Cooley

Intellectual Property Update Regarding Russia, Belarus and Ukraine

March 17, 2022

Cooley has been closely monitoring the situation in Russia, Belarus and Ukraine following Russia's invasion of Ukraine in February 2022. Although the situation is in flux and circumstances may change with little or no notice, we've provided a summary below of recent intellectual property (IP) developments in Russia, Belarus, Ukraine and the Eurasian Patent Organization, along with a description of the actions that Cooley has taken in response to these developments and our current recommendations. (You can find additional information about financial sanctions and export control restrictions imposed on Russia and Belarus by the United States, the United Kingdom and the European Union in our March 4 client alert.)

Recent developments

Payments to Russia, Belarus and Ukraine

While we are currently authorized to make payments to foreign associates in Russia and Belarus, we have been informed that sanctions are impacting banks inside and outside of Russia, Belarus and Ukraine. In addition, several vendors have suspended the processing of payments to Russia and/or Belarus. Consequently, it may be difficult to send funds to these jurisdictions, even for transactions that are permitted under applicable sanctions.

Martial law in Ukraine

Martial law has been declared in Ukraine and will last at least until April 14, 2022. It is expected that all Ukrainian IP deadlines will be suspended as long as martial law is in place.

Russian patents

Russia recently issued a decree that removes protections for patent holders who are registered in "unfriendly countries," do business in them or hold their nationality. The list of "unfriendly countries" includes the United States and Great Britain, as well as other European Union member countries. As a result of this decree, impacted patent holders will not be entitled to any compensation for infringing activities in Russia.

While IP protections for trademarks and copyrights are not subject to the same decree, at least one recent court decision has indicated that world-famous images can be used without punishment in Russia. Russian officials also have raised the possibility of lifting restrictions on unauthorized use of some copyrighted works and trademarks not owned by Russian entities.

United States Patent and Trademark Office (USPTO) actions

The USPTO has terminated its engagement with officials from intellectual property agencies in Russia (Rospatent) and Belarus, as well as with the Eurasian Patent Organization (a regional organization covering Azerbaijan, Armenia, Belarus, Kyrgyzstan, Kazakhstan, Russia, Tajikistan and Turkmenistan). In addition, effective March 11, 2022, the USPTO is no longer granting requests to participate in the Global Patent Prosecution Highway (GPPH) when the requests are based on work performed by Rospatent. For any pending cases where the USPTO has granted special status under the GPPH based on work performed by Rospatent, the USPTO will remove that status, and return the application to the regular processing and examination queue.

Sanctions and export control restrictions

As part of the sanctions levied against Russia and Belarus, the US government has significantly tightened export control restrictions to those jurisdictions, and it will be necessary to obtain a foreign filing license from the USPTO before filing any patent applications in Russia and/or Belarus.

Cooley's responses

- Your Cooley team will be reviewing all deadlines in Russia, Belarus, Ukraine and the Eurasian Patent Organization through the end of 2022 and, absent your instructions to the contrary, will work to satisfy all deadlines in these jurisdictions as quickly as possible.
- We are monitoring sanctions lists to confirm that we can continue to work with our current local counsel based in Russia, Belarus and Ukraine.
- In addition, we have identified law firms located outside of these countries that are able to assist with prosecution in Ukraine and Eurasia, so please reach out to a member of your Cooley team if you are interested in making a change.

Cooley's recommendations

- Inform Cooley **as soon as possible** whether or not you are still interested in maintaining your existing IP filings in Russia, Belarus, Eurasia and/or Ukraine, so we can take the necessary actions and inform local counsel in these jurisdictions accordingly.
- Let your Cooley team know in advance of any deadline(s) if you plan to make new filings in Russia, Belarus, Eurasia and/or Ukraine.
- Confirm with your annuity service provider that they will be able to pay any annuities in Russia, Belarus, Eurasia and/or Ukraine that are due in 2022. Contact a member of your Cooley team if your vendor will not be able to make an annuity payment in any of these jurisdictions, as we may be able to work with local counsel to make the payment.
- Consider updating IP risk factors (e.g., in Form 10-K, Form S-1, etc.) and/or license provisions to reflect the current situation in impacted countries.

We will continue to monitor developments in these jurisdictions, and we will provide additional information and guidance if necessary. In the meantime, please reach out to a member of your Cooley team with any specific questions or if you need more information regarding these issues.

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