

Intellectual Property

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Introduction

The protection of intellectual property in Ukraine has developed quickly along the lines of that in other European countries, based on the same principles and general rules of the major international treaties. Ukraine is a member state of the European system of protection of intellectual property rights created by the Paris Convention on Protection of Industrial Property and the Bern Convention on Protection of Copyright and Neighbouring Rights. To the extent these international treaties signed by Ukraine contradict Ukrainian legislation, the provisions of the international treaties prevail.

The Constitution of Ukraine adopted in 1996 protects the results of intellectual activity of people as their exclusive property. There are two basic types of intellectual property rights protected in Ukraine - industrial property and copyright. There can also be criminal law consequences for breaches of confidentiality.

Industrial property law - patents

The basic laws in the sphere of industrial property law are the following statutes protecting patents: (1) Law 'On Protection of Industrial Designs', (2) Law 'On Protection of Rights on Inventions and Utility Models' and (3) Law 'On Protection of Rights on Trade Marks and Services'. Under these laws, the following types of industrial property are protected:

- invention
- utility models
- industrial designs
- trademarks.

At the present time, drafts of the Law 'On Protection of Rationalisation Proposition' and the Law 'On Protection of Know-How' are being pre-

pared by Parliamentary commissions, but know-how and trade secrets are not yet legally protected in Ukraine.

The preconditions necessary for the registration of a patent for any type of industrial property are established by Ukrainian legislation and are similar to those in other European countries. However, Ukrainian legislation does not recognise existing international household names (eg Coca-Cola) as trademarks. It is therefore essential to protect these names by registering them in Ukraine.

As a party to the Paris Convention on Protection of Industrial Property, Ukraine establishes the priority right of the applicant who was the first to apply for a patent or trademark in any member state. However, this right is only valid for six months from the date of the original registration, and it is therefore essential that the patent be registered in Ukraine as well. Applications for registration of rights should be submitted to the State Patent Department (SPD). Non-Ukrainians are advised to enlist the help of a patent agent at the SPD, as applications must be submitted in Ukrainian and the agent can help with the translations of any technical terms as well as with practical aspects of local procedural rules.

The period of validity of the patent depends on the type of object patented. A patent on an invention is valid for a period of 20 years from the date that the application is submitted to the SPD. Patents on 'utility models' (models that offer technical improvements on an existing invention) are valid for a period of five years. Patents on industrial designs are valid for a period of ten years, and may be extended for a period not exceeding five years.

In view of the rapid technical developments making some inventions obsolete in just a few years, some applicants prefer to protect their inventions in Ukraine with a simplified utility model registration to avoid the lengthy application process for inventions.

Trademark ownership in Ukraine is confirmed by a certificate issued by the SPD, effective for ten years from the date of submission of application. It is possible to extend the effective duration of a certificate at the end of each ten-year period.

The holder of a patent or certificate may transfer the right of ownership or use of the different types of industrial property covered to any other person by signing a licence agreement. Licence agreements should be registered at the Ukrainian SPD.

Preventing infringements

Any actions violating the rights of a patent or certificate holder are considered under Ukrainian law to be infringements of the rights of the holder, at whose request such violations must cease, and the violator should pay compensation for any losses caused. In addition to legal remedies under the cited intellectual property laws, according to the Law 'On Protection Against Unfair Competition', a person whose rights have been violated by

unfairly competitive actions may also apply to the Antimonopoly Committee in a bid to stop such violations. If this procedure is not successful, then the person can still take his or her case to the Ukrainian courts.

Violations of intellectual property rights can be punished by the courts with both civil and criminal liability. Sanctions usually include forced withdrawal from the market of products which infringe rights, as well as cessation of unlawful business activity by the offending party and payment of damages and legal fees. Criminal sanctions can range from fines to detention with hard labour.

Copyright

The basic rules on copyright are those created by the Law of Ukraine 'On Copyright and Neighbouring Rights'. As a member state of the Bern Convention on Copyright, Ukraine also ensures protection of copyright through the Convention's legal and institutional framework.

Ukrainian legislation protects published and unpublished works dealing with science, literature and arts, irrespective of their designation, genre, volume, purpose (whether for education, information, advertising etc) and method of reproduction, and whether rendered in oral, written or any other form.

Unlike most European countries, Ukraine has no specific law for the protection of software. The Parliament of Ukraine has prepared drafts of laws to protect the copyright of software and audio and video products, but these laws are not expected to be adopted and come into force until late in 1998.

Preventing infringements

Under Ukrainian law an infringement of copyright and neighbouring rights results from any reproduction or distribution of copies of works, sound recordings and radio and/or TV programmes without the permission of the persons holding the copyright and neighbouring rights. Violations of copyright can also result in civil and criminal liability. Criminal sanctions can range from fines to detention with hard labour.

In the event of a copyright infringement the author and/or owner can apply to the State Agency on Copyright as well as to the courts for redress.

Summary

Legal protection for intellectual property rights in Ukraine is moving towards basic 'western' standards, though there are still some gaps in the legislation. Foreign investors should retain experienced patent counsel to ensure that their rights are fully protected and developments are responded to promptly.