

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Intellectual Property Legislation

I. Introduction

The original body of laws regulating intellectual property rights used to be a painful topic for those seeking to protect their rights in Ukraine. Several court rulings later, however, there was an indication that at least some protection indeed existed. For instance, Bayer won the rights to its trademark in Ukraine and, thereafter, other precedents began to emerge. The discussion below describes this formerly controversial area of law, taking into consideration the most recent legislative changes.

II. Discussion

On December 15, 1993, the Parliament enacted the following three legislative acts, governing industrial property:

1. Law No. 3687-XII “On the Protection of Rights to Inventions and Utility Models,” (the “Invention and Model Law”), as lastly amended on May 22, 2003;
2. Law No. 3688-XII “On the Protection of Rights to Industrial Designs,” (the “Industrial Design Law”), as lastly amended on May 22, 2003; and
3. Law No. 3689-XII “On the Protection of Rights to Trade and Service Marks,” (the “Trade and Service Mark Law”), as lastly amended on May 22, 2003. All three laws are hereinafter collectively referred to as the “Laws.”

The Laws originally entered into force on July 1, 1994, replacing the temporary regulations “On the Legal Protection of Industrial Property and Rationalization Proposals,” approved by a Presidential Decree dated September 18, 1992, and an informational letter issued by the Ukrainian Patent Agency, entitled “On Transitional Provisions in the Area of Industrial Property Protection in Ukraine.” In dealing with the transitional stage, the validity of patents, industrial designs, and trade and service marks in Ukraine were determined in accordance with the laws effective on the date the application was filed.

The Laws were unique in that they went practically unchanged unlike many other Ukrainian laws. In fact, their implementation resulted in amendments to other Ukrainian legislative acts that peripherally regulate intellectual property rights in Ukraine, including the Civil Code and the Labor Code, among others.

A. Industrial Property Subject to Protection in Ukraine

Formerly, the State Patent Agency (hereinafter “Derzhpatent”) was the governmental entity responsible for protection of industrial property in Ukraine. In practice, however, all applications for new patents and trademark certificates were submitted to the Ukrainian Institute of Industrial Property, which was under Derzhpatent’s direct supervision. Derzhpatent, on the other hand, was responsible for maintaining the register of inventions, industrial designs, and trade and service marks, as well as for publishing official information and effectuating other actions according to the Regulations approved by the Ukrainian Cabinet of Ministers.

On December 7, 1999, the Cabinet of Ministers passed Resolution No. 2212 “On Establishment of the State Agency of Ukraine for the Protection of Industrial Property.” Resolution No. 2212 liquidated Derzhpatent and replaced it with the State Agency for the Protection of Industrial Property (hereinafter the “Agency”), a self-financing state institution subordinated to the Cabinet of Ministers. The passing of Resolution No. 2212 also meant the liquidation of the Ukrainian Institute of Industrial Property and the creation of a similar subdivision of the Agency based on the property transferred from the Institute.

Approximately 6 months later, the Cabinet of Ministers passed its Resolution No. 997 “On Approval of the Regulations on the State Intellectual Property Department,” dated June 20, 2000. Resolution No. 997 replaced the Agency with the State Intellectual Property Department (hereinafter the “Department”), which is a government body acting within the Ministry of Education and Science and is subordinated to the said Ministry. The main tasks of the Department are as follows:

- ensuring, within its competence, the implementation of state policies regarding intellectual property;
- forecasting and determining the perspectives and priority directions of progress in the field of intellectual property; and
- ensuring the protection of rights to intellectual property objects.

1. Inventions, Utility Models and Industrial Designs

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