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RE: Effective Protection of Intellectual Property Rights in Ukraine

Contrary to popular opinion, Ukraine has several types of intellectual property protection. One of them is known as “jurisdictional protection”, which involves the use of civil, criminal and administrative proceedings. This is the most effective form of intellectual property protection available. Another one is so-called “non-jurisdictional protection,” which involves issuing warnings to intellectual property right violators. Such warnings may be issued by legal entities and natural persons, including patent attorneys or other authorized representatives.

The civil-legal form of intellectual property protection includes various measures of a mandatory nature, which involve the recognition of intellectual property rights and their restoration, identification of the lawful owners of intellectual property rights, termination of intellectual property violations and assessment of penalties on violators.

In general, the Civil Code of Ukraine provides for the following remedies in the area of intellectual property:

1. recognition of an owner’s intellectual property rights;
2. recognition of agreements as null and avoid (for example, licensing agreements);
3. cessation of certain acts which violate intellectual property rights;
4. restoration of conditions which existed before the violation of intellectual property rights;
5. mandatory performance of obligations (for example, the forced payment of licensing fees for the use of intellectual property);
6. change of legal relations (for example, a change of the terms and conditions of a licensing agreement for the use of intellectual property);
7. termination of legal relations (for example, the termination of a licensing agreement);

8. compensation of damages caused by a violation of intellectual property rights;
9. compensation of moral damages;
10. recognition of a decision, act or omission to act of a state body as invalid (for example, the termination of the validity of a patent issued by the State Department of Intellectual Property).

Of course, the choice of the above remedies depends on the nature of the violation in question. In some cases, several of the above remedies may be applied simultaneously.

One of the most common forms of intellectual property protection is the demand of a patent holder to cease and desist from further violations of such a patent. For instance, a court decision may require a violator of intellectual property rights to cease illegal production of goods containing a patented invention, utility model or industrial design. A patent holder may also demand the cessation of other acts which are an unsanctioned interference in such holder's exclusive sphere.

A patent holder may also claim the compensation of damages, including spoilage of property, loss of profit, etc. In Ukraine, patent holders most often claim loss of profit as their principal damages. Note, however, that Ukrainian legislation also permits a patent holder to claim moral damages which will be set by a court depending upon the patent holder's level of damage, the violator's actions and other circumstances.

Significantly, Ukrainian customs legislation also provides for certain measures aimed at intellectual property protection. However, the customs authorities only verify the formal characteristics of violations provided by law. Pursuant to the Customs Code of Ukraine, a person or entity, which owns intellectual property and has grounds to believe that such intellectual property rights are being violated during the crossing of goods onto or out of the customs territory of Ukraine, may submit to the customs authorities an application, requesting their assistance in the protection of its intellectual property rights.

The customs authorities are obliged to register intellectual property objects and goods containing such objects in order to investigate and examine goods imported into Ukraine for circulation on the internal market. This register is maintained in accordance with the "Procedure for the Registration of Objects of Intellectual Property Rights in the Customs Register and the Receipt of Information and Cooperation of the Customs Bodies with Other Law Enforcement and Controlling Bodies of Intellectual Property Rights in Case of the Suspension of the Customs Clearance of Goods at the Initiative of a Customs Body", approved by the Cabinet of Ministers' Resolution No. 622 of April 13, 2007.

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