

Feb 23, 2010 - March 2, 2010

Annex to the RA Government
Protocol Decree N° 14 dated April 2,
2009

POLICY PAPER
ON IMPLEMENTATION OF
RELIABLE AND EFFECTIVE PROTECTION
OF
INTELLECTUAL PROPERTY

This Policy paper on Implementation of Reliable and Effective Protection of Intellectual Property (hereafter: Policy Paper) presents the current peculiarities of the intellectual property protection system, describes, through analysis, the current state of use of intellectual property subject matters in economy, reveals the existing problems and proposes effective solutions to them.

The analyses are based on the international leading practice, taking into account the current development trends of the RA economy and the need to provide competitiveness in the knowledge based global economy.

In particular, in this field the experience of developed countries was considered, systems of which reflect the free market demands in a most clear manner.

Consultations on the international best practice were implemented with the assistance of the World Intellectual Property Organization and the European Patent Organization.

Intellectual Property includes two main spheres of rights, industrial property and copyright.

The industrial property rights are various. The most popular ones are the rights in inventions and trademarks. Patent on invention grants the inventor an exclusive right for a limited period of time provided that the technical essence of the invention is disclosed.

Legal protection to trademarks, as identification marks of proposed goods and services by particular right-holders, is granted for an unlimited period, provided that their use with commercial aim continues.

Trademarks, as identification means for goods and services provided by a particular person, are granted legal protection for an unlimited period of time, provided that their use for commercial purposes continues.

Industrial property rights also include relatively less known rights, such as rights in industrial designs, geographical indications, trade names and new plant varieties.

The next main field of intellectual property is copyright, which includes rights in works in literary, scientific, art domains, as well as the rights of performers, phonogram producers, film producers, broadcasting organizations, publishers, makers of database, which are known as related rights.

The general feature for intellectual property rights is that the right-holder is entitled to prohibit the illegal use of intangible subject matter of potential trade value notwithstanding of its being a solution serving as a basis for a novel product or process, an indication of origin of a good, a name of a trade organization, music, computer program or an audiovisual work.

1. Challenges

Intellectual property protection is one of the most important conditions for novelty. It promotes the establishment of institute of research and development, as well

as the transfer of knowledge from laboratory to manufacturing domain, and from manufacturing to the market.

Besides, intellectual property protection is an important condition for art and culture development.

Precise and effective regime of intellectual property protection is the main condition for free movement of knowledge and works in the global market. And it can also make a part of a broader policy and have essential significance for solution of global issues and key issues.

2. Economic benefits of industrial property rights protection

Property, whether material or non-material, has a decisive role for market economy. Industrial property rights, especially rights for inventions, industrial designs and new plant varieties serve a drive for creation of new inventions and other innovations providing exclusive rights against them for a limited period of time. Provision and protection of these rights contribute to the entry of newcomers to the market, including risk capital investments, ensuring production of goods (licensed by them) by capable companies.

In the knowledge-based global economy the significance of inventions and innovations increases as a competitiveness incentive. In this environment the continually increasing role of business entities, especially SMEs and research organizations, as well as universities becomes more important related to the goods production based on their licenses. Exchange of knowledge between private sector and research organizations increases competitiveness. This approach creates favorable conditions for formation of a higher-level activity field and facilitates international exchange of knowledge.

The more actively research organizations implement business activities related to licensing of products, the closer their needs and problems approach SME needs and problems. For that reason activities undertaken for SMEs to some extent can be beneficial for research organizations.

It must be taken into account that provision of industrial property rights, as an important component for management of intellectual property subject matters, has a big

role in the general business strategy of companies. It is conditioned by the fact that business strategy, besides stipulating rights for new solutions, innovations and producing goods based on them, suggests creation of other new solutions through them and their implementation. Stipulation of rights for the latter solutions gives an opportunity to their right-holders to make potential competitors overlook patented technologies through new researches and developments, restraining activities of competitors in the market.

3. The current state of the intellectual property protection system

3.1 Inventions, utility models, industrial designs

The current phase of legal protection of inventions, utility models, industrial designs in the RA is described by legislation specifications and its implementation practice. Since 1993 the legislation underwent a number of changes, which were made considering economy development specifications, as well as the circumstances that timelines of providing rights for the mentioned subject matters must be reduced as much as possible, and costs related to them must reach the minimum and protection of those rights must be reliable and effective. These issues, to a certain extent, are solved by the “RA Law on Inventions, Utility Models, Industrial Designs” adopted in 2008, which is in line with norms envisaged by international agreements and corresponding EU Directives. The main peculiarity of the law is that the invention patent is provided without conducting an essential examination (i.e. during the examination patent capability of the invention is not checked), which can be valid for 10 years. The patent can be valid also for 20 years, if before the end of the 9th year of validity evidence is provided by the patent-holder on the patent capability of the given invention. Evidence must be provided only by an internationally recognized search center, specialized in the given area. Such an approach provides a possibility to avoid the need of having a big number of experts, ensuring high quality at the same time.

The other peculiarity of the law is that it clearly defines the patent rights implementation mechanism, when there is an issue of prohibiting the use of the given invention by third parties. In such cases, the Law envisages to implement the exclusive

right based on the patent only when there is evidence proving the patent capability of the given invention. Such an approach, to a certain extent, will reduce cases of issuing a patent for inventions without corresponding quality, receipt of similar applications and will exclude the possibility of creating non-justified obstacles in the business.

3.2 Trademarks, Appellations of Origin and Geographical Indications

On the legal protection of Trademarks, Appellations of Origin and Geographical Indications the RA legislation started to be formed since 1995, the future changes of which aimed at legislation improvement, considering requirements of the RA international agreements, international leading practice and the need to solve problems originated in the law implementation practice.

At the same time the fact was considered that rights in a trademark play an important role for creation of a conscientious competitiveness system, since it is these marks that enable the consumer to distinguish goods and services of one organization from goods and services of another organization. Besides, the role of trademarks becomes important also because on the one hand they serve as a means for information and advertising, on the other hand they are considered the symbol of capacities and reputation of the organization.

In connection to this the “RA Law on Trademarks and Service Marks, Appellations of Origin” stipulates mandatory consideration in each case of rights valid earlier (for providing legal protection to trademarks), which were acquired not only for trademarks but also trade names.

The legislation on legal protection of trademarks today generally corresponds to the norms, which are defined by a number of international agreements in the area, as well as by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. Despite this, there is a need to harmonize the legislation to the requirements stated by new international agreements and EU Directives. Besides, practice of law implementation shows that some clauses of conducting examination needs clarification and must be harmonized to the strictest international standards.

Slightly different is the situation with legal protection of Appellation of Origin and Geographical Indications. Despite the availability of the Law (in force) on Appellation of Origin, there are still certain issues related to its implementation. Particularly the fact of the law so far being used for mineral water names already created a need for serious discussions and stipulation of new approaches.

Some clauses regulating legal protection of Geographical Indications were placed in the “RA Law on Trade Marks, Service Marks and Appellation of Origin.” Main clauses of definition and protection of Geographical Indications are defined by the RA Civil Code. Therefore, the fact that the order and conditions of provision and revocation of legal protection of Geographical Indications and their use are not clearly regulated by a separate legal act can become a reason for creation of some problems; particularly their illegal use will inevitably bring to unfair competition.

It is necessary to solve of the mentioned problems by adoption of new laws on Trademarks and Geographical Indications.

3.3 Copyright

The situation in the other area of intellectual property, i.e. copyright is essentially different. Copyright and related rights are regulated by the new “RA Law on Copyright and Related Rights” adopted in 2006. The law is completely in line with norms defined by the RA international agreements and requirements of EU Directives.

In accordance with the law, for protection of interests of the authors and management of economic rights an organization (already fully established) for collective management of economic rights of right-holders was created and works, which is integrated in the corresponding international network and cooperates with state, public and private structures.

According to the law no registration is required for copyright origin, the right is originated by the fact of creation of the corresponding work and preparation of the related rights subject matter.

4. Strategy of industrial property rights

In protection of industrial property rights the RA strategy must aim at responding to challenges of knowledge-based global economy in the 21st century.

The industrial property protection system must continue to serve as an incentive for activation of invention and innovation activities. To achieve this, certain criteria are already internationally adopted, in particular:

- a mechanism for receipt of applications of industrial property subject matters by modern technologies
- high quality system strictly in line with international standards and examination accepted in practice
- quality of provided rights, clear legislation and affordable prices, joint law interpretation and court procedures
- Database creation on subject matters that received legal protection, their exchange with databases of corresponding foreign agencies, provision of their accessibility for the public
- Valuing intellectual process results and ensuring easy circulation of inventions and innovations.

Justification of rights, provided in connection to it, is very important for all aspects (of the whole system), which promote business, including SME activities, contribute to knowledge exchange and serve a powerful and effective means in fighting against circulation of false and counterfeit goods, as well as piracy.

Besides, as a civil right subject matter, ensuring full circulation of intellectual property can be made only based on intellectual property assessment, which is not regulated by law. And the corresponding legislative framework can have high efficiency of implementation, if universities are involved in preparation activities of assessors.

It is necessary to:

- *Introduce systems for electronic receipt, discussion and publication of industrial property subject matters*

- *Implement outsourcing (as much as possible) for conducting invention examination activities to international and foreign search centers accredited by World Intellectual Property Organization*
- *Expand the circles of exchanging industrial property information databases and ensure their availability for the public through internet*
- *Introduce a system for making descriptions of services provided in relation to intellectual property and assessment*
- *Contribute to reinforcement of rights for intellectual property in foreign states*
- *Introduce an intellectual property assessment system, which suggests ensuring corresponding legislative framework and forming an institute of assessors*

5. The quality of industrial property rights

5.1 Inventions

In terms of ensuring quality it is important what inventions and innovations are granted patent protection. In this respect it is necessary to prevent (by consultation provided to applicants) or reduce (as much as possible) the entry of applications for inventions without patent capability, which have a negative impact, since because of them the time required for examination of more important invention applications is aimlessly delayed. The mentioned consultation must be implemented by the Intellectual Property Agency, since the expertise and professional skills of experts play an important role.

Protection of utility models has its special place in ensuring quality and faster implementation in economy. For the protection of utility models weaker requirements are defined: only novelty and industrial use requirements, testing of which is comparatively easy and less costly and the expiration date is shorter: 10 years.

In terms of ensuring quality of inventions and utility models it is also important to make the information on them accessible to companies and inventors.

*For ensuring corresponding quality of provided rights it is **necessary to:***

- *Implement comprehensive study of patents to analyze rights acquired with weaker bases and find effective means to avoid their provision*
- *Study possible problems created by unused patents, assess their creation reasons and undertake relevant means*

5.2 Trade marks

For the RA economy it is necessary to have a strong and reliable system of trademark protection. It is an effective means to prevent unfair use of trademarks, violation of rights against it, use with improper permission, as well as review of rights, in case of not using them. The process of providing legal protection (registration) requires high quality, strict criteria, including the examination, which will ensure their being valid and in line with consumer requirements as a result of registration.

The quality of rights for trademarks is important especially for formation of a conscientious competitiveness system and prevention of unfair cases.

*For ensuring corresponding quality of provided services **it is necessary to:***

conduct examination of trademarks by examination implementation approaches accepted in practice and strictly in line with international standards.

envisage clauses (in trademark legislation), which would provide a possibility to consider during the examination foreign famous trademarks, brands not registered in the RA

for limiting the right against the unused registered trademarks legally clarify conditions and mechanisms for early end of registration of these trademarks, taking into account clauses defined by international agreements and EU directives

ensure ongoing improvement of professional skills of experts

6. Invention support to SMEs

Implementation of industrial property rights can greatly promote SME development. Usually the SME depend less on protection of industrial property rights. When it's a result of insufficient awareness, consultation or other required support, it is necessary to urgently apply a corresponding policy. Therefore, the state must create conditions for the SME to use opportunities offered by the market, as well as relevant information on inventions and trademarks.

Besides, it is necessary to improve SME dispute solution system (related to industrial property rights), which can imply application of an alternative mechanisms for dispute solution, particularly trade arbitrations, which can add to the court system, if they operate more quickly and comprehensively and are more affordable in terms of the price. Through solution of key aspects of relations between courts and trade arbitration solution of disputes related to intellectual property rights will become rather easy.

The main objective of programs based on intellectual property must be raising SME awareness and ensuring support services.

It is necessary to:

- *study as to how operation of trade arbitrations can be promoted in the future and how their current work can be facilitated in terms of court procedures related to patent issues*
- *provide sufficient support to SMEs for strengthening industrial property rights acquisition activities and providing relevant and wide-ranging support services*
- *improve provision of information for all the organizations and research institutes on intellectual property management, as well as SMEs*

7. Implementation of intellectual property rights: fight against piracy and counterfeiting

Protection of innovations must go with use of effective implementation mechanisms. Falsification and piracy of products is a negative phenomenon (that reached enormous volume), which grows with absolute value and proportionally parallel to international trade growth and technical capacity development. It essentially damages the

country's economic development growth and creation of new employment places, risking the health and safety of citizens.

The annual turnover of counterfeit and pirated goods makes approximately 200 billion US dollars. In the RA similar examinations were not conducted, however counterfeiting and piracy, especially in copyright, is evident. Thus, actually stolen products are freely sold in the market. Such activities are mainly implemented out of the tax field, especially in cases, when it is about copyright area: particularly turnover of pirate versions of audiovisual works, CDs and computer software. This phenomenon greatly harms the culture and economy prohibiting their development. Moreover, their presence damages the country's international reputation, reduces probability of potential flow of foreign investments, increasing their risk factor.

In circulated volumes of counterfeit and pirated goods a certain part is products imported from the foreign states, which is evident in the trade net even without conducting special examinations.

Presence of big volumes of counterfeit and pirated goods is mainly conditioned by the following circumstances:

- insufficient follow up of right-holders regarding protection of their intellectual property rights
- weak cooperation between state bodies fighting against law violations in intellectual property and absence of a joint action plan
- weak sanctions stipulated by the law for law violations in the area and imperfection of their implementation mechanisms

It is necessary to:

- for strengthening fight against law violations in intellectual property and coordination of its implementation an inter-ministerial commission was created (chaired by the RA Minister of Economy), which will include representatives of the RA Ministries of Economy, Culture, Diaspora, RA National Security Service, RA Police, RA State Revenue Committee by

the Government, State Commission for the Protection of Economic Competition of the Republic of Armenia, as well as NGOs representing interests of right-holders

- implement periodical market analyses to clarify turnover volumes of counterfeit and pirated goods and extent of damages
- develop and implement a joint action plan against counterfeiting and piracy
- for ensuring implementation of intellectual property rights envisage (in the current laws) contemporary implementation clauses (meeting international requirements), which must be in line with the EU Implementation Directive 2004/48/EC. For effective implementation of those clauses ensure mutually agreed proper actions by corresponding institutional infrastructures and responsible bodies at all levels from the police, customs services and other state structures to courts.
- ensure implementation of border activities envisaged by the law and undertake measures to ensure information exchange between right-holders and customs services to discover transfer of counterfeit and pirated goods
- study international practice in reserving the right to the customs bodies for implementation of ex officio actions envisaged by the WTO Agreement on Trade Related Aspects on Intellectual Property Rights in order to exclude suspicious transfers and prevent entrance of counterfeit and pirated goods to the market
- take measures for improving area related knowledge of the corresponding employees of the police and customs bodies (bodies ensuring implementation of intellectual property legislation) and judges
- expand the volume of public awareness activities, which would change the attitude of the public toward counterfeit and pirated goods.