellectual property in CIS and EAEU countries often ignore the abovementioned rules and conditions for a civilized IP market. In Russia these issues were initiated by RSRIIP and such strategy was prepared (on a common base) in 2006. However a long-term strategy for IP development still hasn't been approved. Many strategies and programs of innovative development at national, sectoral, regional and corporate levels (more than 200) don't include provisions on IP market.

Third, the effective public control of management in these processes has been a necessary and obligatory condition for a successful IP market since 1967 (WIPO establishment).

In EAEU and CIS countries this rule was reflected in the creation of single inter-state and governmental bodies having centralized the management functions for copyrights, related rights, patent rights and other intellectual rights with regard to all main IP objects (except Russia where functions of governance and control in IP are still dissimilated

among more than twenty federal agencies).

Forth, unfair competitiveness and lack of IP market in EAEU and CIS are directly interrelated and interdependent. With digital economy, the share of added value in the turnover of IP will rise in the pricing of goods, services and finance, as well as the level of unfair competitiveness in this industry.

In the last decade there has been a strong contradiction between patent monopoly on RIA and the opportunities to develop competitiveness on the markets of goods, works and services with the use of such IP objects. In the last 10 years the growth of patent issuance (in Russia — 5%) is provided only by foreigners. Today in Russia every second holder of patent is a foreigner; in some industries the number is even higher — up to 90%. At the same time joint ventures are not created, licensed agreements are not executed with domestic producers, compulsory licenses are not issued. All this leads to shake-out of domestic companies in favor of international and foreign corporations.

When legal monopoly of copyright holder results in actual monopoly on commodity markets, it means

unfair competitiveness and demands a patent reform, in particular for antimonopoly regulations.

Fifth, with conflict of laws remaining on national level (in EAEU countries as well) and its growth considering rule-making by EEC and EAEU supra-national bodies, the role and importance of standardization increases — as a «soft power» regulator with possibility to use later the rule of «regulatory reference» when a voluntary standard becomes a compulsive one.

Today in Russia there are 10 national standards in this sphere. For the development of the financial market with intellectual property the most important are national standards implied in the Program on national and interstate standardization in 2018–2019: «Intellectual property. Credit organization management», «Intellectual property. Stock market management» and «Intellectual property. Risk hedging».

It's necessary to consider global rules as well as national features of

Eurasian IP market in EAEU and CIS countries. It's necessary:

- to work out and approve an IP Development strategy and a special program for the establishment and development of Eurasian IP market as a part of global IP market and basic conditions for technological modernization of the national industry;

- to change profoundly public and corporate strategies of accounting policy, of RIA legal protection in scientific and technical sector with budgetary financing to further commercialize the IP;

- to actively use the institute of national and interstate standardization based on the technical committees on standardization «Intellectual property» (MTK-550 and TK-481).

Challenges of digital economy

The evaluation of legislation and legal practices of execution, turnover and protection of IP in Russia and other EAEU and CIS countries in

2015–2018 when shifting to digital economy has revealed the following challenges:

- foreign software is still widely used to create corporate information systems. It bears considerable risks. For example, under an open license you are obliged to provide, free of charge, the developed software to anyone who wants to buy it or use programs for computer;

- commutative license agreements claim non-exclusive rights as their object. However according to international law there are personal non-property rights which are inalienable, and exclusive (property) rights subjects to assessment, turnover, sales and subjects to relevant agreements;

- such agreements on behalf of foreign companies (Microsoft, Oracle, etc.) claim as their subjects the so called official partners of these companies which distribute relevant services and software. At the same time there are no copies of licensed agreements between the corpora-



Plenary session «Digital economy — a shift to a new technological mode» within the All-Russian conference «Digital sector of industrial Russia 2017» in Innopolis (Russia). May 25, 2017

tion — rights holder and its official partner necessary for sub-licensed agreements, while the status of a partner and of a license holder do not always coincide;

— agreements don't usually include the type of use of software. However, unlike property law, in IP law, the absence of a ban does not imply the existence of consent. The consent must be expressed directly in writing in the form of an agreement, otherwise there is a risk of recognition this product as counterfeiting.

Within the formation of digital economy in EAEU in 2016–2018 more than 60 decisions were made. Their assessment with regard to digital agenda for CIS and EAEU, revealed risk groups in IP sphere, subjects to measures of EEC and CIS Executive Committee as well as national authorities.

Thus to build integrated information system (IIS) with integrated component EEC resolutions instructed the governments of EAEU member-states to unite national information resources in all sectors of economy, to ensure the work of national segments of the integrated system and the implementation of general processes within IIS EAEU. At the same time EEC «executes rights and duties of a right holder» regarding software of integration

segment of IIS, and according to the Procedure of transfer of software of EEC integration segment to the integrated information system of EAEU and its use (Decision of EEC Board dd. 26.01.2016 #10), the Commission is not responsible for «any direct or indirect, special, occasional or other damage caused to the demander of the national segment of third parties acting upon charge of the on demander of the national segment regarding the use of software».

With delicate character and the volume of data bases and information resources regulated by PC IIS EAEU the level of risk is obviously high, and the responsibility should be handles to EEC. Procedure of transfer of software of EEC integration segment to the integrated information system of EAEU should be amended considering that EAEU in the name of EEC has the rights on PC in this segment of IIS.

IP commercialization

Unfortunately in public and corporate policy today IP commercialization issues are often replaced by the issues of legal protection of RIA and its accounting. At the same time the economy of intellectual property implies added volume; otherwise it becomes «as good as a headache». And it happens a lot today.

The main ways to commercialize intellectual property are:

- Build-up of added value (up to 10–15% of the product price), vertically (government order), horizontally (related items), mostly in the form of agreements (license, franchise, alienation, leasing, etc.);
- Capital increase (via intangible assets — up to 50 percent);
- Inclusion into equity capital (RSRIIP by order of Ministry of Industry and Trade of Russia is working on a package of such documents);
- M&A of companies;
- investments (loans, borrowings, banking guarantees on pledge of intellectual property);
- securities pledge (assets and bonds of PJSC, LTD bonds, Russian depository receipts; investment units; clearing participation certificates) on stock exchanges.

To transfer IP into liquid assets, to decrease risks and manage them institutional mechanisms are needed.

Most companies in EAEU and CIS still don't have a single management system for IP life cycle. In late 2017 MOEX welcomed a meeting of Corporate Management and Investment Committee (with participation of RSRIIP and Association of Managers) called «Board of Director and capitalization of Russian companies



by means of intellectual property and intangible assets: practical aspects». The meeting pointed out that there is hardly any IP in Russia's and EAEU economy unlike western companies. For example: in IBM 330 IP specialists accrue to 3000 employees. It brings \$2–3 bn. of additional revenue every year.

To overcome formalism and increase the role and effectiveness of Boards of directors in companies when solving the problems of IP commercialization one needs a relevant decision of shareholders as well as corresponding regulatory instructions including such measure as:

- adjustment of strategies and programs of long-term and innovative development of companies with regards to national and intergovernmental industry strategies and programs as well as regional documents in this sphere (strategy committee);
- creation of a system to reveal, assess and manage risks of IP within the framework of innovative, investment and budgetary policies (risk management committee, audit committee);
- changes of the main effectiveness criteria for the boards of directors and management of companies (compensation committee, nomination committee);
- authorization of an independent director to set IP policy and creation of a special committee in the board of directors (IP management committee).

Financing on pledge of intellectual property

Financing on pledge of intellectual property can be legally based on the decision of Basel Committee on banking supervision «International Convergence of Capital Measurement and Capital Standards: A revised Framework», as well as on national laws. In Russia it's Civil Code of the Russian Federation (Article 1233. «Disposing of an exclusive right» and Article 358.18. «Pledge of exclusive rights»). Here the pledge item is exclusive rights for IP assets.

According to Russian practice in 2009–2017 Rospatent registered more than 500 pledge agreements, 34 banks issued loans on pledge of intellectual property. At the same time the USA issue more than 4000 such loans every year. To increase this number EAEU and CIS need a system of risk detection and management with the following elements:

- complex expertise (Legal — existence of RIA, author of RIA, rights holder, legal protection term; technological — patent search, prototyping, area of usage; economical — marketing report, cost assessment report for exclusive rights for IP item);
- state registration of the pledge of exclusive right regarding the patent right objects, trade mark and the names of the places of goods origin (Article 1232 of the Civil Code of Russia);
- notarial certification of license agreements on disposal of pledged item by pledger;
- risk insurance and reinsurance (IP Value Insurance — in case of reduced income related to IPI disposal; IP Abatement Coverage — in case of breach of rights of beneficiary in IPI disposal by third parties; IP Defense Cost — in case of claims to beneficiary from rights holders — RPX Corporation, IPISC);
- right to levy execution on a pledge within up to 180 days.

To support the practice central banks in EAEU countries could include intellectual property in the I quality category to decrease loan loss provisions.

Considering that EAEU is building single financial market, launches on January 1, 2025 single rules in services sectors (banking sector, insurance, forex market), promotes non-discriminatory access to financial markets of EAEU member-states, we should take into account the results and recommendations of the International forum «Innovative development through the market of intellectual property». These recommendations address EEC, parlia-



ments, governments and central banks of EAEU countries and imply:

- special provisions in the concept and the program of single financial market in EAEU regarding goals, principles and tasks to create mechanisms of IP management in the banking sector, insurance and forex market sector by 2020;
- harmonization of legislation with international standards regarding IP risks including risks of digital economy, banking sector, insurance and forex market;
- broader functions of Eurasian Development Bank (EDB) as an investment and innovative bank for large pilot projects of lending on pledge of intellectual property in EAEU countries.