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***SEARCH ORDERS AND EFFECTIVE
COOPERATION WITH STATE AUTHORITIES
THE RUSSIAN FEDERATION***

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INTRODUCTION

The Russian Federation is not a common law country and ex parte seizure orders are not permissible under applicable legislation.

INTRODUCTION

Russian legislation is based on the Civil Code¹, which currently includes sections related to copyright, patents and trademarks that replace separate Copyright, Patent and Trademark Acts.

¹The Civil Code of the Russian Federation (Part I) No.51-FZ as of November 30, 1994; (Part II) No.14-FZ as of January 26, 1996; (Part III) No.146-FZ as of November 26, 2001; (Part IV) No.230-FZ as of December 18, 2006 (with the Amendments and Additions of December 27, 2009, February 21, May 8, July 27, October 4, 2010, February 7, April 6, July 18, October 19, November 21, December 6, 2011)

COURT SYSTEM

The Russian Federation has a dual court system consisting of courts of general jurisdiction and commercial courts (with a specialized Intellectual (Property) Rights Court (IPC) that has been operating for more than three years in Moscow).

COURT SYSTEM

The courts of general jurisdiction usually consider cases connected with claims of individuals, while the commercial courts generally consider commercial disputes between legal entities.

COURT SYSTEM

Forum shopping is usually not possible. As a general rule, cases are heard at the domicile of the infringer.

COURT SYSTEM

IP disputes can generally be heard in both courts, depending on the type of IP rights proprietor, as follows:

RUSSIAN LEGAL SYSTEM - TYPES OF MEASURES AVAILABLE

COURT SYSTEM

➤ Patent rights infringements:

Courts of general jurisdiction. Will be an appropriate forum if the patent owner is an individual. Patent invalidation counterclaims cannot be used as a defensive tool, and patent invalidation (initiated as an administrative procedure with the Russian PTO) may not always stay an infringement case.

Commercial courts. Will be an appropriate forum if the patent owner is a legal entity. Patent invalidation counterclaims cannot be used as a defensive tool, and patent invalidation (initiated as an administrative procedure with the Russian PTO) may not stay an infringement case.

Intellectual (Property) Rights Court (IPC). Will be an appropriate forum if the invalidation claim administrative procedure undertaken by the Russian PTO is challenged by any interested party. In such situations the IPC usually serves as the sole court on administrative disputes with the Russian PTO.

RUSSIAN LEGAL SYSTEM - TYPES OF MEASURES AVAILABLE

COURT SYSTEM

➤ **Copyright infringements:**

Courts of general jurisdiction. Will be an appropriate forum if the copyright owner is an individual. Copyright is not registrable per se in Russia, so no invalidation counterclaims can be brought; however, a defendant may always counter claim copyright in its own name, which may result in a separate dispute over copyright ownership.

Commercial courts. Will be an appropriate forum if the copyright owner is a legal entity. Copyright is not registrable per se in Russia, so no invalidation counterclaims can be brought; however, a defendant may always counter claim copyright in its own name, which may result in a separate dispute over copyright ownership.

Intellectual (Property) Rights Court (IPC). Usually not applicable here in the absence of any administrative copyright procedures.

RUSSIAN LEGAL SYSTEM - TYPES OF MEASURES AVAILABLE

COURT SYSTEM

➤ **Trademark infringements:**

Courts of general jurisdiction. Usually not applicable here, as an individual cannot be a trademark owner.

Commercial courts. Will be an appropriate forum. Trademark invalidation counterclaims cannot be used as a defensive tool, and trademark invalidation (initiated as an administrative procedure with the Russian PTO) may not stay an infringement case.

Intellectual (Property) Rights Court (IPC). Will be an appropriate forum if the invalidation claim administrative procedure undertaken by the Russian PTO is challenged by any interested party. In such situations the IPC usually serves as the sole court on administrative disputes with the Russian PTO.

COURT SYSTEM

Administrative seizures

Available with customs (for an initial period of a maximum of 10 days).

Goods can be seized, provided:

- the trademark (or copyright) is deposited with the Customs Intellectual Property Register;
- the trademark (or copyright) proprietor files the appropriate administrative application with a customs office together with all supporting documents and evidence.

Customs Union. 2016



Customs Union (CU) basics

Russia

Kazakhstan

Kyrgyzstan

Belarus

Armenia



- Customs Code of the Customs Union. Prevails over the national customs laws
- No customs borders between the member-states
- Unified customs tariff for external importers
- Unified goods nomenclature for foreign economic activities

Customs Union (CU) basics

Measures on CU boarder:

- **Customs register.** No unified IP Customs Register yet.

National IP Customs Registers still exist at the moment:

IP	RUSSIA	KAZAKHSTAN	KYRGYZSTAN	BELARUS	ARMENIA
Trademarks	YES	YES	YES	YES	YES
Patents	NO	MAYBE	YES	YES	NO
Copyright	MAYBE	MAYBE	MAYBE	YES	NO

- *Ex-officio* measures (national IP office's registry)
- Post-control. Statute of limitation – 3 years.

Customs Union (CU) basics

Parallel import

- ❖ Exhaustion of rights: regional principle
- ❖ **Parallel import from outside of CU is prohibited**
- ❖ NB! Russian customs does not seize parallel goods through administrative action - only civil action available (*Porsche Cayenne case No. A40-9281/08-145-128 - Supreme Court decision No. 10458/08*)

RUSSIAN LEGAL SYSTEM - TYPES OF MEASURES AVAILABLE

COURT SYSTEM

Criminal proceedings

- ❖ Search orders can be issued by the court (at the request of the investigator when a criminal case is opened) or by the investigator (if it is a matter of urgency) and are enforced by police authority only. Bailiffs cannot be involved in a criminal investigation.
- ❖ If court issues a search order it will be enforced by federal police officers and any practitioner role will be limited as the police investigation is carried on without a practitioner's active involvement.
- ❖ Once a search order has been issued by the court, the police investigator enforcing the search order may in principle use any evidence or information available in the criminal case file.
- ❖ A professional usually communicates with police investigators by phone and in person (where questioning of a professional are provided for in applicable legislation) Email correspondence is not provided for in applicable legislation, however in some instances the federal police and prosecutor's office use email and text messaging to communicate brief messages.
- ❖ Since Russia is a very formalistic country, a professional should be prepared to keep all records in place and all support documents and evidence to share with police and/or prosecutor's office upon request. The federal police is traditionally very reluctant to investigate patent, trademark and copyright infringement cases, so a professional will need to be extremely insistent (by sending repeated written briefs) in initiating criminal proceedings.

Thank you for your attention!



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