

# THE INFLUENCE OF THE FOREIGN EXPERIENCE ON THE ESTABLISHMENT OF THE INTELLECTUAL PROPERTY RIGHTS COURT IN THE RUSSIAN FEDERATION

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## Abstract

The problem of the specialized protection of intellectual rights is receiving considerable attention nowadays. The topicality of the theme is provoked by the establishing of the Intellectual Property Rights Court in the Russian Federation. The article under consideration deals with the interior factors and the impact of foreign experience on the current model of the Intellectual Property Rights Court of the Russian Federation. The authors come to the conclusion that the influence of foreign experience can be traced by analogy to the Federal Patent Court of Germany and the Intellectual Property High Court of Japan.

**Key words:** intellectual rights, specialized courts, Intellectual Property Rights Court, foreign experience, legislation on intellectual rights.

## 1. Introduction

The idea of the Rule of law lies at the foundation of civilization in its contemporary state. The United Nations Millennium Declaration adopted on September 8, 2000, resolves "To strengthen respect for the rule of law in international as in national affairs [...]" [1]. Thus, the implementation of the Rule of law is a prerequisite for the successful development of each national-state community, ensuring the free (and hence the most complete) realization of its human potential.

It goes without saying that the formal consolidation of the most advanced norms of law does not guarantee the implementation of the Rule of law; therefore justice is one of the ways to implement this principle.

The law must respond to the changes occurring in the society in due time. The modern society is characterized by the rapid development in all spheres of life, the creation of new information technologies, scientific discoveries and achievements of arts and culture. Thus, nowadays one of the most current issues of law is the problem of protecting intellectual property rights. In history, there are many examples when the real names of people who had made a significant contribution to the development of science remained unknown. Therefore, there is an urgent need to protect intellectual property rights.

It must be noted that in recent decades, many states have progressed significantly in protecting these rights. There are more and more specialized intellectual property rights courts in the world: Specialized Intellectual Property Court (Japan), Intellectual Property Court (Russia, Ukraine, Singapore), Patent Court (Germany, France), Intellectual Property and International Trade Court (Thailand), Intellectual Property Enterprise Court (United Kingdom), etc. Despite the fact that the governments give these courts different names, their core functions and jurisdictions are unified. The primary focus of their activities is to consider cases in the field of intellectual property. The Russian Federation is no exception. The Intellectual Property Rights Court was established by the Federal Constitutional Law No. 4 of December 6, 2011. It is a specialized arbitration court that deals with disputes related to the protection of intellectual property rights within its competence as a court of first instance and cassation court. [2]

The novelty of the research appears to be in the investigation of the specialized intellectual property courts abroad and the factors which influenced on the establishment of the Intellectual Property Rights Court in the Russian Federation, reasons of its establishment, its aims and objectives, and the likely effectiveness of this judicial body.

## **2. Specialized Intellectual Property Courts and Tribunals abroad.**

Jurisdictions of many countries (Austria, Belgium, China, France, Germany, Japan, Mexico, New Zealand, South Korea, Sweden, Switzerland, Thailand, the United Kingdom, the United States, etc.) have specialized intellectual property courts, tribunals, and other alternative judicial bodies which specialize in protection of intellectual property rights, handle the intellectual property cases.

Among all these states we have chosen four (Germany, Japan, the UK, the USA) which might have had some influence on the establishment of the Intellectual Property Rights Court in the Russian Federation.

*In the Federal Republic of Germany* the Federal Patent Court (Bundespatentgericht) was established in Munich on July 1, 1961. It is a specialized court that “adjudicates on cases involving the grant (registration) or denial of property rights (patents, trademarks, utility models, topographies, designs and plant variety protection rights). It may also void a right that has been granted by cancellation or a declaration of nullity” [3].

The unique feature of the court is that its judges “include not only lawyers but also “technical judges”, i.e. judges who have qualification in natural sciences. The latter are appointed for life and have all the rights and duties of professional judges. “The technical judges sit on all cases which are also related to the properties of a technical invention, for instance in proceedings for the grant of a patent or on an action for the declaration of patent nullity, as well as in cancellation proceedings related to utility models. By contrast, the boards of appeal for all trade mark proceedings sit exclusively with legally-trained members” [4].

*In Japan* the Intellectual Property High Court was established on April 1, 2005. It deals with appeals from district courts in civil cases “in infringement litigation related to patent rights, copyright, trademark rights, and design rights; appeal cases in IP-related lawsuits over, for example, violation of the Unfair Competition Prevention Act; and suits against appeal/trial decisions made by the Japan Patent Office” [5]. The judges of these courts are so-called generalists, i.e. the judges without scientific or technical background although it becomes clear that nowadays it critically important for the judges of the Intellectual Property High Court “to cultivate so-called technical mind by keeping active interests in technologies and maintaining progressive spirit on the basis of their sophistication as a lawyer as well as their knowledge and experience as a generalist [...]” [6]. However, this court involves specialist who clarify the technical point of the problem.

*In the United Kingdom of Great Britain* there is the Copyright Tribunal that resolves dispute resolutions including the terms and conditions of licenses. It consists of the judges and lay members appointed by the Secretary of State for Business, Innovation and Skills. In addition, in the UK there are three specialized intellectual property courts: the Intellectual Property Enterprise Court and the Patents Court (Part of the Chancery Division of the High Court of England and Wales) and the Court of Session (Scotland, Edinburgh).

*In the United States* there is one specialized Intellectual Property Court: the United States Court of Appeals for the Federal Circuit. It “has nationwide jurisdiction in a variety of subject areas, including international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, veterans' benefits, and public safety officers' benefits claims” [7]. Moreover, the court clarifies disputable issues arising in the judicial practice of the lower courts. The judges working in this court are generalist with wide knowledge and experience.

Thus, based on the overview of the foregoing judicial bodies it may be concluded that the models of the intellectual property rights courts differ widely from country to country in terms of their benches and issues under consideration. However, the experience of these courts could be taken into consideration when establishing these courts in other countries, including the Russian Federation.

## **3. The internal prerequisites for the establishment of the Intellectual Property Rights Court in the Russian Federation**

The establishment of the Intellectual Property Rights Court in the Russian Federation was the result of the objective needs of the society to protect intellectual property of its citizens.

The development of the justice system of the Russian Federation is based on the establishment of the specialized judicial bodies, therefore, the Intellectual Property Rights Court is one of them. It was the first specialized court within commercial disputes courts.

The idea of a specialized court dealing with the debates over intellectual property rights can be traced back to the end of the 20<sup>th</sup> century. In the beginning of the 1990's firstly in the Soviet Union (1991) and later in the Russian Federation (1992) there were attempts to establish the Patent court but they failed. The Patent Law No. 3517-I of September 23, 1992 initiated the Supreme Patent Chamber of the Russian Federation which in 1997 was transferred to the Russian Agency for Patents and Trademarks (Rospatent). All disputes were considered by the structural subdivisions of the Rospatent under administrative procedure. Moreover, all their decisions were under its control.

The adoption of the Part 4 of Russia's Civil Code (January 1, 2008), which regulated intellectual property matters and the increase of the disputes on the violation of the intellectual property rights made it necessary to return to the idea of a specialized court. The Supreme Commercial Court initiated a bill of the establishment of the Intellectual Property Rights Court in the system of commercial courts. The new court was to be a second instance court after the Rospatent which dealt with pre-trial settlements.

The explanatory note to the draft of the Federal Constitutional Law "On amendments being made to the Federal Constitutional Law "About the judicial system in the Russian Federation" and "About the commercial courts in the Russian Federation" with the establishment of the Intellectual Property Rights Court in the system of commercial courts' specifies the prerequisites for the establishment of the new court:

"The rise in disputes on new issues relating to intellectual property rights objectively requires the establishment of the specialized commercial court which can resolve disputes from the legal point of view and taking into consideration the specificity of an intellectual right which is subject to protection. Moreover, consideration of such disputes, as a rule, requires special knowledge (carrying out expert examination which also needs a very serious assessment on such affairs cannot remedy the lack of this court). Taking into account international standards the establishment of this court will allow increasing system effectiveness of protection of the intellectual property rights in the Russian Federation" [8].

Thus, the establishment of the Intellectual Property Rights Court is justified by the judicial practice and external reality as the dispute resolutions connected with the intellectual rights protection, often require much more time and the efforts from judges considering the specified category of disputes. Moreover, the ordinary judges of the commercial courts do not have enough knowledge to deal with all disputes properly.

### **3. The influence of the foreign experience on the establishment of the Intellectual Property Rights Court in the Russian Federation**

As mentioned above, the experience of some countries significantly influenced on the establishment of the Intellectual Property Rights Court in the Russian federation. Thus, particular attention was paid to the German Federal Patent Court and the Intellectual Property High Court of Japan. The idea of "technical judges" (Germany) couldn't be applied in the judicial system of the Russian Federation but it allowed involving specialists (Japan) during court hearings. Therefore, a new specialist appeared in the commercial procedure law. Today he is to expertise the judges on the basis of his special knowledge in the sphere of the International Patent Classification which "provides for a hierarchical system of language independent symbols for the classification of patents and utility models according to the different areas of technology to which they pertain" [9].

Furthermore, according to the ex-assistant of the chairperson of the Intellectual Property Rights Court, Egor Andreevich Shipitsyn, international conferences, symposia, summit meetings play a significant role in the work of the court. An opportunity to exchange the experience with the foreign colleagues allows learning from the mistakes of others and not repeating them.

### **5. Conclusion**

In summary, the interior factors as well as the foreign experience have a significant influence on the establishment of the Intellectual Property Rights Court in the Russian Federation.

The interior factors include, firstly, an increase in the number of disputes on intellectual property rights, which led to an increase in the burden on judges of commercial courts and secondly, the need for judges or specialist with the specialized knowledge to make resolutions of such disputes.

The foreign experience allows establishing more sophisticated judicial bodies and avoiding the problems that other states have already overcome. Therefore, the study of foreign experience is one of the guarantees of the effectiveness and stability of innovations in the state.

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