

THE ROLE OF RESOLVING DISPUTES RELATED TO INTELLECTUAL PROPERTY ITEMS THROUGH COURTS AND FOREIGN EXPERIENCE IN THIS AREA

I Buriyev Abdumannop Abduraxmatovich
Head of Department of Justice of Fergana Region

Abstract

The article examines the handling of disputes related to the protection of intellectual property items in courts, the practical problems encountered in dealing with such cases, and foreign experience in this area. Given that the field of intellectual property rights protection is relatively new and rapidly developing, it is noted that the number of such cases in courts has been increasing year on year, with these disputes being heard in administrative, alike in criminal civil, and economic courts. Additionally, the article discusses specialized intellectual property courts in foreign countries and Uzbekistan's position in international rankings regarding the protection of intellectual property rights. Based on the experience of advanced foreign states, relevant recommendations for improving this field are provided.

Keywords: intellectual property law, appellate board of appeals, intellectual property courts, World Trade Organization, administrative responsibility, patent.

Introduction

As a result of the improvement of the legal framework of intellectual property rights in our country, the establishment of mechanisms for the effective protection of intellectual property items, we can see that the number of cases related to intellectual property in the courts increases year by year.

In particular, if in 2011 criminal courts reported only **22** cases related to administrative infringements in intellectual property, this number reached **100** in 2018, **185** in 2020, **213** in 2021, and **267** in 2022.

At the same time, disputes related to intellectual property items are being considered in **administrative** and in **criminal, civil** and **economic** courts alike.

In particular, cases under Articles 177, 1771, 1772 of the Code on Administrative Responsibility, Article 149 of the Criminal Code are considered by criminal courts, the cases related to recovery of material and moral damage caused by violation of intellectual property rights - by civil courts, the disputes related to violation of intellectual property rights between entrepreneurs - by economic courts.

Administrative courts have heard 22 cases related to legal protection of intellectual property in 2021, 32 cases in 2022, and 20 cases in 2023 .

However, since the administrative, civil and economic courts **do not keep statistics** on the hearings of cases related to intellectual property items, there is no information on this sort of cases in these courts.

Number of appeals to Board of Appeals the Department of Justice - another pre-trial institution for intellectual property disputes - remains low. .



In particular, the Justice Department's Board of Appeals has heard 101 Appeals in 2022, 128 in 2023, and 35 appeals as of August 1, 2024.

The lack of special attention to consideration of intellectual property disputes in our country, the absence of a specialized judicial system negatively affects the process of accession of the Republic of Uzbekistan to the World Trade Organization and its place in international ratings.

Specifically, due to these reasons, the fact that in the 2023 U.S. "Special 301 Report" **1 Uzbekistan is listed among states that do not provide adequate legal protection for intellectual property rights, was one of the reasons why the country was not included by the International Institute for Management Development (IMD) in the 2023 "competitiveness ranking of countries" (World Competitiveness Ranking) .**

Also, though the Article 41 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which has to be signed by all WTO member states , doesn't obligate all member states to establish intellectual property courts, it states the expediency of having them.. Therefore, the country's revision of the legal protection system of the intellectual property sector, the establishment of separate courts specializing in this direction will make it possible to further accelerate the process of joining the World Trade Organization.

Mechanisms for judicial resolution of disputes related to intellectual property objects

Specialized courts and tribunals have been established in most of the WTO member countries. The World Intellectual Property Organization (WIPO) annually publishes ranking of the world states according to the "Intellectual Property Rights Index" among the member states of the Organization.

It should be noted that the the fact of creation of specialized courts in such countries as **Switzerland, Sweden, Finland, France, Germany, Korea**, which are leading in this ranking, testifies once again that these courts are one of the important factors.

Special, i.e. specialized judicial structures considering cases related to intellectual property are also established in the system of general jurisdiction courts of such countries as **China, Belgium, Brazil, Hungary, Hong Kong, Denmark, Israel, Iran, Spain, Italy, Canada, the Netherlands, Norway, Pakistan, Panama, Romania, Slovenia, Slovakia, South American countries, Russia, Turkey**.

The positive experiences of some developed foreign countries in the field of legal protection of intellectual property rights, were analyzed in order to practice, to apply to the judicial system. In particular, according to the Federal Constitutional Law of the Russian Federation No. 4 of December 6, 2011, the **Intellectual Property Rights Court (SIP)** was established and the Law "On the Judicial System of the Russian Federation" of December 31, 1996 was amended.

According to Article 26¹ of this Law, the of intellectual property rights court is a specialized arbitration court, which, within its competence, hears cases related to the protection of intellectual rights as a court of first instance and cassation court.

That is, the Court of intellectual property rights is a separate court in the system of arbitration courts that hears cases related to intellectual property. .

¹ <https://ustr.gov/sites/default/files/2023-04> - link doesn't work



There is only one SIP in Russia. There are no representative offices in other areas. Therefore, in this court, cases related to intellectual property are considered without jurisdiction or other geographical restrictions.

In 2021, SIP heard 2,625 cases. Most of them are related to the registration of intellectual property rights. For example, if Rospatent and the Patent dispute chamber refuse to grant the company the status of a well-known trademark, the SIP will be appealed. Or vice versa, if a company has received a trademark but does not use it, the competitor may apply to the SIP to terminate legal protection prematurely and obtain the brand for themselves.

Cases in the intellectual property rights court are heard by a **jury** or **judicial presidium**. In particular, the **Federal patent Court of Switzerland**² Established under the “Federal patent Court Act” of the Parliament of Switzerland of March 20, 2009, it began operations on January 1, 2012.

The Federal patent Court is the first instance patent court of Switzerland and issues its decisions as the lower court of the Federal Supreme Court.

The Federal patent Court of Switzerland has **two permanent judges**, as well as **41 non-permanent judges**, of which **28 are technical experts** and **13 are judges with legal training**. All of them have special knowledge of patent law.

The Federal Patent Court performs the following functions:

- a. review of cases on disputes and licensing actions on the validity of patents and their infringements;
- b. defining preliminary measures until the circumstances specified in the appeal are considered;
- c. ensuring the implementation of the decisions made.

It also holds the rights in other civil suits involving patents, in particular, to obtain or grant patents. The jurisdiction of the Federal Patent Court does not preclude the jurisdiction of the territorial courts.

If a preliminary question arises in a territorial court about the invalidity or infringement of a patent, or needs to be considered on the basis of protection, the judge gives the parties the appropriate deadline to apply to the Federal Patent Court with a claim of patent validity or dispute. Regional courts will cease proceedings until a final and absolute decision is made on the claim. In the event that no claim is made to the Federal Patent Court within the specified period, the territorial courts will continue the proceedings, and the initial question or defense will not be taken into account.

If a litigant files a counterclaim that the patent was invalid or infringed, the territorial court refers both claims to the Federal Patent Court.

The system of judicial protection for intellectual property in China, was initially based on the people’s court system, and developed over time as a separate judicial system. In particular, in October 1992, the Supreme People's Court of China establishes its intellectual property rights department. In August 1993, **intellectual property rights departments** are also established in the Beijing Supreme People's court and middle-tier people's courts, and then in all people's courts nationwide.

² П.Н.Бирюков «Федеральный административный суд Швейцарии». 2022. <https://cyberleninka.ru/article/n/federalnyy-administrativnyy-sud-shveysarii/viewer>



Since November 2014, Intellectual Property Courts are established successively in Beijing, Guangzhou and Shanghai. Since 2017, so far 21 specialized IP judiciary bodies are established, including Chengdu, Nanjing, Suzhou and Wuhan.

In January 2019, there is established an intellectual property court, which handles patent, monopoly and other high-level technical civil and Administrative Appeals cases.

The specialized intellectual property court hears the following cases:

- Civil complaints regarding invention patent, utility model patent and other intellectual property related to technology;
- Administrative Appeals cases related to technology for Patent issuance and revocation;
- Administrative cases in the sphere of technology-related intellectual property in the second instance;
- - Retrial of civil and administrative cases in the sphere of to technology-related intellectual property, which comes into force at first instance.

In the judicial system of the Republic of Uzbekistan, it is necessary to improve the mechanisms of consideration of intellectual property cases and to comply with international standards.

In particular, it is advisable to improve the mechanisms for considering intellectual property cases at the following stages:

In the first stage:

- to improve the qualifications of judges on the consideration of cases related to intellectual property in the courts at the level of the Republic and each region.
- to impose on the courts the obligation to attract specialists based on the essence of the case when considering cases related to intellectual property.

In the second stage:

- To clearly define the powers of the courts (civil, criminal, economic and administrative) in the consideration of cases related to intellectual property.
- Establishment of a specialized intellectual property court under the Supreme Court of the Republic of Uzbekistan.

In the third stage:

- Organization of specialized intellectual property courts in the regions and the courts of the Republic of Karakalpakstan and the city of Tashkent.

The establishment of specialized courts in the field of intellectual property, in addition to preventing violations of intellectual property rights, provides the basis for the introduction of unified judicial practice, the professional and holistic consideration of cases.

References

1. Oliy Sud saytining statistika bo'limi <https://stat.sud.uz/mib.html>
2. The Office of the United States Trade Representative <https://ustr.gov/sites/default/files/2023-04>
3. World Competitiveness Center <https://www.imd.org/centers/wcc/world-competitiveness-center/rankings/world-competitiveness-ranking>
4. Суд по интеллектуальным правам <https://ipc.arbitr.ru/about/about>
5. П.Н.Бирюков «Федеральный административный суд Швейцарии». 2022. <https://cyberleninka.ru/article/n/federalnyy-administrativnyy-sud-shveytsarii/viewer>.

