

WHAT SHOULD YOU KNOW ABOUT TRADEMARKS WHEN DOING BUSINESS IN RUSSIA

(Case – project application for
the Baltic Institute of Finland)

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ABSTRACT

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Title of Thesis: What should you know about trademarks when doing business in Russia
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This final thesis was written for the Baltic Institute of Finland. The author of this final thesis was working eight years at the BIF as project manager and was responsible for two IPR projects, manager by the BIF. The materials from previous IPR projects managed by the BIF have been used in new project application. New project application for the cooperation between the North-West part of Russia and Finland is the main reason of that final thesis.

This work is intended for everyone who is interested in development of Intellectual Property Rights in the Russian Federation, particularly in development of a trademark protection. The review of Russian legislation on development of IPR processes as well as existing IPR legislation is represented. A comparison between Finnish and Russian IPR legislations, particularly in trademark protection, as well as real court cases are presented.

The aim of this paper was to convince the audience of the need to continue international cooperation on IP issues, especially between the Russian Federation and Finland.

Theoretical part of the thesis covers the definitions related to the IP system and to the innovation process. Russian definition of innovation differs from the European definition of innovation, leading to different approaches in innovation system development.

The report is based on qualitative case study method. The data has been gathered from the interviews, literature and an internet.

As a conclusion is possible to state that companies looking to expand into Russia may face a serious problems with trademarks squatters. Before coming to Russian market it is very important to check all issues related to IP protection in the Russian Federation. Despite that Russian IPR legislation has been modified several times to be closer to the EU IPR legislation, some difference still exist. Further cooperation between Finland and Russia on awareness of IPR matters is an important part of the economic development for both countries. Involvement of all IPR actors: Universities, business incubators, patent attorneys, SMEs is necessary for successful development of IPR and Innovation systems.

Key words: intellectual property, trademarks, innovations, project plan, Russia - Finland

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ABBREVIATIONS AND TERMS

IPR	Intellectual Property Right
IP	Intellectual Property
vs.	versus
OECD	Organisation for Economic Co-Operation and Development
BIF	the Baltic Institute of Finland
WIPO	World Intellectual Property Organization
SME	Small and Medium-Sized Enterprises
EAPC	the Eurasian Patent Convention
EAPO	the Eurasian Patent Office
PRH	Finnish Patent and Registration office (Patentti- ja Rekisteri- hallitus – in Finnish language)
SPbGEU	Saint-Petersburg University of Economics
EUR	Euro
Rb	Rouble

1 INTRODUCTION

This work is intended for everyone who is interested in development of Intellectual Property Rights in the Russian Federation, particularly in development of a trademark protection. The review of Russian legislation on development of IPR processes as well as existing IPR legislation is represented. A comparison between Finnish and Russian IPR legislations, particularly in trademark protection, as well as real court cases are presented.

The 21st century is the century of so called “knowledge-based economies”. Organisation for Economic Co-Operation and Development (here and after: OECD) describes “knowledge-based economies” as follows: “knowledge-based economies” – economies which are directly based on the production, distribution and use of knowledge and information (OECD, 1996, 7). Knowledge and technology have become increasingly complex, raising the importance of links between firms and other organisations as a way to acquire specialised knowledge (OECD, 2005). Due to the fact that knowledge became more and more important in the new environment, protection of that knowledge plays very important role. The system of intellectual property (IP) rights creates a mechanism to resolve the “appropriability” problem of knowledge, by creating property rights over knowledge. (WIPO, Intellectual Property Rights and Innovation in Small and Medium-Sized Enterprises).

Due to the fact that intangible assets became very attractive as a source of competitive advantage for firms, the protection of IP turn out be one of the most important strategies for the company's development. SMEs have become an important part in modern business and job creation, account for approximately 95% of the business population. Burrone E. (2004) states that: “empirical evidence suggests that SMEs face significant barriers in making effective use of the IP system and this may have an impact on their ability to exploit their innovative and creative capabilities.” Even more problems SMEs faced when entering a foreign market, especially Russian market, due to the fact that Russia is not a part of the EU and Russian IPR legislation slightly differ from the European one.

The Baltic Institute of Finland (here and after: BIF) since 2005 has been in charge of the four cooperation projects promoting the development of the IPR system in North-West Russia (St Petersburg, Petrozavodsk and Kaliningrad) and Nordic Countries (Finland,

Denmark and Sweden). By writing this paper the author would like to convince the audience of the need to continue international cooperation on IP issues, especially between the Russian Federation and Finland.

The development of the legal protection of intellectual property rights in Russia is closely linked with the history of the country and with its socio-economic transformations. To be able to understand the evolution of the IPR legislation in Russia short excursion to the historical events is presented in this paper.

The final thesis is structured as follows. Chapter Two is dedicated to the development of the IPR system in the Russian Federation. Due to the fact that during 1992 – 2015 the Patent Office of the Russian Federation changed its' name several times, the table where is possible to trace the above mentioned changes is presented. Chapter Three give an analyses of the Russian and the Finnish Intellectual Property legislation regarding trademark protection. Real court cases related to trademark protection presented in this chapter. Chapter Four and chapter Five are taken from my bachelor's thesis "The overview of innovation infrastructure in Saint-Petersburg, Russia", 2008. In chapters Four and Five the difference of the meaning of the term innovation in Russia and in Europe, as well as general terminology of the term innovation are introduced. Chapter Six dedicated to the interlinkages between Intellectual Property Rights and Innovation in SMEs. Practical recommendations for Nordic SMEs entering the Russian market as well as practical recommendations for Russian SMEs entering the Nordic market are presented in this chapter. Chapter Seven is the new project application on IPR thematic, written for the BIF. This chapter is not public due to the confidential information related to the new project application. The author of this final thesis was working eight years at the BIF as project manager and was responsible for two IPR projects, and took part in the last IPR project managed by BIF. The materials from previous IPR projects managed by BIF have been used in new project application. The author organised several preparatory meetings of the future project partners: one in St. Petersburg, Russia on 13.05.2015 and four in Petrozavodsk, Russia on 25.6.2015, 2.7.2015 and 3.7.2015 (two meetings). Minutes from the meeting in St Petersburg as well as list of participants attached as Appendix 1 and Appendix 2. Minute from Petrozavodsk meetings attached as Appendix 3. Budget for the future IPR project attached as Appendix 5. Appendices 1-3 and 5 are not public due to the confidentiality reasons.

2 RUSSIA AND IPR

To be able to describe the Intellectual Property Rights (here and after IPR), first we need to understand what is Intellectual Property (here and after IP)? The World Intellectual Property Organisation (here and after WIPO) define IP as follows: “Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.” (WIPO 2015)

In the Civil Code of the Russian Federation¹, passed by the State Duma on November 24, 2006 and approved by the Federation Council on December 8, 2006 (as in force on December 1, 2007), part IV, section VII (Rights to the results of Intellectual activity and means of individualization), chapter 69 (General provisions), Article 1225 (Results of Intellectual Activity and Means of Individualization subject to protection) the intellectual property described as follows:

1. The results of intellectual activity and means equated to them of individualization of legal entities, goods, work, services, and enterprises that are granted legal protection (intellectual property) shall be as follows:

- 1) works of science, literature, and art;
- 2) computer programs;
- 3) databases;
- 4) performances;
- 5) phonograms
- 6) broadcasting or diffusion of radio- or television transmissions via cable
- 7) inventions;
- 8) utility models;
- 9) industrial designs;
- 10) selection attainments;
- 11) topographies of integrated circuits;
- 12) secrets of production (know-how);

¹ The English translation of the Part IV of the Civil Code of the Russian Federation, prepared by the specialists of Rospatent, is an unofficial one intended to inform the international community, in particular, multilateral organizations, foreign IP offices, and also professionals dealing with the issues of protection and enforcement of IP rights both in the country and abroad.

- 13) trade names;
- 14) trademarks and service marks;
- 15) appellations of origin;
- 16) commercial names.

2. Intellectual property shall be protected by statute.

The Civil Code of the Russian Federation has been amended by the Federal Law of March 12, 2014 № 35-FZ "On Amendments to the first, second and fourth parts of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation". The above mentioned general provisions are not changed.

2.1 History review

The development of the legal protection of intellectual property rights in Russia is closely linked with the history of the country and with its socio-economic transformations. To be able to understand the evolution of the IPR legislation in Russia short excursion to the historical events is needed.

Protection of inventions in Russia rooted in the XVI-XVII centuries. Its legal form evolved from the feudal "privileges" when monarchs issued so called "letters of grace" (Russian: жалованные грамоты) for example for the establishment of manufactories. (Rospatent, Historical reference 2015)

The earliest Russian law protecting the intellectual property rights was the "Manifesto on privileges for inventions and discoveries in the arts and sciences", signed by Emperor Alexander I on June 17, 1812. In fact it was the first patent law, which regulates the content and form of privileges for invention, the procedure of issuance, validity, fees, justifications for revocation and the procedure of the trial. (Rospatent, Historical reference 2015)

The “Regulations on privileges for inventions and improvements” enacted May 20, 1896, already contained most of the elements of a modern patent system, such as the enablement, novelty and utility requirements, and a fifteen-year exclusive patent term. (Zegelman J., 2009)

After the Revolution of 1917, Russian political and economic systems changed. The monarchy was replaced by a Soviet Socialist Republic. On 29 July 1919 the “Decree on Abolishing Private Property Rights on Archives of Russian Writers, Composers, Painters and Scientists, Preserved in Libraries and Museums” came into force. All objects of copyright were nationalized and since then belongs to the “people”, what means to the State.

However, the patent itself, as a form of protection of inventions, was introduced on September 12, 1924 by the Government of the Soviet Union. (Rospatent, Historical reference 2015)

In 1931 the “Regulations on inventions and technological improvements” came into force. According to Zegelman (2009) the 1931 regulations abolished the private ownership of intellectual property rights. Instead of being able to independently exploit his invention in a commercial way, the inventor now received a nominal remuneration in exchange for permanently assigning her invention and the accompanying intellectual property rights to the State.

Following Liubov Kiriya²(2015), Acting Director General of the Federal Service for Intellectual Property, during the 1918 – 1955 management system of legal protection of intellectual property in the Soviet Union changed several times (table 1 and table 2).

² Liubov Kiriya’s presentation “Rospatent: Past, Present and Future”. XIX scientific - practical conference of Rospatent on 23-24 September 2015 (in Russian language, interpreted by Julia Aleshkova)

TABLE 1. Management system of legal protection of intellectual property in the Soviet Union during the 1918-1955

Period of centralized management	Period of decentralized management
Committee for inventions under the jurisdiction of the Supreme Council of National Economy of the USSR (1918–1931)	Branch people's commissariats (informally abbreviated narkomat) ³ , Bureau at the USSR State Planning Committee (1936–1946)
Committee on the invention under the Council of Labor and Defense (1931–1936)	Branch ministries, the Office for Standardization under the Council of Ministers, the Committee of Standards, Measures and Measuring Instruments (1951–1955)
The Committee for Inventions and Discoveries under the Council of Ministers of the USSR (1947–1948)	
The Committee on the introduction of advanced technology in the national economy (1948–1951)	

TABLE 2. The period of decentralized management of protection of inventions and technological – scientific achievements

Work on the development of invention activity carried out by:	Invention registration and edition of patent literature was carried out by:
Branch people's commissariats (1936–1946)	Bureau at the USSR State Planning Committee (1936–1946)
Branch ministries (1951–1955)	The Office for Standardization under the Council of Ministers (1951–1953)
	The Committee of Standards, Measures and Measuring Instruments (1954–1955)

According to Liubov Kiriya (2015), decentralised management of protection of inventions and technological – scientific achievements caused lot of problems such as:

- a gap between the receipt of proposals and their use,
- lack of Ministerial planning of questions related to the development and introduction of inventions and discoveries,

³In 1917-1946 years - the central executive body in charge of the management of specific fields of the State or of a separate sector of the economy; analogue ministry.

- lack of information on domestic and foreign inventions
- declines in the number of applications and the issue of the Intellectual Property security documents as well as low level of invention introduction

The above mentioned facts showed that some changes in the IPR management should be implemented. On 29 September 1955 the Committee on Inventions and Discoveries (here and after: the Committee) under the USSR Council of Ministers (here and after: the USSR CM) was formed.



PICTURE 1. The Resolution of the USSR Council of Ministers from 29 September 1955 on the establishment of the Committee (Kiriya 2015)



PICTURE 2. Committee building in Moscow in Cherkassky lane (Kiriya 2015)

During 1955 – 1991 the name of the Committee changed several times as well as its jurisdiction. Those changes presented in the table 3.

TABLE 3. Changes of the Committee's name (Kiri 2015)

Name	Jurisdiction	The period of existence		Head	The basis of change
		The beginning	The end		
The Committee on Inventions and Discoveries under the USSR CM	The USSR CM	29.09.1955	13.03.1963	A. Gar-mashev (January 1956–August 1961); J. Maksarev (September 1961–March 1963)	The Regulation of the USSR CM №1772
State Committee for Inventions and Discoveries of the USSR	The USSR CM	13.03.1963	12.10.1965	J. Maksarev	The Regulation of the USSR CM №282
State Committee for Inventions and Discoveries under the USSR CM	The USSR CM	20.08.1973	17.07.1987	J. Maksarev (August 1973–August 1978); I. Najashkov (September 1978–July 1987)	Decree of the Presidium of the Supreme Council of the USSR
The Committee on Inventions and Discoveries under the State Committee on Science and Technology of the USSR CM (SCST USSR CM)	The SCST USSR CM	17.07.1987	13.04.1991	I. Najashkov (July 1987–May 1989); J. Bespalov (June 1989–April 1991)	Decree of the Presidium of the Supreme Council of the USSR
State Patent Agency of the USSR (Gospatent)	The Cabinet of Ministers of the USSR	13.04.1991	14.11.1991	J. Bespalov	The Regulation of The Cabinet of Ministers of the USSR №176

Reforms of the USSR intellectual property system started in 1991, with change of socio-economic system of the Soviet Union. The draft of new IPR legislation was designed to modernize the older system of protecting of intellectual property rights.

As it was mentioned above, till 1991 almost all the inventions were protected by Inventor's Certificates and belong to the State. Dr Natalia N. Karpova (2015) explains the Inventor's Certificates as follows: “First of all it provides the state's protection of a right to an invention. If you have an Inventor's Certificate you are the only author. An exclusive right to use the invention belongs to the State. Anybody in the USSR, now in Russia, may use an invention which has received an Inventor's Certificate, without a patentee's consent. Then, if you have received that certificate you do not need to pay any fee for it, but you may not sell it or a license to use your idea because it has become state's property. “

The patent as a form of exclusive right for an invention also exists in the USSR, unfortunately it was available only for foreigners.

In the USSR the inventors received “the inventor's certificates which only confirmed their authorship and allowed them a modest remuneration from the enterprise they worked at” (Dr Natalia N. Karpova 2015). During Soviet period the new technical solutions were not regarded as anyone's property and could be used free without the inventor's permission. This is the reason, why Russia has so many problems with IPR. Even now some persons are using the results of other people's work without the owner's authorization. Unfortunately the reason for that is not only bad will, but lack of education in IPR field. Dr Natalia Karpova (2015) mentioned that: “The reason lies in our past when property belonged to the State, then, immediately, it passed into the hands of entrepreneurs unaccustomed to private property.”

With collapse of the USSR in 1991 lot of questions related to the IPR arise. According to Dr. Natalia N. Karpova (2015), “an invention was very often done in one republic, implicated in another one, improved in the third one. And the old country's legislation assisted that process. “

Questions related to the ownership of the innovations produced during the USSR as well as market economy forced new Russian Government develop new IPR legislation.

During 1992 two very important for Russia documents related to IPR were issued:

1. "Patent Law of Russian Federation No. 3517-1 as of 23.09.1992".
2. "The Law of the Russian Federation on trademarks, service marks and appellations of origin" No. 3520-1 as of 23.09.1992".

2.2 Rospatent

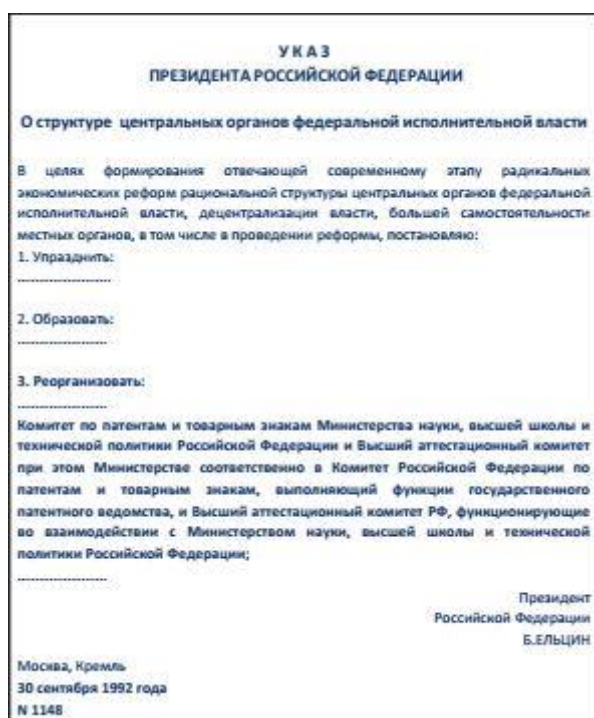
On 24 January 1992 the Committee for Patents and Trademarks (Rospatent) under the Ministry of Science, Higher Education and Technical Policy of the Russian Federation was established (picture 3).



PICTURE 3. Decree of the President of the Russian Federation on Rospatent signed by the President of the Russian Federation Mr Boris Yeltsin. (Kiriya 2015)

On 30 September 1992 Rospatent became the Federal executive authority, acting as the State Patent Office (picture 4).

Administration of the President of the Russian Federation and the Government Executive Office of the Russian Federation prepared joint Decree of 6 August 2004 №1363 / 1001 which approved the abbreviated names of ministries, services and agencies. For the Federal Service for Intellectual Property, Patents and Trademarks retained the abbreviated name "Rospatent". (Rospatent, Historical reference, 2015)



PICTURE 4. Decree of the President of the Russian Federation on the structure of the central authorities of the federal executive branch, signed by Mr B, Yeltsin. (Kiriya, 2015)

During 1992 – 2015 the Patent Office of the Russian Federation changed its' name several times. In the table 4 is possible to trace the above mentioned changes.

TABLE 4. The names of the Patent Office of the Russian Federation in 1992-2015 years (Kiriya 2015)

Name	Jurisdiction	The period of existence
The Committee on Patents and Trademarks	Ministry of Science, Higher Education and Technical Policy of the Russian Federation	1992 (January – September)
The Committee of the Russian Federation for Patents and Trademarks	The Government of the Russian Federation	1992 – 1996
Russian Agency for Patents and Trademarks	The Government of the Russian Federation	1996 – 2004
The Federal Service for Intellectual Property, Patents and Trademarks	The Ministry of Education and Science of the Russian Federation	2004 – 2011
The Federal Service for Intellectual Property	The Government of the Russian Federation	2011 – 2012
	The Ministry of Economic Development of the Russian Federation	2012 – present

On Rospatent webpage is possible to read the main functions of the Federal Service for Intellectual Property:

- a)** the provision of the procedure for affording in the Russian Federation the legal protection to intellectual property rights and also the procedure for their exploitation, said procedures are established by the Constitution of the Russian Federation, the Federal constitutional laws, the Federal laws and other statutory legal acts;
- b)** the performance of control and supervision of examination of applications for intellectual property rights and the issue of protective titles in the manner established by legislation of the Russian Federation;
- c)** the registration of intellectual property rights and also license agreements and assignment agreements in the sphere of intellectual property and publication of data on the registered intellectual property rights;
- d)** the performance of control and supervision of the observance of the procedure for paying patent fees and registration charges;
- e)** the performance of certification and registration of patent attorneys of the Russian Federation and the performance of control of the fulfilment by them of requirements provided for by legislation of the Russian Federation.

The Russian Agency for Patents and Trademarks (Rospatent) is a federal executive body authorized to grant, register, and maintain intellectual property rights. Dr. Natalia N. Karpova (2015) stated that “in April 1999 Rospatent was empowered to improve legislation international cooperation and interaction with public organizations in the field of copyright and related rights.”

The structure of Rospatent include several elements. The figure 1 illustrates the structure of Rospatent in present time.

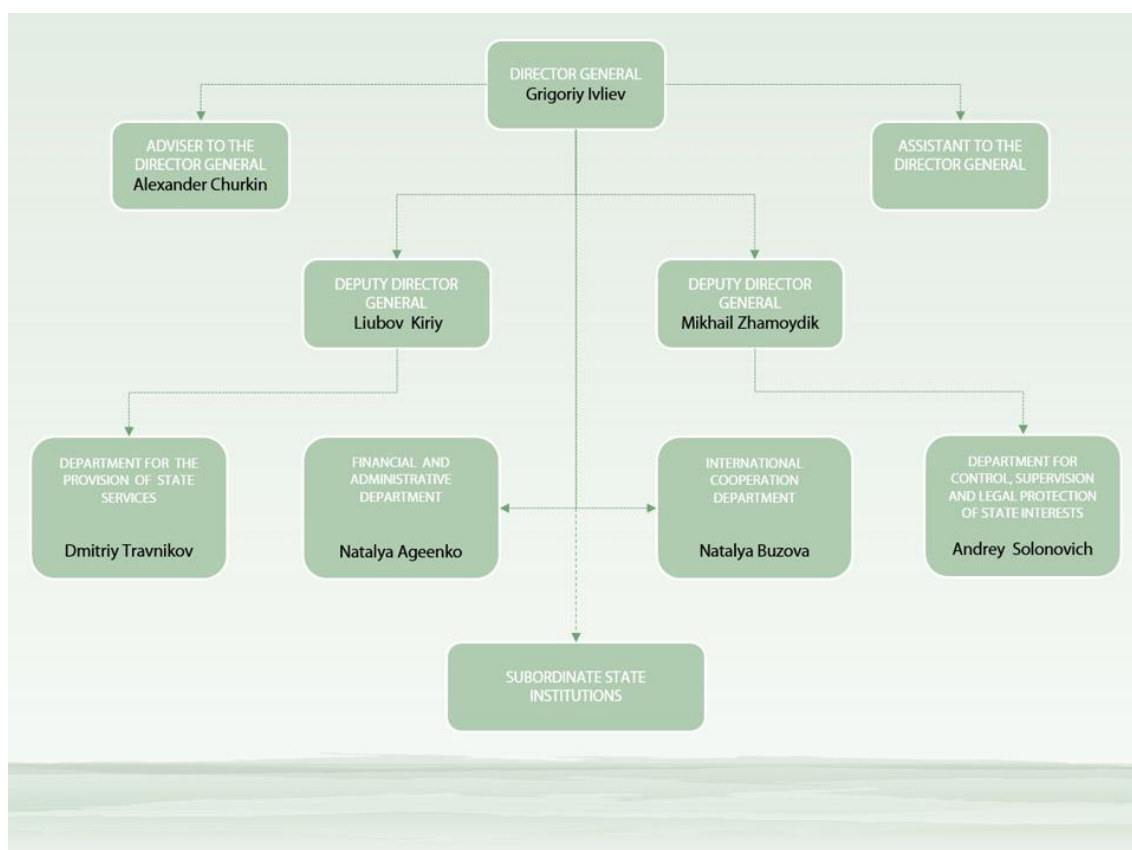


FIGURE 1. Structure of Rospatent (Rospatent, 2015)

Subordinate State Institutions are:

Federal Institute of Industrial Property (FIPS) – a non-profit research organization in a form of a federal government budgetary institution. The Federal Institute for Intellectual Property (FIPS) is subordinate to Rospatent. The Chamber for Patent Disputes (CPD) is a division of FIPS. FIPS receives and examines patent applications. The main responsibilities of FIPS are carrying out of preparatory work for the implementation of Rospatent legal actions related to the legal protection and the protection of the following results of intellectual activity and means of individualization: inventions, utility models, industrial designs, trademarks, service marks, appellation of origin of goods, computer programs, databases and topographies of integral circuits as well as acquiring and use of scientific knowledge for scientific and technical support of examination of the intellectual property results and means of individualization. (FIPS 2015)

Federal Service of Intellectual Property (FAPRID) is Federal State Institution "The Federal Agency for the legal protection of results of intellectual activities of military, special and dual purposes objects." Main activities are:

- audit of State customers and organizations - executors of state contracts which are carrying out research, development and technological works related to military, special and dual purpose items and services from the federal budget;
- technical and information analytical support to Rospatent on the common register of the results of research, development and technological works for military, special and dual purpose items, which rights belong to the Russian Federation;
- records of licenses sent to foreign countries for the production of military items;
- protection of the rights of the Russian Federation in courts related to the military, special and dual purpose questions. (FAPRID, 2015⁴)

Russian State Educational Institute for Intellectual Property (RGIIS) established by Rospatent for educational and informational purposes. RGIIS offers courses, workshops, conferences on IPR related questions, as well as expert advice and information. (RGIIS, 2015)

2.3 International cooperation

“The key objective of the Rospatent’s international cooperation activity is to make sure that the interests of the Russian Federation are honored, and obligations thereof are duly fulfilled as set forth in relevant international treaties and bilateral agreements governing intellectual property protection and enforcement.” (Rospatent, Annual report 2014)

Rospatent promote its cooperation with international organizations and foreign partners. In 2014 Rospatent was working on harmonization of the Russian intellectual property system with the national systems of other states and regional associations. One of the examples of such cooperation is the EU -Russia project "Approximation of EU and RF IPR aspects". Within the framework of implementing Component 3 - “Patent application, registration and processing procedure” the comparative analysis of patent processing proceedings of EPO and Rospatent has been done (Appendix 1). The results have shown that

⁴ The website is only in Russian language, the content interpreted by Julia Aleshkova

“document processing procedures in the EPO and Rospatent are essentially similar. However, certain differences of procedures were identified, particularly with respect to application filing and examination as to substance.” (Rospatent, Report, 2010)

2.3.1 Cooperation with the World Intellectual Property Organisation (WIPO)

Rospatent closely cooperate with WIPO.

The World Intellectual Property Organization (WIPO) is the most large-scale international agency dealing with immaterial property protection. Its activity is devoted to the development of effective and available international intellectual property system, which can supply with reward for creative activity, stimulate innovation and make an important contribution to economic growth in view of public interests. WIPO was established in 1967 and became a dedicated United Nations Organization institution in 1974. The pre-supposition of this establishment was the necessity to administer two conventions adopted at the close of 19 century, the Paris Convention for the Protection of Industrial Property (1883), and the Berne Convention for the Protection of Literary and Artistic Works (1886). The Russian Federation joined the WIPO in April 1970. (Elena Setjanova 2015)

In 2014 Rospatent and the International Bureau of WIPO organised several seminars, conferences and summer school. The same year experts from Rospatent were involved in WIPO projects to improve the International Patent Classification (IPC) and the International Classification for Industrial Designs (Locarno Classification). “The efforts yielded the Russian language electronic version of IPC-2015.01 for examiner use and web publication for external users of patent information. Besides, groundwork was done for selecting new titles of industrial designs to be incorporated in the 11th Edition of the Locarno Classification.” (Rospatent, Annual report 2014)

The Russian Federation is a party to the majority of international agreements administered by WIPO (table 5). Table 6 shows the International treaties to which the Russian Federation is not a party but interested to accede and table 7 presents the International treaties at drafting stage.

TABLE 5. The Russian Federation international agreements administered by WIPO (Rospatent, Annual report 2014)

Document title	In force in respect of the Russian Federation
Industrial property	
Paris Convention for the Protection of Industrial Property	Since July 1, 1965
Convention Establishing the World Intellectual Property Organisation	Since April 26, 1970
Madrid Agreement Concerning the International Registration of Marks	Since July 1, 1976
Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	Since June 10, 1997
Patent Cooperation Treaty (PCT)	Since March 29, 1978
Trademark Law Treaty (TLT)	Since May 11, 1998
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	Since April 22, 1981
Strasbourg Agreement Concerning the International Patent Classification	Since October 3, 1976
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	Since July 26, 1971
Locarno Agreement Establishing an International Classification for Industrial Designs	Since December 15, 1972
Nairobi Treaty on the Protection of the Olympic Symbol	Since April 17, 1986
International Convention for the Protection of New Varieties of Plants (co-administered by WIPO and UPOV)	Since April 24, 1998
Patent Law Treaty (PLT)	Since August 12, 2009
Singapore Treaty on the Law of Trademarks	Since December 18, 2009
Copyright and Related Rights	
Berne Convention for the Protection of Literary and Artistic Works	Since March 13, 1995
Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite	Since January 20, 1989
Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	Since March 13, 1995
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	Since May 26, 2003
WIPO Copyright Treaty (WCT)	Since February 5, 2009
WIPO Performances and Phonograms Treaty (WPPT)	Since February 5, 2009

TABLE 6. International treaties to which the Russian Federation is not a party but interested to accede (Rospatent, Annual report 2014)

International treaties to which the Russian Federation is not a party but interested to accede			
Document title	Date introduced	Date ratified	Framework
Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled	June 27, 2013	–	The treaty provides for a more flexible copyright and legal treatment based on latest technology achievements to protect the blind and people with impaired vision
Beijing Treaty on Audiovisual Performances	June 26, 2012	–	Pioneering treaty to provide comprehensive protection for audio/visual performers' rights as part of the international copyright system. It upholds the property rights of film actors and other performers as well as contains provisions for them to generate additional income from the product they deliver. Also, it grants the performers personal non-property rights to be credited for their authorship and to protest against the distortion of their performance.
Hague Agreement Concerning the International Registration of Industrial Designs	November 6, 1925	–	The treaty sets an international framework for several countries to have their industrial designs protected under one application filed with the WIPO International Bureau, worded in one language, with one set of relevant fees paid in one currency (CHF). Also, the Hague system provides for a significant ease in subsequent management of the industrial designs based on an easy, one-stop WIPO International Bureau procedure for amending or renewing the registration for another term.

TABLE 7. International treaties at drafting stage (Rospatent, Annual report 2014)

International treaties at drafting stage			
Document title	Date introduced	Date ratified	Framework
Draft Treaty on the Protection of Broadcasting Organisations	—	—	The treaty is to protect broadcasters' rights. Specifically, it is expected to set forth limitations and exceptions for libraries, archives, education/training/scientific research institutions and individuals with different disorders, save for vision impairments or a limited ability to perceive printed information
Draft international documents ensuring the protection of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions / folklore (TCE)	—	—	Uniform texts are being drafted to ensure the observance of IP rights where applicable to the use of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions / folklore (TCE)
Draft international document on industrial design law and practice plus draft regulations	—	—	The treaty is expected to set forth regulations for industrial design laws streamlining standard procedures for industrial property registration
New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications	—	—	The document is expected to refine the existent regulations governing the development of an international registration system for geographical indications. Also, it is to regulate the accession of intergovernmental organisations to the systems.

2.3.2 Cooperation with International Organizations

Rospatent representatives took part in different international projects, conferences and seminars dedicated to the development of IPR system. Rospatent cooperates with the following international organisations:

- Asia-Pacific Economic Cooperation (APEC)
- European Union (EU)
- The European Patent Office (EPO)
- EU Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM)⁵
- Eurasian Patent Organization (EAPO)
- Eurasian Economic Commission (EEC)

More information of concrete events and ways of cooperation of Rospatent with international organisations is possible to take from the 2014 Annual Report of Rospatent.

2.4 Choosing between Russia and Eurasia

It is important to know, that apply for patents in Russia is possible through two different organisations: the Rospatent and the Eurasian Patent Office (EAPO).

With collapse of the Soviet Union in 1991, questions related to the ownership of the innovations produced during the USSR arise. It was important to segregate authority between national and republican agencies. “A new Treaty of Union was seen as a comprehensive and drastic solution to the political and economic problems of the period.” (EAPO, Establishment of the Eurasian Patent Organization 2015). The Eurasian Patent Convention entered into force on 12 August 1995. To perform administrative tasks relating to functioning of the Eurasian patent system and grant of Eurasian patents, the Eurasian Patent Convention (EAPC) established the Eurasian Patent Organization with the Eurasian Patent Office (EAPO) acting as its executive body. (EAPO, Procedures 2015)

⁵ With the entry into force of Regulation No 2015/2424 amending the Community trade mark regulation on 23 March 2016, OHIM became the **European Union Intellectual Property Office (EUIPO)** (Read 9.05.2016 <https://euipo.europa.eu/ohimportal/en/the-office>)

Despite that Russian and Eurasian systems have been influenced by patent laws and regulations in the European territory, there are several differences which should be taken into account while choosing the way to apply a patent.

The first one is geographical coverage. The Eurasian Patent Convention reunites nine States: Turkmenistan, Republic of Belarus, Republic of Tajikistan, Russian Federation, Republic of Kazakhstan, Republic of Azerbaijan, Kyrgyz Republic, Republic of Moldova, and Republic of Armenia.

The second one is price difference. According to Teemu Lang, Director (Patent Department) at Papula-Nevinpat and Registered Patent Attorney (Teemu Lang, World Intellectual Property Review 2013) “the official fees in the Eurasian Patent Office (EAPO) are significantly higher than in the Russian national office; especially since the Russian national office lowered its fees in 2012 in anticipation of WTO membership, which no longer allowed the office to maintain different fees for foreign and domestic applicants.” In his article, Teemu Lang gave an example of price differences between RU office and EA office: “As an example, the filing fee in the RU office is about \$60 while the filing fee in the EA office is about \$630 for Patent Cooperation Treaty nationalisations. Similar relative differences in official fees apply to other prosecutions as well. “

Third difference is in the expertise of the examiners. Following Teemu Lang (2013), the EA office has a tradition of serving foreign applicants in the pharmaceutical industry, consequently, the expertise of EA office is potentially at a higher level than exists in the RU office. But, Teemu Lang prolong, that due to the fact that RU office a much bigger organisation it accumulated more versatile expertise across a wider range of technological fields.

Forth difference is the timing. In the RU office examination of the application usually is taking longer time that the same procedure in the EA office. Such difference occur due to the fact that the RU legislation is more strict in formal matters and the requirements concerning sufficient support for and clarity of the claims than the Eurasian one, which have adopted the very clear formulation from the European Patent Convention. According to Teemu Lang (2013), “on average, prosecution through the RU national office requires about one more round of office actions than prosecution through the EA office.”

As an example, complicated applications from the pharmaceutical field requires two or more investigation rounds and as a result “the time from requesting examination to a granting decision is about one year more through the national RU office than through the EA office.” (Teemu Lang, 2013)

Teemu Lang conclude that “looking at the mere cost of prosecution in Russia it would be wise to choose the RU office for shorter applications and the EA office for longer and more complicated applications.”

3 INDUSTRIAL PROPERTY

Intellectual property is usually divided into three branches: industrial property, copyright and non-traditional subjects of IP. Table 8 shows different objects of IP. In this final thesis, the author will concentrate only on Industrial property, particularly on trademarks.

TABLE 8. Objects of Intellectual Property (Pogrebinskaja T., 2011)⁶

Objects of Intellectual Property				
Objects of Copyright and Neighbouring Rights		Objects of Industrial property		Non-traditional objects of IP
Copyright	Neighbouring Rights	Patents	Means of individualization	
- works of science, literature, and art	- performances	- inventions	- trade names	- selection attainments
- computer programs	- phonograms	- utility models	- trademarks and service marks	- topographies of integrated circuits
- databases	- broadcasting or diffusion of radio- or television transmissions via cable	- industrial designs	- geographical indications	- secrets of production (know-how);
			- commercial names	

⁶ The original text is in Russian language. Russian-English translation of the table made by Julia Aleshkova

The Paris Convention for the Protection of Industrial Property (Article 1 (3)) define the Industrial Property as follows: “Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.” Industrial property exists in different forms, the main types of which will be outlined in this thesis. Here are some types of industrial property: patents to protect inventions, industrial designs, trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. Due to the fact that Industrial property covers different subjects, the author will concentrate only on trademarks. Following the WIPO: “In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general.” (Understanding Industrial Property, WIPO 2015)

3.1 Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights. A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features – the possibilities are almost limitless. (Trademark, WIPO 2016)

Following Russian legislation (The Civil Code of the Russian Federation, Article 1482) types of Trademarks are:

1. Verbal, pictorial, three-dimensional, and other indications or their combinations may be registered as trademarks.
2. A trademark may be registered in any colour or colour combination.

As we can see there is not any difference between EU and Russian description of a trademark.

3.1.1 The use of the ® and ™ symbols

The Finnish Trademarks Act does not lay down provisions on the use of the ® and ™ symbols, but in case law it is considered that the ® symbol must be used only with registered marks. In other words, if a trademark is not registered in Finland or in the EU, there is no reason to use the ® symbol. However, the ™ symbol can be used even if the trademark has not been registered, for example as a symbol for an established trademark or when a trademark application is pending. (Frequently asked questions. PRH 2016)

The right-holder for giving notice of his exclusive right to a trademark shall have the right to use the symbol of protection, which shall be placed alongside the trademark and consists of the Latin letter "R" or the Latin letter "R" in a circle ® or the verbal indication "trademark" or "registered trademark" and which symbol indicates that the indication used is a trademark protected on the territory of the Russian Federation. (Article 1485, Civil Code of the Russian Federation)

The Table 9 shows the symbols and the verbal indication of a trademark in Russian and English languages

TABLE 9. The symbols and the verbal indication of a trademark

R	®	Trademark (Товарный знак – in Rus- sian language)	Registered trademark (Зарегистрированный товарный знак – in Russian language)	™
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3.1.2 Registration of a trademark in Russia and in Finland

Registration systems of a trade mark in Russia and in Finland are similar to each other. It is possible to register a trade mark in National offices: Finnish Patent and Registration

Office (Patentti- ja Rekisterihallitus (PRH)) – in Finland and The Federal Service for Intellectual Property (its subordinate State Institution - Federal Institute of Industrial Property (FIPS)) in Russia.

In Finland exists two ways to apply for a trademark: with PRH online application form or PRH paper forms available in Finnish and in Swedish (address: Arkadiankatu 6 A P.O.Box 1140, FI-00101 Helsinki, Finland). “The paper form must be signed by you or your representative. You can also email the application to us as an attached document but make sure that the signature is shown in the application. You do not have to send the original application to us. Remember to enclose a copy of the receipt with your application”. (PRH 2016)

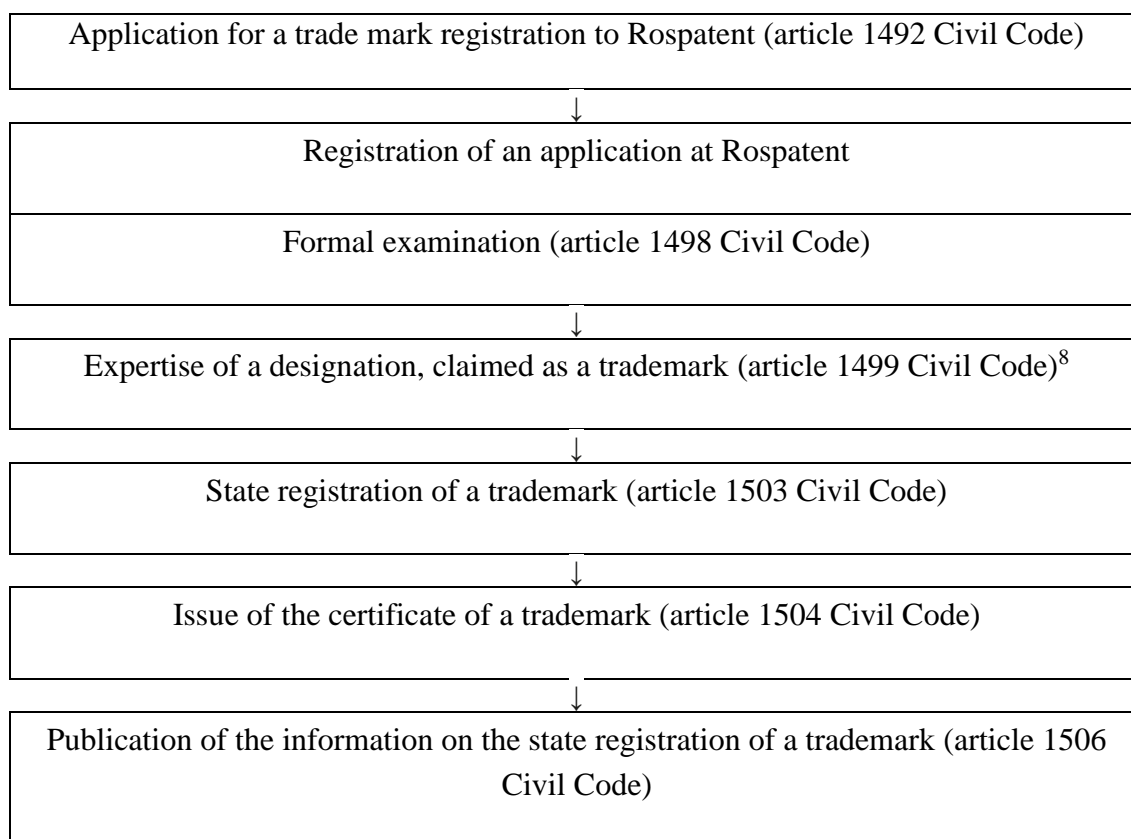
In Russia the application should be in Russian language and there exists four ways to apply for a trademark:

1. By post, address: 30-1 Berezhevskaya nab. Moscow G-59, GSP-3 125993 Russian Federation
2. By arriving to the FIPS office (same address as in paragraph 1)
3. By fax: +7 (495) 531-63-18 with the subsequent submission of the originals of the application documents within one month from the date of their receipt by fax together with a cover letter identifying the documents submitted earlier by fax;
4. By using digital signature via the Common Government Services Portal of Russian Federation www.gosuslugi.ru/pgu/eds (in this case the applicant should contact the local Trusted Certified centre (the list of centres is possible to see at the following webpage: <https://e-trust.gosuslugi.ru/CA>) and receive an electronic key).

The easiest way to apply for a trademark is to use the help of the IPR expert. Foreign companies must use a patent attorney registered with the Russian Patent Office to handle the filing of a patent application. (Patent System In Russia, EU 2010)

Table 10 shows the standard procedure of a trade mark registration in the Russian Federation.

TABLE 10. Standard procedure of a trade mark registration in the Russian Federation (Pogrebinskaja T. 2011)⁷



The examination procedure includes a formal examination of the application – conducted within one month of filing – and a substantive examination of the mark. During the formal examination, the application and accompanying documents shall be checked for compliance with the statutory requirements. During the substantive examination, the mark is checked for compliance with the conditions set out in the Civil Code:

- the acceptability of the applied-for subject matter as a trademark; and
- the absence of absolute and some relative grounds for refusal of registration (World Trademark Review Yearbook 2016/2017 - Russia chapter, Gorodissky&Partners)

State registration of a trademark in the Russian Federation can be applied through the normal procedure or the accelerated procedure. The normal procedure takes usually 12-18 months starting from the application date, the accelerated procedure takes 5-8 months

⁷ The original text is in Russian language. Russian-English translation of the table made by Julia Aleshkova

⁸ Usually called a substantive examination (author's note)

starting from the date of conclusion of the agreement associated with the immediate verification of the claimed designation on the application for a trademark. (Pogrebinskaja T. 2011)⁹

3.1.3 Validity of registration

Regarding the validation period of the trade mark registration Russian and Finnish legislations are similar. “The protection of a registered trademark begins on the date on which the application is filed. The registration is valid for 10 years from the registration date, and you can renew it every 10 years.” (PRH 2016)

At the end of 2015 the European Parliament approved a new trademark directive. Directive (EU) No. 2015/2436 of the European Parliament and of the Council entered into force on 15 January 2016. The aim of the directive is to modernize, clarify and further harmonize member countries’ trademark systems. Following Ms Pirjo Aro-Helander, head of unit, PRH announcement “New EU directive on trademarks into force on 15 January 2016”, the directive includes the following changes:

- A sign should be permitted to be represented in any appropriate form using generally available technology, and thus not necessarily by graphic means.
- Trademarks shall be registered for a period of 10 years from the date of filing of the application (not the date of registration).
- An obligatory administrative procedure for revocation or declaration of invalidity will be introduced, which means that an administrative authority – for example, the Finnish Patent and Registration Office (PRH) – will examine and decide on requests for the revocation or declaration of invalidity of trademarks. At the moment, such issues belong to the competence of courts in Finland.

⁹ The original text is in Russian language. Russian-English translation made by Julia Aleshkova

Ms Pirjo Aro-Helander (Announcement 2016, PRH 2016) informed that “the directive itself does not change the member countries’ laws, but the legislator - Parliament in Finland - has to implement the changes by reforming national legislation... the changes will be carried through by a total reform of the Finnish Trademarks Act.”

Regarding the validity of a trade mark, the Finnish legislation as well as Russian legislation are following the EU Directive – in both countries the registered period is calculated from the date of filing the application.

In Russia and in Finland registration of trade mark may not be renewed earlier than one year before or later than six months after it expires.

3.1.4 Unregistered trademarks

In the Russian Federation as well as in Finland no rights exist in an unregistered mark unless it is Well-known mark in Russia or in case of Finland, it is a trademark with a Reputation.

3.1.4.1 Well-known trademarks in Russia

In the Russian Federation no rights exist in an unregistered mark unless it is well known according to Article 6bis of the Paris Convention and recognised as such according to Articles 1508 and 1509 of the Civil Code. An unregistered mark can be protected if, due to intensive use, it has become widely known in Russia among the relevant consumers with respect to the goods of the person seeking protection of the mark and is recognised by the Russian Patent and Trademark Office (PTO) to be well known in Russia. Further, according to Articles 1538-1541 of the Civil Code, a mark used by a legal entity or an individual entrepreneur to distinguish its commercial enterprise may be protected as a commercial designation if the mark has sufficient distinctiveness and its use by the owner in respect of the enterprise is known within a certain territory (World Trademark Review Yearbook 2016/2017 - Russia chapter, Gorodissky&Partners, Biriulin V. & Bogdanov N., 227). Following Biriulin V. and Bogdanov N. if a trademark is not registered in the Russian Federation, it could be protected if a trademark is well-known in Russia (in this

case if the owner of a trademark wish to have his trademark recognized as well-known he should submit certain documents to Rospatent).

At the moment only 165 trademarks recognised as well-known in Russia when, at the same time, there are 498 318 (Statistic from FIPS on 11.05.2016) valid trademarks registered at the Rospatent. The registration process for a well-known trademark is quite strict and sometimes requires a lot of time and affords, but it gives a certain advantages, such as:

- A well-known mark may be protected from use by other parties in relation to goods in other categories
- Legal protection of well-known marks is not time limited
- Applications to register a similar or an identical trademark by another party may be refused
- Applications to register marks which include the name of an identical or similar mark which has previously been registered as well known, to the extent that confusion is likely, are rejected. For example, the registration of the INTEL mark means that marks INTELPART and INTELCROSS are unlikely to be registered. (Serova L., 2010, 79)

Following the below-mentioned information we can say that the registration of a trademark as well-known can ease their owners the enforcement procedure, due to the fact that a well-known mark is “protected from use by other parties in relation to goods in other categories” (Serova L., 2010, 79) comparing to a trademark protection when a trademark protected from use by other parties in relation to goods only in registration mentioned categories. At the same time trademarks recognised as well-known can save some budget to their owners, due to the fact that it is not necessary to renew registration of the mark every 10 years and to pay fees for such renewal.

The figure 1 shows the registration of well-known marks in Russia for the period of 2000 – 2013 years.

FIGURE 1: REGISTRATION OF WELL-KNOWN MARKS IN RUSSIA

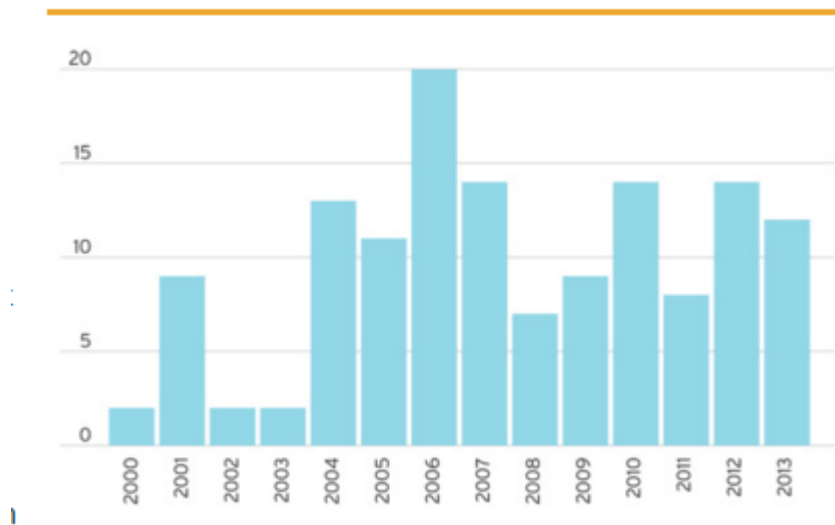


FIGURE 1. Registrations of well-known marks in Russia (Filippova I. & Filippov P. 2014).

Since the first designation was registered on April 2000 as well known (IZVESTIYA) till 2016, the Register of well-known marks in Russia has been significantly extended with Russia and foreign trademarks. Following Filippova I. & Filippov P. (2014) this trend shows the globalisation of the Russian economy, which has become attractive to foreign manufacturers and investors, strengthening the position of Russian trade marks and the recognition of their status for leaders in the IP market.

Figure 2 shows the distribution of registrations of well-known marks in Russia in 2014 between countries of origin. The United States are the leaders in the registration of well-known marks in Russia. They are holders of such world brands as: Pentium, Cosmopolitan, Gillette, Tiffany, Nike and many others.

FIGURE 2: DISTRIBUTION OF REGISTRATIONS BETWEEN COUNTRIES OF ORIGIN

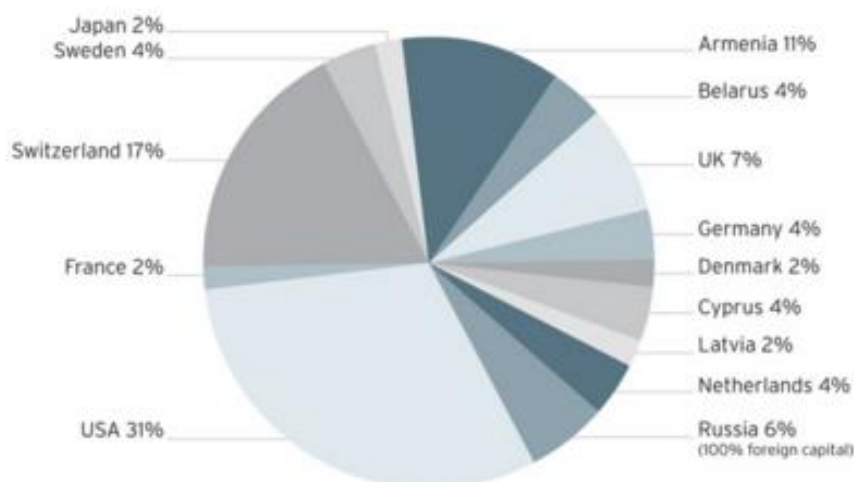


FIGURE 2. Distribution of registrations between countries of origin (Filippova I. & Filippov P. 2014).

As mentioned above, the registration of a trademark as well-known requires a big volume of documents showing recognition of the trademark and its well-known status. Following Filippova I. & Filippov P. (2014): “Typically, two or three applications are usually refused each year by Rospatent for not meeting the legislative standards while 10 to 12 applications are recognised as well-known marks.” Table 11 which shows the number of considered cases related to well-known marks in the Russian Federation, prove their statement.

TABLE 11 The number of considered cases related to well-known marks (Annual Report of Rospatent 2015, modified)

Type of case related to well-known marks	Type of decision	2011	2012	2013	2014	2015
Request to recognize a trademark or an indication used as a trademark as a well-known mark in the Russian Federation	satisfied	8	14	12	7	15
	satisfied in part	-	-	-	1	2
	rejected	2	2	5	2	3
	prosecution terminated	-	-	-	1	3
Appeals against granting legal protection to well-known marks in the Russian Federation	satisfied	-	-	-	-	-
	rejected	1	1	2	1	-
Total		11	17	19	12	23

As noted above, in 2015, there was almost a twofold increase, as compared to 2014, in the number of decisions made on requests to recognize a trademark or an indication used as a trademark as a well-known mark in the Russian Federation, most of which were satisfied (Annual Report of Rospatent 2015).

3.1.4.2 Trademarks with a Reputation in Finland

In Finland exclusive rights in a trademark may be acquired, even without registration, after the mark has become established. A trade symbol shall be considered established if it has become generally known in the appropriate business or consumer circles in Finland as a symbol specific to its proprietor's goods. (The Finnish Trademarks Act, Chapter I, Section 2). In Finland exists two separate databases of trademarks:

1. The Trademark Register
2. List of Trademarks with a Reputation

On 6 June 2007, the Finnish Patent and Registration Office (PRH) decided to establish a list into which trademarks with a reputation in Finland can be entered on application. (List of Trademarks with a Reputation, PRH 2016). Similar to the Russian Federation Well-known trademark database, it is a list of trademarks that are well known in Finland. On 10 May 2016 there were 26 trademarks with a reputation. (Marks admitted on the list, PRH 2016)




The purpose of the list is to serve commerce and industry, agents and all other stakeholders that for one reason or another need information on reputable marks. The list is helpful when conducting preliminary examinations or tests of confusing similarity of trademarks, and should thereby have a preventive effect on trademark disputes. A condition for entry in the list is that the trademark has a reputation in Finland, as defined in Section 6(2) of the Finnish Trademarks Act. The concept of a trademark with a reputation is based on Community legislation, the interpretation of which is supervised by the Court of Justice of the European Communities. An entry in the list will remain in force for five years from the date of entry. You can renew it for a further period of five years by filing an application with the PRH. You cannot apply earlier than six months before or later than six months after the expiry of the term of five years. (List of Trademarks with a Reputation, PRH 2016)

TABLE 12. Applications and notifications 2012–2014 (PRH Annual report 2014, modified)

Trademarks	2012	2013	2014
Resolved national trademark applications	4 380	3 553	3 171
Trademarks with a reputation	2	2	2
International trademarks:			
Processed Madrid applications (Finland as country of origin)	229	169	134
Resolved Madrid applications (Finland as designated country)	1806	2027	1657

Comparing Table 11 and Table 12, we can conclude that in Finland the number of applications for the recognition of a trademark as a trademark with reputation is much lower than in Russia the number of applications for the recognition of a trademark as well-known. I think that one of the reasons for such a difference is the fact that in Russian database of well-known trademarks included so-called world trademarks, recognised by a variety of states and among them the top most valuable brands worldwide. These world TMs including Coca-Cola, Intel, Nike, Nestlé and Disney are in the ranking of the 50 most valuable brands in 2014 according to Brand Finance Global and are registered in Russia as well-known marks. (Filippova I. & Filippov P. 2014, 3). In Finnish List of Trademarks with a Reputation most of the trademarks have Finnish owner, except of five trademarks, mentioned in the Table 13.

TABLE 13. Finnish List of Trademarks with a Reputation – foreign trademark holders

Trademark	Country	Holder of a trademark
	Switzerland	WWF-World Wide Fund For Nature (formerly World Wildlife Fund)
	Germany	Mast-Jägermeister SE
 RED BULL	Austria	Red Bull GmbH
NORDEA	Sweden	Nordea Bank AB (publ)

Another reason for such a difference is the fact that Rospatent started to register a trademarks as well-known in 2000 and PRH decided to establish a list only in 2007.

3.1.5 Enforcement

3.1.5.1 Enforcement in the Russian Federation

The following chapter rely on the World Trademark Review Yearbook 2016/2017 - Russia chapter, Gorodissky&Partners, Biriulin V. & Bogdanov N., 230 – 232.

Any unauthorised commercial use of a protected trademark shall be considered infringing, and goods, labels and packaging on which the trademark or a confusingly similar sign is unlawfully placed shall be regarded as counterfeit. (World Trademark Review Yearbook 2016/2017 - Russia chapter, Gorodissky&Partners, Biriulin V. & Bogdanov N., 230)

In the Russian Federation exists four types of legal action which may be taken against trademark infringers:

- Administrative proceedings
- Civil proceedings
- Criminal proceedings
- Special administrative procedures

TABLE 14. Types of legal action against trademark infringers

	Penalties	Period of time
Adminis- trative pro- ceedings	<ul style="list-style-type: none"> • individuals – twice the cost of the counterfeit goods, but no less than Rb10,000; • legal entities – five times the cost of the counterfeit goods, but no less than Rb100,000; • officers – triple the cost of the counterfeit goods, but no less than Rb50,000. 	Three to four months from discovery of the offence to the first court decision
Civil pro- ceedings	<ul style="list-style-type: none"> • cessation of the authorised use of the trademark; • reimbursement of damages; • removal of all counterfeit goods from the market and their destruction; • publication of the court’s decision; • compensation instead of damages between Rb10,000 and Rb5 million. 	Four to six months from filing to the first-instance court judgment
Criminal proceed- ings (if the in- fringement occurs re- peatedly or if the dam- age exceeds Rb250,000)	<ul style="list-style-type: none"> • a fine of Rb100,000 to Rb300,000 or up to two years’ salary or other income of the convicted person; • compulsory community service for up to 480 hours; • corrective or disciplinary work for up to two years; and • imprisonment for up to two years with a fine of up to Rb80,000 or up to six months’ salary or other income of the convicted person. <p>If committed by an organised group, the same crime is punishable by:</p> <ul style="list-style-type: none"> • a fine of Rb500,000 to Rb1 million or between three and five years’ salary or other income; or • disciplinary work for up to five years; or • imprisonment for up to six years and, optionally, a fine of up to Rb500,000 or up to three years’ salary or other income. 	An average of two years

Special administrative procedures	<p>The illegal use of a trademark may be classed as an act of unfair competition (in case there is competition on the market).</p> <p>The Russian Anti-monopoly Service is empowered to consider unfair competition cases in special administrative procedures. Such procedures start on the basis of a complaint filed by any person concerned and terminate with the decision of the Russian Anti-monopoly Service. The decision may be appealed to a court.</p>	-
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From Table 14 we can conclude that minimum penalty for the infringer of the Intellectual property is 10 000 Rb under Administrative proceedings and the maximum penalty is 1 million Rb or imprisonment for up to six years in case of Criminal proceedings.

In 2013 the IP Rights Court has been established in the Russian Federation. It is a specialised commercial court with jurisdiction over cases concerning IP disputes. All cases are heard by a panel of at least three judges. The court may engage experts to clarify specific questions on the matter of dispute; for these purposes, it may send a binding order to any authority, organisation or person. (World Trademark Review Yearbook 2016/2017 - Russia chapter, Gorodissky&Partners, Biriulin V. & Bogdanov N., 232)

According to the data presented in Table 15, the Court for Intellectual Property Rights was involved in the majority of cases related to the Intellectual property rights. The decisions (actions) of Rospatent which do not fall within the competence of the Court for Intellectual Property Rights are appealed in other commercial courts. Most of these disputes are related to appeals against refusals of the state registration of contracts in respect of the results of intellectual activity and means of individualization. (Annual report 2015, Rospatent). The majority of appeals against decisions (actions) of Rospatent related to trademark protection, in total 440 judicial acts.

TABLE 15 Judicial cases related to appeals against decisions (actions) of Rospatent considered by courts located in Moscow (Annual report 2015, Rospatent,)

IP objects	Appeals against decisions (actions) of Rospatent						
	Court for Intellectual Property Rights		Other commercial courts		General jurisdiction courts		Total
	Claims satisfied	Claims rejected	Claims satisfied	Claims rejected	Claims satisfied	Claims rejected	
Trademarks	40	369	3	24	-	4	440
Inventions	7	92	2	8	-	8	117
Utility models	8	41	-	4	-	5	58
Industrial designs	1	3	-	-	-	-	4
Appellations of origin	-	2	-	-	-	-	2
Total:							621

3.1.5.2 Enforcement in Finland

The following chapter fully rely on the World Trademark Review. Finland chapter. Borenius Attorneys Ltd 2016.

The key national laws governing trademarks in Finland are:

- the Trademarks Act (7/1964, as amended by Law 107/2013);
- the Trademarks Decree (296/1964, as amended by Decree 579/2013);
- the Act on Collective Marks (795/1980, as amended by Law 108/2013);
- the Domain Name Act (228/2003, as amended by Law 116/2013); and
- the Information Society Code (917/2014, as amended by Law 1217/2014).

Since September 2013 the Market Court has had exclusive jurisdiction over civil and administrative IP rights proceedings. Decisions by the Market Court in administrative matters can be appealed to the Supreme Administrative Court; decisions in civil matters can be appealed to the Supreme Court – on condition that these courts grant leave to

appeal. Criminal matters have been left outside the competence of the Market Court, with the Helsinki District Court still the competent court in such matters.

Proceedings are largely identical for registered and unregistered marks. In practice, trademark infringement cases are usually initiated as civil actions under the Market Court Procedure Act (100/2013), but in serious cases it is also possible to institute criminal proceedings under the Penal Code (39/1889). The Unfair Business Practices Act (1061/1978) gives additional protection for unregistered or registered rights.

The estimated timeframe for Market Court proceedings is between 12 and 18 months; in most cases, the Market Court's decision will be final.

In the case of a registered mark, no criminal penalty may be imposed unless the infringement occurred after the date of registration. However, other penalties are applicable – for example, compensation and damages can be awarded for any infringement that takes place between application and registration.

For both trademark counterfeiting and copyright piracy, an offender may be sentenced to average fines of EUR 200 to EUR 1,000. The amount of the fines is commensurate to the severity of the violation and the infringers' income (see Section 39, Chapter 7 of the Finnish Trademarks Act and Section 56a, Chapter 7 of the Finnish Copyright Act). An offender can also be sentenced to a maximum of two years imprisonment (see Sections 1 and 2, Chapter 49 of the Finnish Criminal Code). (International Trademark Association, *Criminal Prosecution Of Counterfeiting And Piracy In Member States Of The European Union*, 2010, 38)

By comparing the enforcement of trademark protection in the Russian Federation and Finland we can conclude that both systems are using the same methods. In Russia penalty for the infringer of the Intellectual property is minimum 10 000 Rb (around 134 EUR, if exchange rate is 75 Rub for 1 EUR) under Administrative proceedings and the maximum penalty is 1 million Rb (around 13 334 EUR) or imprisonment for up to six years in case of Criminal proceedings. In Finland the penalty is smaller: average fines of EUR 200 to EUR 1,000 and a maximum of two years imprisonment.

3.1.6 Court cases

As an example of the enforcement of IPR protection system in the Russian Federation and in Finland a real court cases are presented in this chapter.

FORD case (Russia)

The Ford Motor Company (here and after: FMC) tried to recognised the trade mark Ford as a well-known mark in Russia for goods in class 12 of the Nice classification "cars, spare parts and accessories" from May 2012. The procedure lasted for two years and the result was that the Patent Office refused recognition of the trade mark as famous. Only on 11 October 2015 after several court procedures, the IP court recognised the trade mark Ford as a well-known mark in Russia under N156.

Ranked by Forbes Magazine as the 44th most valuable global brand last year, the Ford name and logo is one of most well-known brands in the automobile industry, and arguably the world. Russia's denial of well-known trademark protection to FMC therefore comes as surprise to anyone who knows anything about cars, or frankly pop culture. (Brand Tough?: Ford Denied Well-Known Trademark Protection in Russia, 2014)

Probably most of the readers would think that the Patent Office refused recognition of the trade mark FORD as famous due to some political reasons. It is not a secret that there exist a political tension between Russia and USA. But following Mr Birulin V., Russian Patent Attorney, Partner in Gorodissky & Partners firm:"...some of the documents to prove the famous status were not duly prepared."(Biriulin V. Russia: Ford's status saved by IP court, 2015)

The reasons why the Rospatent refuse to recognise well-known trademark protection to FMC are the following:

- Some advertisements could not be correlated with the car manufacturer. Historical and information documents were not from Ford Motor Company but from an associated company Ford Sollers Holding, booklets on the cars did not contain cir-

ulation numbers, diplomas and certificates were dated 2008 while the recognition date was sought to be 2007, there was not a single document which would show actual production and supplies of goods marked with the designation “Ford in the blue oval” etc.

- The procedure lasted for two years, and the applicant was twice asked to provide explanations about the submitted documents. Unfortunately nothing was presented.
- As part of the recognition file there were also filed results of a public poll. The panel recognised that the designation used to label the cars is indeed highly recognisable and is known to the majority of consumers. The results of the public poll, however representative, are only one of the pieces of evidence needed to obtain the status and should complement other pieces of evidence.
- Also, circumstantial information from the file shows that the trademark Ford was used in the past in different (sometimes very different) versions which are quite distinct from the blue oval trade mark. See picture 5. However it is the blue oval that seeks recognition as famous. (Biriulin V. Russia: Ford’s status saved by IP court, 2015).



PICTURE 5. Versions of the Ford logo in documents showing it to be well-known (Filippova I. & Filippov P. 2014. How to protect well-known marks in Russia.)

SMIRNOFF vs. СМІРНОВЪ (Russia)

A story of competition between similar alcoholic brands concerns the trade mark Smirnoff (owned by The Pierre Smirnoff Company, Limited) and its namesake СМІРНОВЪ (Cyrillic spelling) a well-known vodka brand belonging to a Russian company (picture 6).






PICTURE 6. Well-known marks numbers 43 and 44 (Filippova I. & Filippov P. How to protect well-known marks in Russia 2014, 4)

The scramble between the brands Smirnoff and СМІРНОВЪ continued for a few years in the Russian courts and finished in 2006, seemingly as a draw. Both brands were recognised by Rospatent as well-known marks on the same day – December 31 1995. However, the UK company did not agree with this decision, continued the fight and achieved success. After two-and-a-half years of litigation, Rospatent cancelled the registration of well-known mark number 44 in June 2008; and the trade mark Smirnoff remains without its Cyrillic clone in the Registry of Well-Known Marks. The reason for the new decision was the insufficient documentary proof from the СМІРНОВЪ holder about when its mark became well known. (Filippova I. & Filippov P. 2014, 4.)

“Moo cow from Korenovka” vs. “moo cow from Kuban” (Russia)

The following chapter fully rely on the article "Plaintiff hits the jackpot as court awards almost \$2 million in compensation" appeared at WorldTrademarkReview.com, September 21, 2015, published by The IP Media Group.

A CJSC Renna Holding obtained a trademark registration (No 421859) for a figurative trademark containing the word element “moo cow from Korenovka” (Korenovka is the name of a village). See picture 7, picture 8 and picture 10. The owner of the trademark subsequently initiated a court action against Kuban Korovka Ltd (“moo cow from Kuban” — Kuban is the name of a region in Russia). See picture 9 and picture 11.

		
<p>PICTURE 7. Trade-mark “moo cow from Korenovka” (Irecom-mend.ru 2016)</p>	<p>PICTURE 8. New trademark “moo cow from Korenovka” (Market-line.spb.ru 2016)</p>	<p>PICTURE 9. Trademark “moo cow from Kuban”(Art-grafit.ru 2011)</p>

	
<p>PICTURE 10. Milk “moo cow from Korenovka” (Otzovik.com 2016)</p>	<p>PICTURE 11. Rjazenka and milk “moo cow from Kuban” (Phorum.Armavir.ru 2005)</p>

The claim was routine — the plaintiff requested:

- that the respondent stop the unlawful use of its designation, which was confusingly similar to the registered trademark;
- the destruction of the counterfeit products; and
- the award of compensation (compensation is an alternative to damages and does not require evidence of damage).

The commercial court did not satisfy the claims of the plaintiff. The judgment was appealed, but without success. The judgment was further appealed to a higher court, which

cancelled the previous judgments and sent the case back to the first instance court for re-examination.

The first instance court re-examined the case and satisfied the plaintiff's claims. The case was appealed by the respondent to the appeal court, without success. The respondent then appealed to the IP Court, arguing that the owner of the trademark did not produce the products sold under the infringing trademark.

The IP Court stated that the lower courts had correctly inferred that infringement of the registered trademark had taken place. The respondent produced dairy products and marked them with the plaintiff's trademark.

The compensation claimed by the plaintiff was double the cost of the infringing products. The respondent argued that its designation was not confusingly similar; however, the court did not accept this position, especially as the respondent had tried to register the designation as a trademark, but its application had been rejected by the patent office. The IP Court noted that, during previous hearings before the lower courts, those courts had repeatedly asked the respondent to provide information on the quantity of products produced under the infringing trademark, but the respondent had not provided such information.

Following a request by the plaintiff, the court sought a large amount of evidence from the distributors of the respondent, including the companies which manufactured the packaging of the dairy products. The court assessed the quantity of products sold by the respondent and found that the plaintiff had correctly calculated the amount. The court then doubled the amount, as allowed by the law. The court also noted that it could not reduce the amount of compensation claimed because it was the result of an accurate calculation (unlike cases where the plaintiff simply claims compensation without explaining its reasons, where the court can moderate the amount at its discretion).

As a result, the court awarded compensation to the plaintiff in an amount of over Rb114 million, which is equivalent to almost \$2 million (after the value of the rouble shrank twofold against the dollar, otherwise the compensation would be approximately \$3.5 million). Such amount of compensation is unusually high for the Russian courts, but should certainly provide a lesson for future infringers.

Hennes&Mauritz vs. Kostyrin's Russia company H&M International

The dispute began in 2004 when Hennes & Mauritz was considering expanding into Russia. It discovered the trademark registration by Kostyrin's Russian company H&M International.

Following Ollier P. (2007), Kostyrin offer to H&M a financial settlement to transfer the mark. H&M rejected Kostyrin's offer and applied to the Chamber for Patent Disputes under the Russia Patent and Trade Mark Office (Rospatent). Rospatent cancelled the trademark registration in November 2006, prompting Kostyrin to appeal to the Arbitrazh Court. The Moscow Arbitrazh Court ruled that Boris Kostyrin, whose company had registered the mark in Russia, has no rights to the H&M trademark.

As we can see it took two years for H&M to win their name back. H&M spokesperson Annacarin Bjorne said: "The judgement is important in protecting the reputation of H&M and has cleared the way for the company to come to the Russian market". (Ollier P., 2007, 1).

VOIMARIINI vs. INGMARIINI case (Finland)

The Supreme Court issued only one decision involving trademarks in 2010. In this case the plaintiff (Valio Oy) used the trademarks VOIMARIINI (registered on December 5 1980) and OIVARIINI (registered on November 11 2004) for margarine. The defendant (Arla Ingman Oy Ab) used the trademark INGMARIINI (registered on June 15 2005) for similar products. The Supreme Court found that there was no similarity or likelihood of confusion that might cause the general public to confuse these two marks, as required by Section 6 of the Trademarks Act. One point that was taken into account when assessing similarity was that the latter part of all three marks came from the Finnish term margariini (margarine). When it comes to likelihood of confusion, even though it was found that both of Valio Oy's marks were well known, there was no confusion over the marks in question among the general public. Therefore, the use of the INGMARIINI mark did not breach Valio Oy's well-known marks. (Rechardt L., Anti-counterfeiting 2011 –A Global Guide)

		
<p>PICTURE 12. Voimariini (www.valio.fi)</p>	<p>PICTURE 13. Oivariini (www.ruoka.net)</p>	<p>PICTURE 14. INGMARIINI (www.ruoka.net)</p>

Conclusion

The above-mentioned court cases showed how difficult and time consuming even for a well-known brand it could be to protect their Intellectual Property in Russia. The Smirnoff case and Ford case illustrate “the need for thorough documentary proof for the registration of well-known marks” (Filippova I.&Filippov P., 2014).

“It is clear that the rules of recognition are strict and many, and they are intended to screen out marks that do not deserve recognition. They indeed help keep clean the register of famous trade marks.” (Biriulin V., 2015, 2)

H&M case showed that companies looking to expand into Russia may face a serious problems with trademarks squatters. Before coming to Russian market it is very important to check all issues related to IP protection in the Russian Federation.

In a country where abuse of trademark rights is quite commonplace, the Chief Judge of the Russian Intellectual Property Court, Ludmilla Novoselova, acknowledged that this is a most pertinent issue for brand owners. She said that, for the Court, any practices that are seen to be in bad faith are of interest to the Court in its evaluation of the rights of legitimate domestic and foreign entrepreneurs. (Aylen D., 2015)

4 INNOVATIONS AND THEIR CHARACTERS

4.1 The concept of innovations ¹⁰

The concept of an innovation is frequently used to describe a material object, but the term does not always refer to the technical innovation. *An innovative product* can be both *new goods*, and *new services*. It is becoming more difficult to make a distinction between new goods and new services since borders between the two types of innovations are disappearing. The process of innovations, on the other hand, is not limited to *the new technologies of production*, it also includes *organizational innovations*. Industrial innovations concern of **what** is made, while innovations of processes concern of **how** the things are made. Mainly, process innovations result in growth of productivity and influence price competition, while product innovations influence quality, first of all.

Russian definition of innovation differs from the European definition of innovation, leading to different approaches in innovation system development:

a) Russian practice

- In Russia, innovation is understood as the end result of innovative activity, resulting in new or improved product, introduced on the market, new or improved technological process used in practice, or a new approach to social services (Statistics of Science and Innovation: Brief Terminological Dictionary – M.: TSISN, 1998).
- Innovation (innovation, innovative product) is the result of innovative activity in new products, services and technology, and/or new organizational and economic form with obvious qualitative advantages in design, manufacturing, sales, consumption and utilization of products, providing additional economic or public benefit in comparison with prior product or organizational or economic scheme (Appendix to Project “Introduction to Policy of the Russian Federation in Development of Innovative Systems through 2010 and beyond,” approved by the President of the Russian Federation on 30/03/2002 under No. 576).

¹⁰ This chapter partly relies on the presentation of Mr Sergey Andreevich Fiveisky “Innovation Activity in St. Petersburg”, St.Petersburg, June 2007.

- Innovation is the end result of innovative activity, resulting in new or improved product sold on the market, new or improved technological process used in practice. (Concept of Innovative Policy of the Russian Federation for 1998-2000, approved by the Government of the Russian Federation on July 24, 1998 under No. 832).

b) European practice

Following “The Measurement of scientific and technological activities. Proposed guidelines for collecting and interpreting technological innovation data” (Oslo Manual, OECD, Eurostat 1997), innovation is a complex and diversified set of many interrelated activities. Determining the components of innovation is difficult due to the fact that most products and processes that create these products are complex systems. Innovations determine changes in properties and characteristics of product effectiveness overall and changes in components improving its effectiveness, including the character of services it provides.

Innovations are in the heart of economic progress. Radical innovations determine the look of large-scale changes in the world, while incremental innovations make the process of change continuous.

The wider concept of the innovation includes five categories (Schumpeter 1934):

- introduction of a new product or a qualitative change in an existing product;
- process innovation new to an industry;
- the opening of a new market;
- development of new sources of supply for raw materials or other inputs;
- changes in industrial organization.

The Oslo Manual talks about technological innovations only, which requires objective improvement of product efficiency. The minimal requirement for innovation is that the product or process is new (or considerably improved) for the company (it does not have to be new for the entire world).

To conclude, *In Russian practice* innovation is viewed as *the end result* of innovative activities. *In Europe* the notion is viewed as *a type of activity, the process of change*. It is important to take into account the different understandings of innovation term, due to the fact that it is reflected in how innovation systems are developed in Russia and in

Europe, what is researched, where the innovation related investments are put and some other aspects.

Recently, researchers have focused on *the social innovations* that include organizational changes within and among companies (group work, inter-organizational networks, flexible working hours), new styles of management (participation of workers), new social techniques (telework at home), new services (e-marketing), new patterns of serving demands (self-service, telelearning) and new institutions (scientific parks) (Schienstock & Hämmäläinen 2001). There are fair reasons to pay more attention to *organizational and institutional innovations*. First of all, new organizational forms may become the key sources for the growth of productivity and innovative activity, depending on whether they can stimulate or not the creation of innovations. Besides, technical changes and organizational re-structuring are closely inter-connected: they develop simultaneously. It means that when a technical innovation is introduced, it is often necessary to change the organization of production process. In order to receive advantages of productivity from the modern information technologies, introduction of new organizational forms is also required. For example, the fact that introduction of modern ICT had smaller than anticipated influence on productivity is interpreted as a failure of effective adaptation of the organizational form to the new technical system.

Organizational innovations become extremely important when the fate of a company in a greater extent depends rather on its capability to constantly make innovations, than on the success of a fundamentally new product or a technological process. The knowledge enclosed in organizational forms and in the capital of human resources, social practices, business culture and so on is knowledge of implicit nature. It represents a value that can hardly be copied and that guarantees *stable competitiveness*.

4.2 Concept of an innovation system

When we look at innovations as a diversified process that includes some number of various participants with various opportunities, who constantly exchange knowledge and cooperate in order to make a new product or a technological process or some other innovation, it will result in the principle **of innovation system**. Innovations have *a systematic, inter-dependent character*. The factors which form and influence innovations, including

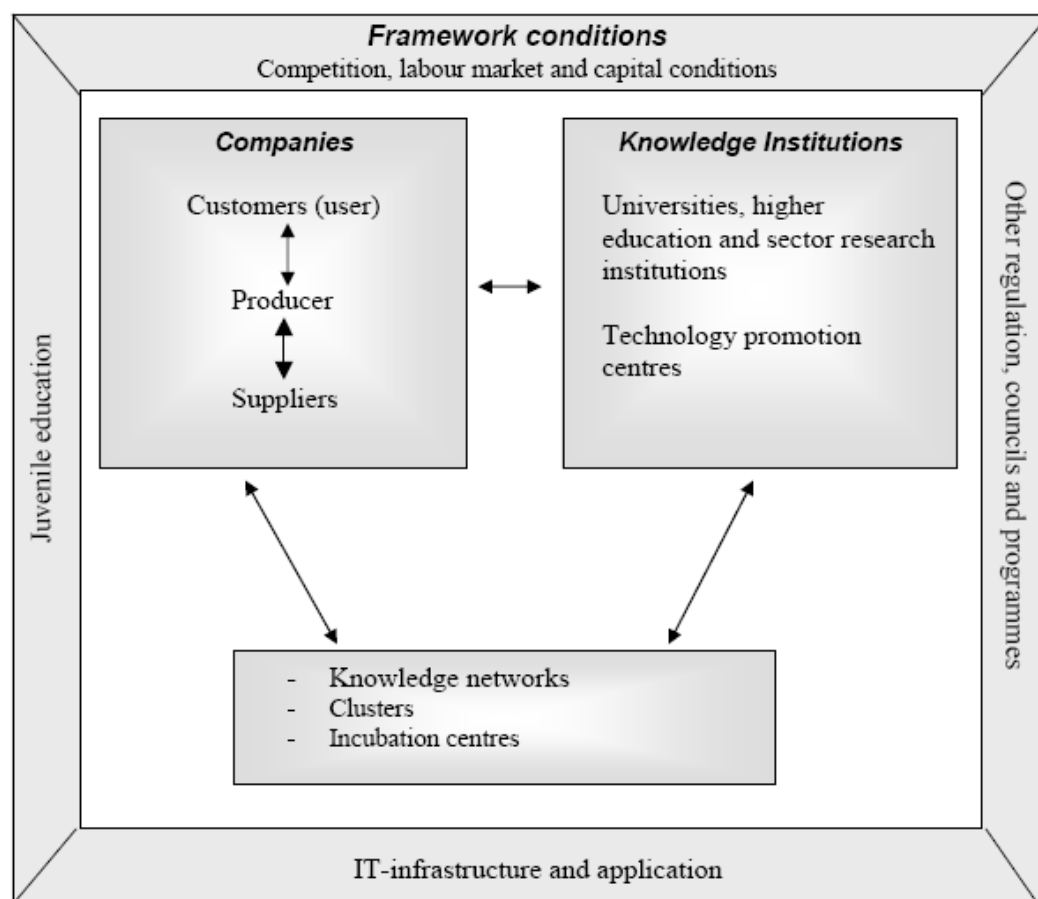
organizational and institutional factors, are inter-dependent and provide bilateral interaction.

There is no single definition of national innovation systems. In a publication of OECD “National Innovation Systems” (1997) a few definitions are mentioned:

- “the network of institutions in the public and private sectors whose interactions initiate, import, modify and diffuse new technologies” (Freeman 1987: 1).
- “the elements and relationships which interact in the production, diffusion and use of new, and economically useful, knowledge ... and are either located within or rooted inside the borders of a nation state.” (Lundvall 1992)
- “a set of institutions whose interactions determine the innovative performance... of national firms.” (Nelson 1993)
- “the national institutions, their incentive structures and their competencies, that determine the rate and direction of technological learning (or the volume and composition of change generating activities) in a country.” (Patel and Pavitt 1994)
- “that set of distinct institutions which jointly and individually contribute to the development and diffusion of new technologies and which provides the framework within which governments form and implement policies to influence the innovation process. As such it is a system of interconnected institutions to create, store and transfer the knowledge, skills and artefacts, which define new technologies.” (Metcalf 1995)

Recently, the innovation system is regarded as *the system of transformation of knowledge* (Schienstock & Hämmäläinen 2001). It means that knowledge is considered as the basic input information that is taken by the innovative system from environment. This knowledge inside the system turns into new knowledge and it means that knowledge is also the basic result, or output of the system. The process of transformation of knowledge includes the following **functions**: acquiring of knowledge, production of knowledge, outspread of knowledge, regulation and standardization of knowledge, application of knowledge, and handling of knowledge. These functions are carried out by several different organizations, including universities, research institutes, scientific research departments of companies, centers of technologies transfer, institutes of standardization, patent agencies, and the government agencies included in the innovative policy.

Institutions are considered as the key aspect of system of innovations. In OECD publication “Innovation and growth. Rationale for an Innovation Strategy” (OECD 2007) it is mentioned that: “innovation also relies heavily on the creation of basic knowledge, through both education and science. A well-performing and broadly accessible education system facilitates the adoption and diffusion of innovation. The contribution of education and human capital accumulation to economic growth is well documented. Some of this occurs through science and innovation. Investment in education and training of researchers and other highly skilled workers is a major factor in determining the contribution that scientific research can make to scientific progress and innovation”. In essence, the institutional environment supports, stimulates, and adjusts processes of innovations. This environment includes different types of institutions: the institutions that give information and thus reduce uncertainty, the institutions that settle down conflicts and cooperation and the institutions that stimulate innovative activity. But institutions may also hamper the progress of innovation (tradition or legal regulation). It is possible to conclude that institutions influence the behavior of organizations, making restrictions or stimulus for training and innovations.



Source: Andersen, M. M., Risoe National Laboratory, 2004

Image 15: The core elements of the innovation system analytical frame (Andersen, M.M., Risoe National Laboratory 2004)

By analyzing the schema, presented in Image 15, Dr. Maj Munch Andersen in her presentation on “The Green of Policies – Interlinkages and Policy Integration Conference” on 3-4 December 2004, in Berlin, Germany mentioned that the knowledge producers are the key components in the national innovation system: “On the one side companies, with emphasis on the interfere learning between companies in the value chain and the knowledge structure of companies, i.e. the distribution of different industrial sectors and their knowledge intensity. On the other side the public and semipublic knowledge institutions providing research and education. Transgressing these two groups are knowledge networks, clusters and incubators that make up important spheres of cooperation between these two groups. The arrows indicate an active interplay in the knowledge production. The purpose of the NIS approach is not just to shed light on these different elements, but very much to focus on their interaction and synergy effect, as the figure also seeks to illustrate”.

Since any of the participants is not isolated in the innovative activity, **communication and processes of an exchange between them are becoming determinative factors**. The important theoretical and political problem that is set up under the system approach is that innovations are generated not only by individuals, the organizations and institutions, but also by their complicated models of interaction. The system approach represents such an approach under which *the independence of participants* in the system is one of the most important characteristics. To understand why systems of innovations differ as concerns their achieved economic success, it's not enough to list the participants and supporting institutions of the system and to describe their resources. We should take into account interrelations and interactions between these participants. When participants of the innovative system are connected properly, they can become powerful machine of economic development. In case of bad ability to interaction, they can seriously detain the process of innovations (Freeman 1987). It means **that the success of innovation system to a great extent depend on the form of management**, due to the fact that management then always reflects how the concept of innovation is understood.

4.3 Forms of innovations management¹¹

It is possible to allocate **3 types of innovation management**: *the markets* which include the reverse and direct relations, and also horizontal relations; *hierarchical structures* (bureaucratic) with unilateral streams of resources, skills and knowledge; and *structures of interaction*, such as the networks "consumer - manufacturer".

It is also distinguished between the mechanisms of market transactions, procedures of planning and management inside companies or some forms of the network mechanism. It seems logical that **networks are the most effective form of management in the innovation systems**. Economists refer to *operational and organizational expenses*, asserting that the markets create high operational expenses and that the bureaucracy creates high organizational expenses, while networks optimize both kinds of expenses. Sociologists, on the other hand, assert that innovations, including the implicit knowledge, to the greater extent, depend on *reliable connections* between the participants of the system that may rather originate in a network structure, than in the market or hierarchical interrelations.

¹¹ This chapter based on the interview with Mr Kirill Razguljaev, director of The Institute of Regional Innovation Systems.

4.4 Innovation system as a part of economic system

The innovation system is regarded as one of *the subsystems of national economy* alongside with other subsystems, such as a financial system, a labor market or a system of production subsystem. It is important to understand that the success of economic system depends, to a great extent, on the mutual conformity of various subsystems and interaction between them.

As a subsystem of economy, the innovation system is focused on “*the generation of changes in the economic system, by producing new knowledge*” (Hauknes 2000). The primary aim of the innovation system is to contribute to the creation of growth and social welfare within an economy by producing knowledge that is used particularly to modernize and renew the production system, its products, services, and processes. Therefore, the innovation system contributes only indirectly to economic growth and competitiveness (Schienstock & Hämäläinen 2001).

On the other hand, for effective performance of modernization function, the innovation system depends heavily on other subsystems of economy. It is clear, for example, that a new small business, playing a key role in innovative processes, sufficiently depends on the availability of venture capital. The important role of the labor market is obvious enough to innovative processes, as creation of a new product and technological process or new services depends on availability of sufficiently qualified employees. It means that the labor market should give stimulus to workers to participate in the innovative - oriented process.

Whether the innovation system is capable to carry out the modernizing function depends as well on the positive influences of its *environment*, such as the education system, science, legislation or culture. For example, the innovativeness of economy depends, to a great extent, on whether the research resources are transferring to more innovative hi-tech industries. The innovativeness of a country may be limited, if the education system has

not introduced preliminary reforms to support the appearance of highly innovative industries. The legislative system also influences innovative activities (the property rights and patent regulation). Though patents can encourage the companies to invest into the research with bigger risk, they can also interfere with distribution of new knowledge thus complicating the innovative activity of other companies. The business spirit as a basic element of culture of transformations is the key-supporting factor for innovative activities in the country.

It is possible to conclude that the innovation system should be regarded as “*the open system*” (Lundvall 1992) that is closely connected to several other systems. As the innovation system is a subsystem of the economic system, its function is to modernize the economy by means of development of new products and technological processes, as well as services and other social innovations. Effective realization of modernization function depends on the input data from other subsystems of economy, such as the financial system, labor market or production, and on support of other subsystems of society, including the education system, scientific system, legislative system or cultural system. Most likely, to improve regional innovativeness, the integral approach that is not limited to only the system of innovation must be applied.

4.5 Innovation networks

The innovative opportunities of companies depend not only on their own abilities to generate new knowledge, partly, these opportunities are determined by their ability to acquire and apply knowledge from external sources. Pavitt emphasizes that because of amplifying specialization of scientific disciplines, companies are compelled to use increasing amount of knowledge to solve technical problems and achieve their technical goals. New products become more and more sophisticated and combine knowledge from different areas. Sources of knowledge are diverse and frequently lay outside the control of separate companies.

As a result, the companies that produce new products must have various knowledge, but they cannot cover the whole spectrum of the basic disciplines. Not having the opportunity to independently produce all the necessary knowledge, the companies must keep track of

other companies and producers of knowledge worldwide and in the various branches since inter-disciplinary becomes crucial (OECD 2000). The companies should search for partners that specialize in those areas of knowledge which are necessary for their innovation activities but which they have no competence in.

Quite recently the strategy developers have realized that it is not enough to just establish supporting institutes. Because of growing specialization, streams of knowledge and distribution of knowledge become more and more important for success of innovations, and the strategy developers must also start developing policies for creation and supporting of inter-organizational networks. The strategy developers are focusing more and more on integration of participants of innovative systems into the global streams of knowledge and networks (Schienstock & Härmäläinen 2001).

During fundamental changes the uncertainty becomes a key question for the strategy developers, as well as for all other participants of the process of transformation. Nevertheless, it is difficult to assume that the strategy developers have excellent understanding of conditions of the market or the technological information; more likely they have an excellent ability to coordinate different kinds of institutions. It means that though the importance of technological macroeconomic management may be reduced, the role of the state in innovative processes might remain rather significant. *The new role of the state* can be described as a catalyst for innovation processes, a supporter of ongoing research and innovation activities, a facilitator of cooperation in research and innovation processes, a moderator of diverging interests, an organizer of a dialogue between various economic actors on future developments and as an initiator of questions and new tasks (Schienstock 1994). Creation of new vision can be regarded as formation of a network for connecting the existing capital of knowledge and competences, for making up the opportunities to learn through information interchange and experience, and for opening up new communication channels between the various participants included in the process of transformation (Schienstock & Härmäläinen 2001).

The OECD states: "Networks are an important component of national systems of innovation. An important function of science and technology policy is to strengthen existing innovation-related networks and to help build networks in areas where they are lacking" (OECD 1992; see also OECD 1998a).

Governments can also facilitate networking activities and through that facilitate innovation processes. But as mentioned in the book “Transformation of the Finnish innovation system” of Gerd Schienstock and Timo Hämäläinen: ”Network-facilitating policies differ significantly from country to country. They can involve different types of actors (firms, universities, government agencies, business associations, etc.), geographical dimensions (local, regional, national, international), industrial sectors, and phases of the innovation process (basic research, design, international marketing, etc.). Network policies can also be cross-sectoral, involve many different geographical dimensions and cover most activities in the value system.”

As a conclusion one could note that networks differ from each other and are important for companies, research institutions and countries. Therefore it is no surprise that not only companies but also governments recognize the importance of networking for economic growth and for boost of innovations.

5 WORLDWIDE EXPERIENCE OF INNOVATIVE ACTIVITY

The economy of the modern developed countries is more and more based on the knowledge. Consequently, economic development relates such factors as investment in research and engineering, increase of innovative activity, improvement of quality of education and qualification of specialists. Nevertheless, to boost economic development it is not enough just invest to the above-mentioned components (Schienstock & Hämäläinen 2001).

The linear model of innovations, supposing a unidirectional relationship between scientific knowledge and innovations, represents rather an exception than a rule. The ideas underlying innovations frequently proceed from many sources and different stages of researches, development, transfer of knowledge, training or the market demand (Schienstock & Hämäläinen 2001). The innovation may have different forms: technological, process, productive, organizational or social. The innovation process is based on the complex system of interrelations of the elements, which produce different knowledge, manage their streams and usage of the knowledge. The efficiency of the innovative process in many respects is defined by how the basic participants of the process cooperate with each other as the elements of the collective system of creation and using of knowledge, as well as of technologies. Interaction may appear in joint researches and development, consultation, training of the personnel, purchase of licenses, the equipment, etc.

5.1 Innovation system¹²

Regarding innovations as a diversified process that comprises a number of different participants with various competences and possibilities that constantly exchange the knowledge and cooperate in order to make a new product, a technological process or another innovation, results in the concept of innovative system. Innovations have a sys-

¹² This chapter partly relies on the book "Transformation of the Finnish innovation" by G. Schienstock and T. Hämäläinen, 2001.

tematic, interdependent character. The factors forming and influencing innovations, including organizational and institutional ones, are interdependent and provide bilateral interaction (Schienstock & Hämmäläinen 2001).

The primary elements of the innovation system are enterprises, research organizations, universities, individual scientists and inventors. The basis is made by enterprises that aspire to develop production by means of innovations. They search for channels of reception of new sources of knowledge. If such channels, connecting the enterprises with the research organizations, universities and scientists, are adjusted, the innovative system works and develops.

There are both the state organizations and private ones with the mixed ownership cooperating inside the system; however, the governmental structures play the most important role. The state policy comes through them influencing innovative processes. It is the state policy that determines the institutional structure of the system that depends, in many respects, on such factors, set by the government bodies, as the mode of functioning of enterprise environment, the level and orientation of basic researches on the market, system of motivation of research activity, its orientation to producers, the organization of higher education (Schienstock & Hämmäläinen 2001).

Together with growing globalization of economy and appearance of the economy based on knowledge, conditions of business have significantly changed. Today companies should combine an ability to make a necessary amount of qualitative goods in time and at reasonable prices with a possibility to quickly and constantly introduce innovations. The economic success depends on the ability of companies to exceed the competitors, to be the first ones in the market with new goods in demand. To retain top positions in both production and application of knowledge the company should be focused on its basic competences that, on the other hand, make it more dependent on the additional knowledge that is produced by other organizations. The companies cannot introduce innovations if they are altogether isolated. On the contrary, producing of new knowledge and applying it to new production takes place in the innovation networks (Schienstock & Hämmäläinen 2001).

The geographical affinity is frequently considered as an advantage since it makes it easier to exchange the implicit knowledge between the specialized organizations, but innovative networks, especially in hi-tech branches, overcome national borders. The connection with global streams of knowledge is becoming more and more important for success of innovative activity.

The changing conditions have forced to develop technological and innovative policy. The policy of direct innovations is being changed to the policy of capability to innovations, being focused on the creation of supporting institutional structures, as well as cluster and network formations.

The opportunity of managing the innovative processes on a national level is being reduced. First of all, it is connected with the fact that the national borders in the innovative processes are being erased because the transnational corporations break down the chains of added cost and place them there where they find local advantages. A region becomes a natural economic area under process of globalization.

It is necessary to take into account two major tendencies in the geographical aspect. Firstly, the innovative processes become more transnational; secondly, regional innovative networks appear. In this connection the regional governments should adapt globalization strategies of companies, making up supporting conditions and establishing special organizations and institutions that make the region attractive for foreign investments, simultaneously retaining them in the territory. It shows that competitive advantages of regions can be created on purpose. Alongside with the changing role of the state in the innovation system, transition from a national level to a level of a regional policy is observed.

Based on the global experience, it is possible to draw a conclusion that in big countries **the concept of a centralized national innovation system not taking into account peculiarities of the regional development appears to be ineffective.** Therefore, the creation and support of regional innovation systems plays the key role.

6 INTELLECTUAL PROPERTY RIGHTS AND INNOVATION IN SMES

The 21st century is the century of so called “knowledge-based economies”. Organisation for Economic Co-Operation and Development (here and after: OECD) describes “knowledge-based economies” as follows: “knowledge-based economies” – economies which are directly based on the production, distribution and use of knowledge and information (OECD, 1996, 7). Knowledge and technology have become increasingly complex, raising the importance of links between firms and other organisations as a way to acquire specialised knowledge (OECD, 2005). Due to the fact that knowledge became more and more important in the new environment, protection of that knowledge plays very important role. The system of intellectual property (IP) rights creates a mechanism to resolve the “appropriability” problem of knowledge, by creating property rights over knowledge. (WIPO, Intellectual Property Rights and Innovation in Small and Medium-Sized Enterprises).

Due to the fact that intangible assets became very attractive as a source of competitive advantage for firms, the protection of IP turn out be one of the most important strategies for the company's development. SMEs have become an important part in modern business and job creation, account for approximately 95% of the business population. Burrone E. (2004, 34) states that: “empirical evidence suggests that SMEs face significant barriers in making effective use of the IP system and this may have an impact on their ability to exploit their innovative and creative capabilities.” Even more problems SMEs faced when entering a foreign market, especially Russian market, due to the fact that Russia is not a part of the EU and Russian IPR legislation slightly differ from the European one.

During past few years Government of the Russian Federation implement a policy of encouraging innovation among SMEs. Unfortunately the results from the previous IPR projects of the Baltic Institute of Finland shows that there is a need for more concrete co-operation between the various IPR actors as well as SMEs.

Burrone E. (2004, 38) concludes that there are many barriers to more effective use of the IP system by SMEs: “In the first place, low awareness of the system limits the exposure SMEs have to the IP system and their ability to use all the elements offered by the IP

system effectively, including not just patents, but also utility models, trademarks, industrial designs, trade secrets, patent databases, copyright and other IP rights. Poor IP management skills within SMEs reduce their ability to fully benefit from the system and, therefore, discourage its future use”.

The results from the previous IPR projects of the Baltic Institute of Finland confirm Burone E. statement. Very few Nordic SMEs regard Russia as a potential market, while hardly any Russian SMEs are even aware of the international features of all forms of IPR and how they can be utilized, even if they are only operating inside Russia (BIF, 2014, 9)

The IPR experts, who took part in the implementation of the fourth IPR project of the Baltic Institute of Finland prepared recommendations for SMEs. Those recommendations are presented in the publication of BIF “Nordic-Russian Cooperation on Intellectual Property Rights Enforcement”. The author of that final thesis took part in that project and in the preparation of the above mentioned publication. The chapter from this publication with recommendations for SMEs is presented below.

Due to the rapid development of the IPR legislation, both in the Nordic countries and in Russia, IPR experts recommend constant checking of the most recent legislative status and also of the IPR practices before taking any real business action.

6.1 Recommendations for Nordic SMEs entering the Russian market

1. Registration rules are much stricter in Russia than in the Nordic countries. As the first step it is recommended to register your trademark before you enter the Russian market.
2. Such registration should be done by your company, not via your distributor. If your distributor has already done the registration, you can reclaim the rights through litigation. Litigation in Russia is relatively quick; in some cases it may take only 3-4 months. However, just to be on the safe side, it is recommended to undertake the procedures well in advance.

3. When registering trademarks, please use both Latin and Cyrillic characters. According to Russian Trademark Law, you are required to use your trademark during the first three years to prevent it from being terminated. Always make an unambiguous agreement about the use of your trademark(s).
4. Use the Customs Register of IPRs to prevent parallel importing.
5. Register your licensing agreements.
6. Cooperating with a local partners is imperative when starting a business in Russia, as is carefully planning a legal structure of your relations with said partner by referring to help of local experts. Once you find a local partner, maintain continuous live dialogue with them.
7. Ensure all Russian creative personnel such as designers, engineers etc. sign employment contracts with a special emphasis on IPR.
8. Obtain professional advice on the protection of commercial secrets in Russia
9. Beware of Russian registered utility model patents since they are registered without substantive examination and may not be formally opposed until they are registered. As a result, such patents may be used by dishonest competitors.

6.2 Recommendations for Russian SMEs entering the Nordic market

1. File for trademarks and designs as early as possible and obtain professional advice as Russian and European business practices differ in many respects.
2. Think about the global opportunity for your business. Due to global phenomena, please do this well before you file the first Russian application.
3. Domestic patenting is nothing but an invitation to your Chinese competitor.
4. IPR ownership must be clear, including future development and improvements.

5. Protect your know-how
6. Identify your competitors and study their IPRs (trademark, patents, designs, etc.) prior to entering foreign markets.
7. File for patents within a year of the local application, then quickly investigate business opportunities to consider investing in international patent protection.

7 PROJECT PLAN FOR “THE IMPORTANCE OF IPR FOR INNOVATION-BASED SMES IN NORTH-WEST RUSSIA AND FINLAND” PROJECT

8 CONCLUSION

In the 21st century of “knowledge-based economies” innovative SME’s can foster the innovation, job creation and development of countries’ economies. For SMEs it is important not only be innovative, but also capable to organise protection of their innovations.

An entrance of a new product to the market is the most difficult stage of the innovative process, and frequently requires active involvement of partners and lot of expenses. With the development of innovation infrastructure in general, also the question protecting the intellectual property rights of innovations becomes more and more actual. The reasons are clear: development of market relations assumes that mechanism for protecting rights holders from actions of business pirates exists. Existence and use of reliable mechanisms of protecting innovations stimulates innovative activity and essentially allows improving the innovative climate. (Lihhatsjova J., 2008)

Despite the fact that the Russian Government has made great efforts to protect IP in Russia, historical traditions, as well as differences in the laws on intellectual property protection in Russia and in the EU sometimes cause problems for foreign companies to enter the Russian market.

Practice shows that even well-known companies, not to mention the small and medium-sized business, experience difficulties in the Russian market due to the bureaucracy and due to the high level of trademarks squatters. Before coming to Russian market it is very important to check all issues related to IP protection in the Russian Federation.

The results from the previous projects of the Baltic Institute of Finland on IP thematic showed that “...too few SMEs both in the Nordic countries and in Russia are planning to enter the neighbouring country. The main reason for such a low level of interest seems to be lack of valid information as well as of capacity building. Therefore much more effort should be put into innovative SMEs, both in the Nordic countries and in Russia.”(BIF, 2014, 314). Unfortunately the economic slowdown and hard political situation set up even more barriers for SMEs to enter the neighbouring market. Due to the above mentioned fact it is very important to organise events specially targeted SMEs in Finland and

North-West Russia focused on awareness-raising and advice on procedural matters concerning the application for IP rights. Events to promote interaction between Finnish and Russian universities, R&D centres and SMEs in the field of innovation and technology transfer should be arranged.

Universities and business incubators play an important role in the development of innovations, thus IPR awareness-raising among students of higher educational institutions is one of the goal in the new IP project application of BIF. Our common future depends on how much we invest in young people (BIF, 2014, 314).

IPR experts who was involved in the previous IP projects of BIF suggest to organise special events dedicated to the exchange of experience in IPR protection. Due to the rapid development of IPR legislation, both in Finland and in Russia, meetings between experts of Rospatent, PRH and representatives of law firms from Russia and Finland are planned in the new IP project application.

The “knowledge-based economy” brought new challenges for companies. One of the main question for companies is how to manage their knowledge and how to make profit out of it? Intellectual property rights is a proper tool to manage innovation and to avoid various problems associated with the release of new products and services to the market.

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APPENDICES

Appendix 1. Minutes. Partner meeting. Preparation of new IPR project application

Appendix 2. Preparatory meeting for IPR project. List of participants.

Appendix 3. Minutes. Meetings in Petrozavodsk. June - July 2015

Appendix 4. Report. Results of comparative analysis of patent processing proceedings of EPO and Rospatent (Rospatent, Report, 2010)

Within the framework of implementing Component 3 - “Patent application, registration and processing procedure” of EU -Russia Project "Approximation of EU and RF IPR aspects” the EPO made available to Rospatent Russian translations of appropriate documents, allowing Rospatent employees to become acquainted with the entire range of EPO's procedures: from filing a patent application, its transfer to search/examination as to substance and, finally, to patent granting.

The objective of activity within Component 3 of the Project is to assist Rospatent in rationalising its patent application filing, registration and processing procedures, drawing extensively on the EPO's experience. A workshop for EPO and Rospatent experts on patent processing and automation of document processing was held on the 26th of March 2010. EPO and Rospatent experts made presentations covering all stages of application processing: its filing, formalities examination and transferring application documents for publication.

Comparative analysis and discussion of presented information have shown that document processing procedures in the EPO and Rospatent are essentially similar. However, certain differences of procedures were identified, particularly with respect to application filing and examination as to substance.

A list of subjects which, if studied further, would allow Rospatent to use EPO' experience to the benefit of Rospatent was earlier handed over to the Project Manager, Nina Formby. In addition, a table attached herewith shows comparison results of processing procedures in the EPO and in Rospatent. Column 3 of the Table gives comments on the differences which have been identified.

Table of Procedures Comparison

N p/p	Convention on the Grant of European Patents (EPC), Guide for applicants "How to get a European patent, Part 1" (Guide), Implementing Regulations to the Convention on the Grant of European Patents (Regulations)	Civil Code of the Russian Federation (Code), Part IV Administrative Regulations of the Federal Service for Intellectual Property, Patents and Trademarks on organisation of the state function on receipt of applications for inventions, their consideration, examination and Russian Federation patent grant by established procedure (Rules of Procedures for Inventions- Rules)	Comments
1	2	3	4
1.	Guide, Paragraph 107 ... you can file European patent applications online or on an electronic data carrier, using software issued by the EPO (Online Filing software; www.epo.org). You can also file European patent applications in electronic form with the competent national authorities of the contracting states which so permit. You cannot file European patent applications with the EPO by e-mail, telegram, telex or teletext...	Rules, par. 13.4 Application filed in electronic format An application filed in electronic form with electronic-digital signature shall be registered provided all the requirements established by Rospatent on the date of the filing are observed	The EPO allows filing patent applications online. It provides incentives for online filing by a considerable reduction of filing fee as compared to that on paper. In Rospatent, while Rules of Procedures for Inventions provide for electronic form applications, to date patent applications are filed on paper. The procedure for online filing is being developed by Rospatent and the study of the relevant EPO experience would be useful.
2.	Guide, Paragraph 109 Confirmation on paper If you file your application electronically (online or on CD-R, DVD-R or DVD+R) or by fax you do not need to supply paper confirmation, unless you are specifically asked to do it. The EPO normally requires paper confirmation only in the case of poor-quality faxed documents	Rules, par.13.1 (2) As stipulated by par. 13.3 of these Rules if the patent documentation is received by fax its registration number is given after the original patent application has been received.	The EPO experience on the application registration received by fax without its confirmation by application on paper can be put to use in Rospatent.
	When filing paper confirmation, you should indicate clearly that the document constitutes "confirmation of a document filed on ... by fax".	Rules par. 13.3. Use of fax The originals of the application documentation, sent by fax, should be submitted within one month from the date it was received by fax together with a cover letter identifying the documents earlier received by fax. Provided this condition is observed, the date of fax receiving shall be deemed to be that of application documentation receipt. If the document original is received when the above indicated time period has expired or there is no cover letter or the document received by fax is not identical to the submitted original, the date when the original document was received shall be the date of its receiving, while the contents of the documentation received by fax shall not be further considered. Until the original document is submitted the faxed document is not deemed received. If an application document (or its part), received by fax, is illegible, the document shall be deemed received on the date its original is received. The application can be regarded as received on the date its facsimile is received provided the applicant removes the illegible text. The use of fax for transmission of documents containing state secrets shall not be allowed	

3	<p>Regulations, Rule 55 Examination on filing If the examination under Article 90, paragraph 1, reveals that the application fails to meet the requirements laid down in Rule 40, paragraph 1 (a) or Rule 40, paragraph 1(c), Rule 40, paragraph 2 or Rule 40, paragraph 3, first sentence, the European Patent Office shall inform the applicant of any deficiencies and advise him that the application will not be dealt with as a European patent application unless such deficiencies are remedied within two months. If the applicant complies, he shall be informed of the date of filing accorded by the Office.</p> <p>Regulations, Rule 57 Examination as to formal requirements If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether ...</p>	<p>Rules Par. 13.1. (1) Provision for application filing and its filing number assignment The document received in Rospatent shall be registered as an application, the date of its receiving being accorded as that of its filing provided the document contains at least a patent application in Russian.</p> <p>Rules, par. 23.1. Provisions for examination as to formal requirements Examination of an application as to formal requirements shall be carried out provided the application has been filed in accordance with sub-paragraph 1 of Par. 13.1 (1) laid down in the present Rules.</p> <p>Rules, par. 23.6. Fixing the date of application filing (1) As stipulated by par. 3 Article 1375 of the Code the date of patent application filing with Rospatent shall be the date of the application receiving, containing a request for patent grant, a description of the invention and drawings, if referred to in the description.</p> <p>If the said documents are not filed at the same time, the date of receipt of the last of the documents shall be deemed as the filing date.</p> <p>Rules, par. 23.7 Notice on a positive results of examination as to formal</p>	<p>The EPO first undertakes a preliminary examination before the application is registered and only after all the revealed deficiencies are remedied, the date of filing is accorded. Then the EPO will examine the application on its compliance with the formal requirements. Rospatent files the application without any preliminary examination.</p>
3	<p>Regulations, Rule 55 Examination on filing If the examination under Article 90, paragraph 1, reveals that the application fails to meet the requirements laid down in Rule 40, paragraph 1 (a) or Rule 40, paragraph 1(c), Rule 40, paragraph 2 or Rule 40, paragraph 3, first sentence, the European Patent Office shall inform the applicant of any deficiencies and advise him that the application will not be dealt with as a European patent application unless such deficiencies are remedied within two months. If the applicant complies, he shall be informed of the date of filing accorded by the Office.</p> <p>Regulations, Rule 57 Examination as to formal requirements If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether ...</p>	<p>Rules Par. 13.1. (1) Provision for application filing and its filing number assignment The document received in Rospatent shall be registered as an application, the date of its receiving being accorded as that of its filing provided the document contains at least a patent application in Russian.</p> <p>Rules, par. 23.1. Provisions for examination as to formal requirements Examination of an application as to formal requirements shall be carried out provided the application has been filed in accordance with sub-paragraph 1 of Par. 13.1 (1) laid down in the present Rules.</p> <p>Rules, par. 23.6. Fixing the date of application filing (1) As stipulated by par. 3 Article 1375 of the Code the date of patent application filing with Rospatent shall be the date of the application receiving, containing a request for patent grant, a description of the invention and drawings, if referred to in the description.</p> <p>If the said documents are not filed at the same time, the date of receipt of the last of the documents shall be deemed as the filing date.</p> <p>Rules, par. 23.7 Notice on a positive results of examination as to formal</p>	<p>The EPO first undertakes a preliminary examination before the application is registered and only after all the revealed deficiencies are remedied, the date of filing is accorded. Then the EPO will examine the application on its compliance with the formal requirements. Rospatent files the application without any preliminary examination.</p>

		requirements Provided the application contains all necessary documents which comply with the requirements, established by the present Rules, the applicant shall be notified on the positive result of the examination as to form and on the filing date accorded pursuant to par. 23.6 of these Rules within two months from the date the application documents have been received.	
4	Guide, Paragraph 118 An additional fee is payable for European patent applications comprising more than 35 pages. The amount of the additional fee depends on the number of pages over 35 and is calculated on the basis of the pages of the description, claims, any drawings and one page for the abstract, in the language of filing. The pages of the request for grant form (EPO Form 1001) are not counted, nor are any pages forming part of a sequence listing. The additional fee is payable within one month of the filing date of the application. If the application is filed without claims or by reference to a previously filed application, the additional fee is payable within one month of filing of the first set of claims or the certified copy (see Points 137 and 147).	It is not envisaged by the applicable regulatory documents.	EPO's practice of charging an additional fee depending on the number of pages in the application is of interest, it can be used by Rospatent.
5	Regulations, Rule 57 Examination as to formal requirements If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether: (a) a translation of the application required under Article 14, paragraph 2, or under Rule 40,	Rules, par. 23.3 Request for amended or missing application documents (1) If the examination of the application as to formal requirements reveals that it fails to comply with the requirements, the applicant shall be notified hereof within two months from the date the	The EPO allows different time periods to remedy the deficiencies revealed by formalities check. If the applicant fails to pay filing and search fees in due time the application is deemed to be withdrawn.
	paragraph 3, second sentence, has been filed in due time; (b) the request for grant of a European patent satisfies the requirements of Rule 41; (c) the application contains one or more claims in accordance with Article 78, paragraph 1(c), or a reference to a previously filed application in accordance with Rule 40, paragraphs 1(c), 2 and 3, indicating that it replaces also the claims; (d) the application contains an abstract in accordance with Article 78, paragraph 1(e); (e) the filing fee and the search fee have been paid in accordance with Rule 17, paragraph 2, Rule 36, paragraph 3, or Rule 38; (f) the designation of the inventor has been made in accordance with Rule 19, paragraph 1; (g) where appropriate, the requirements laid down in Rules 52 and 53 concerning the claim to priority have been satisfied; (h) where appropriate, the requirements of Article 133, paragraph 2, have been satisfied; (i) the application meets the requirements laid down in Rule 46 and Rule 49, paragraphs 1 to 9 and 12; (j) the application meets the requirements laid down in Rule 30 or Rule 163, paragraph 3. Regulations, Rule 58 Correction of deficiencies in the application documents If the European patent application does not comply with the requirements of Rule 57(a) to (d), Rule 57(h) and Rule 57(i), the European	application documents were received, the letter shall indicate the revealed deficiencies, which should be properly legally grounded and a proposal to submit amended or missing documents within two months from the date the request is received. The grounds for request: (1.1) an application missing at least one document listed in par. 10.2 of the present Rules and/or the number of copies provided are fewer than required; (1.2) A document confirming payment of the prescribed patent fees or a document confirming the grounds for exemption from the patent fees, or reduction or deferred payment thereof, shall be attached to a patent application for an invention; (6) if the applicant fails in the required time to submit the required documents or a request to extend the term of documents submission as stipulated by provisions of par. 20 of the present Rules, the application shall be recognized as withdrawn.	

	<p>Patent Office shall inform the applicant accordingly and <u>invite him to correct the deficiencies noted within two months.</u></p> <p>Regulations, Rule 38 Filing fee and search fee The filing fee and search fee shall be paid <u>within one month of filing the European patent application.</u></p> <p>EPC, Article 78 (2) Requirements of the European patent application (2) A European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn.</p>		
6.	<p>Regulations, Rule 137 Amendment of the European patent application (1) <u>Before receiving the European search report,</u> the applicant <u>may not amend the description, claims or drawings</u> of a European patent application unless otherwise provided. (2) <u>After receipt of the European search report,</u> the applicant <u>may, of his own volition, amend the description, claims and drawings.</u> (3) <u>After receipt of the first communication from the Examining Division, the applicant may, of his own volition, amend once the description, claims and drawings, provided that the amendment is filed at the same time as the reply to the communication.</u> No further amendment may be made without the consent of the Examining Division. (4) <u>Amended claims may not relate to</u></p>	<p>15. Introduction of amendments to the application documents (1) The applicant can amend the application documents by replacing the deficient pages with corrected ones ... A document confirming the payment of patent fee in the required amount shall be attached to the said documents. If changes are made to the application documents on the initiative of the applicant within two months from the date of filing of the application, a patent fee shall not be charged for the amendments (2) Amendments and clarification of the application documents, except those mentioned in (3) and (4) of this</p>	<p>The constraints applied in EPO with respect to introducing changes in the claim before the Search Report is received seem reasonable.</p>
	<p>unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.</p>	<p>paragraph, which are not presented as substituting pages shall not be taken into account in the published application information. (3) If corrections concern misprints bibliographic errors and the like and if these corrections and clarifications do not result in diminishing the clearness when the documents are reproduced, the need to introduce corrections can be expressed directly in the request. In this case there is no obligation to introduce substituting pages. (6) Pursuant to <u>Article 1378</u> of the Code an applicant shall be entitled to enter corrections or clarifications in application documents before a decision is made in respect of the application. Changes to the particulars of the applicant, including upon transfer of the right to obtain a patent to another person or due to a change of name or title of the applicant may be incorporated in the application documents prior to registration of the invention in the appropriate State Register. Corrections of obvious or technical errors may also be incorporated in the application documents prior to registration of the invention in the appropriate RF State Register of the Inventions. An error is deemed obvious, if an expert in this field of technology understands that at the date of application filing something other than what was written in the application was meant and no correction but the one that was proposed</p>	

		can be made. (7) The applicant shall be notified on the examination of requests, mentioned in sub-paragraphs (4), (5), (6) within one month from the date the requests are received.	
7.	Guide, Paragraph 145 Immediately after it has been drawn up, the European search report is transmitted to you together with copies of any cited documents. If you require a second copy of the documents, you can obtain it by indicating it in the appropriate box on the Request for Grant form (refer to point 48 and section 39 of the Request for Grant) when filing the application and by paying the prescribed administrative fee.	Rule par. 26.5 (2) Information Search Report and procedures of making the search report results available Copies of the documents, mentioned in the Information Search Report, except copies of application, information of which is not available to any other person, can be made available to the applicant and third parties <u>provided the required payments are made</u> .	It is believed that the EPO experience of providing copies of cited documents together with the Search Report can be used in Rospatent.
8.	Guide, Paragraph 150 If you amend the claims after receiving the European search report but before completion of the technical preparations for publication (see point 172), the amended claims will be published in addition to the claims as filed. The technical preparations are deemed to have been <u>completed five weeks before expiry of the eighteenth month after the date of filing or, if priority is claimed, after the date of priority</u> .		Determination of the time required for technical preparation for publication makes it possible for the EPO to determine the intended publication date from which the EPO counts off other terms. The EPO also notifies the applicant on the date the patent will be published. It is believed advisable for Rospatent to use the EPO experience and to communicate the date of publication to the applicant.
9.	Regulations, Rule 71 Examination procedure (3) <u>Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it, and shall invite him to pay the fees for grant</u>	Code, Article 1393. The Procedure for State Registration of an Invention, Utility Model or Industrial Design and the Grant of a Patent	The EPO experience with respect to inviting the applicant to pay the fees for patent grant and patent printing after the patent text, which the EPO intends to grant, is communicated to
	<u>and printing</u> and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within a period of four months. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the text intended for grant. (4) If the applicant, within the period laid down in paragraph 3, requests amendments under Rule 137, paragraph 3, or the correction of errors under Rule 139, he shall, where the claims are amended or corrected, file a translation of the claims as amended or corrected. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the grant of the patent as amended or corrected. ³⁸ See decision of the Enlarged Board of Appeal G 10/93, G 1/02 (Annex I). 43 (5) If the Examining Division does not consent to an amendment or correction requested under paragraph 4, it shall, before taking a decision, give the applicant an opportunity to submit, within a period to be specified, his observations and any amendments considered necessary by the Examining Division, and, where the claims are amended, a translation of the claims as amended. If the applicant submits such amendments, he shall be deemed to have approved the grant of the patent as amended. If the European patent application is refused, withdrawn or deemed to be withdrawn, the fees for grant and printing, and any claims fees paid under paragraph 6, shall be refunded. (6) If the European patent application in the text intended for grant comprises more than ten claims, the Examining Division shall invite the applicant to pay claims fees in respect of each additional claim within the period under	1. Based on a decision to grant a patent for an invention, utility model or industrial design, the Federal executive authority for intellectual property shall record the invention, utility model or industrial design in the corresponding register – the Official Register of Inventions of the Russian Federation, the Official Register of Utility Models of the Russian Federation or the Official Register of Industrial Designs of the Russian Federation and shall grant a patent for the invention, utility model or industrial design. If the patent is claimed in the name of several persons, they shall be granted one patent. 2. An invention, utility model or industrial design and the grant of a patent shall be registered, provided that the corresponding patent fees have been paid. If the applicant has not produced the required document confirming payment of the patent fees, the invention, utility model or industrial design and the grant of a patent shall not be registered and the corresponding application shall be deemed to be withdrawn.	the applicant, is of interest to Rospatent in view of utilizing such an approach in its practice.

	<p>paragraph 3, and, where applicable, paragraph 5, unless the said fees have already been paid under Rule 45 or Rule 162.</p> <p>(7) If the fees for grant and printing or the claims fees are not paid in due time, or if the translation is not filed in due time, the European patent application shall be deemed to be withdrawn.</p> <p>(8) If the designation fees become due after the communication under paragraph 3, the mention of the grant of the European patent shall not be published until the designation fees have been paid. The applicant shall be informed accordingly.</p> <p>(9) If a renewal fee becomes due after the communication under paragraph 3 and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.</p> <p>(10) The communication under paragraph 3 shall indicate the designated Contracting States which require a translation under Article 65, paragraph 1.</p> <p>(11) The decision to grant the European patent shall state which text of the European patent application forms the basis for the decision.</p>		
10.	<p>Guide, Paragraph 168</p> <p>Before a patent can be granted, you must also have paid <u>any renewal fee and additional fee due</u> (see point 213 et seq.). If a renewal fee falls due before the expected date of publication of the mention of grant of the European patent, you will be informed accordingly. Mention of grant will not be published until you have paid the renewal fee. If you fail to pay the renewal fee and any</p>	<p>Code, Article 1399</p> <p>Early Termination of a Patent for an Invention, Utility Model or Industrial Design</p> <p>A patent for an invention, utility model or industrial design shall be terminated early:</p>	<p>RF Patent legislation does not prevent patent grant if there default on annual fee payment, annual fee should be paid at the same time as the patent grant fee, this results in a certain conflict, because the patent can be terminated even before the patent is granted.</p>
	<p>additional fee in due time, the application is deemed to be withdrawn.</p>	<p>From the date of expiry of the time limit for payment of the patent maintenance fee, if the fee for maintenance of the invention, utility model or industrial design patent has not been paid.</p> <p>Par. 9 Instruction on Fees Payment</p> <p>9. Payment of the fees specified in subparagraphs 1.15.1 and 1.15.2 of the Annex to the present document (<i>annual fees for patent maintenance</i>) for each year the patent (certificate) is in force, and filing the document confirming the payment of an appropriate fee should be made within a previous year or within the term specified in the first sub-par. of par.8 of the present Instruction (<i>i.e. the patent grant fee should be paid within the required time</i>), if this period starts later.</p> <p>An additional time period of 6 months is accorded to pay the indicated fees starting from the expiry date specified in the first sub-par. of this paragraph, provided the fee paid is 50% higher.</p> <p>The document confirming payment of the required fee shall be filed together with the notice from the person indicated in par. 4 of the present Instruction that the fee has been paid, but not later than one month before the additional term expires.</p> <p>If the document confirming the payment of the required fee and the notice of the payment are not filed in due time, the fee shall be deemed unpaid in the</p>	<p>The EPO experience in this respect is useful for further studies in Rospatent.</p>

		required time. Maintenance fee for the year following the year during which the request on patent renewal was filed shall be paid in the same term as the patent renewal term. The document confirming payment of this fee shall be filed at the same time as the request.	
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Differences in document management procedures revealed during a Russian Delegation visit to the EPO Headquarters

	In EPO	In Rospatent	Comments
1.	Chemical formulae, drawings, tables and other similar elements of graphics are stored in the automated system in the facsimile format, being forwarded to the publication in the same facsimile format.	Chemical formulae, drawings, tables and other similar elements of graphics are converted into electronic format.	It is believed reasonable to use the EPO experience, this would result in lower labor costs
2.	Letters prepared by an examiner in the automated system can be supplemented with a letter by another examiner from a different department (e.g. Formalities) and forwarded to the printer in the Mail room, where they can be printed out and sent to the applicant.	A letter stored in the automated system called «Electronic applications archive» can be compiled only by one employee. In a number of cases such practice results in several letters from various departments being sent as answers to the same in-coming letter (e.g. a document compiled by an examiner and another one written by a person responsible for getting fees).	EPO experience is believed advisable and it is reasonable to use it for reducing working time in writing letters as well as for reducing physical costs of the mail sent.
3.	Information on applications is placed (published) on the EPO website 18 months after the application is filed, it includes Search Report, Claim, Description and Abstract (after the decision is made to grant) as well as the Refusal to grant and all the correspondence relevant to	The Rospatent website shows published information on the Applications and the Patent	It seems reasonable to consider a possibility to place on the Rospatent website after the patent data is published, all the correspondence related to patent, and its related Search Report to allow anybody

	the application.		interested to familiarise oneself with these data.
4.	Prior to the patent information publication its draft is sent to the applicant.	Decision to grant a patent and its Abstract is sent to an Applicant	The EPO practice seems useful, i.e. an applicant is provided with an opportunity to correct errors in the texts of Description and Abstract as well as in the patent bibliography
5.	In the EPO practice an applicant has a possibility to apply for an advanced search and examination as to substance.	Rospatent does not provide an applicant with the service of advanced search and examination as to substance.	Rospatent does not plan currently to introduce such procedure in its practice.
6.	On-line filing is made with the use of a smart card; an applicant can obtain such smart card by post either from the EPO or a National Patent Office. The smart card with a necessary document packet is sent to an applicant by post.	On-line filing can be made after an applicant gets a Certificate on Electronic Signature (CES) from Rospatent. The RF Law on CES does not stipulate the use of smart cards.	The use of on-line filing is limited in Rospatent since not all the applicants are able to get CES because they are located too far from Rospatent.

Appendix 5. Timetable of the project and budget

