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Contact us:

■ **Bolotov & Partners LLP**
Almaty Residence BC, 6 floor
60 Auezov St., Almaty 050008
Republic of Kazakhstan
+7 (727) 357 23 80
info@BolotovIP.com
www.BolotovIP.com

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Intellectual Property in Kazakhstan



Yuri Bolotov

Managing
Partner
Trademark &
Patent Attorney
Member of the
Chamber of legal
advisers

Since the disintegration of the USSR, business has been rapidly developing in the Commonwealth of Independent States [CIS], one of the key countries of which is Kazakhstan. For many companies, Kazakhstan - bordering China on its North side and being a regional leader in natural resources and industry - is a gateway for business in other Central Asian Republics, such as Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

Kazakhstan is roughly equal in size to five states of France, and is a valuable potential key player in the world oil and gas markets. It is a major world source of coal, copper, iron ore, chromium, magnesium, lead, zinc, silver, and uranium and has notable reserves of gold, molybdenum, titanium, and others. Kazakhstan is a member of the Paris Convention, the Madrid Agreement, the Patent Cooperation Treaty, and others.

It has developed a system of IP rights protection, including the Patent Law and Law on Trademarks, while the Administrative Code and Criminal Code provide administrative and criminal liability for infringement of IP rights. While Kazakhstan legislation provides broad protection to intellectual property rights, particular areas remain underdeveloped and enforcement generally remains a problem.

Under Kazakhstan IP legislation, it is an exclusive right of an individual/company to reap the benefits of intellectual creative activities and means of individualization of a company, production of an individual/company, works performed or services rendered thereby (including trade name, trademark, service mark, etc.).

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Intellectual property forms two groups:

- results of intellectual creative activity, and
- means of individualization of civil turnover participants, goods, works or services.

Exclusive right to the results of intellectual property-related activities or means of individualization is a property right of its owner to use the object of intellectual property by all means and at his/her discretion. Other persons would be allowed to use exclusive rights only subject to the owner's consent.

In order to protect a trademark or a patent from infringements, the owner of such IP needs to ensure their appropriate registration in Kazakhstan. Failure to register IP rights may easily lead to violation of such rights. Foreign individuals or companies may apply for registration of intellectual property only through a registered patent attorney (patent agent).

Owner's consent is granted by either a license agreement or an assignment agreement. Pursuant to a license agreement, the owner enjoying exclusive rights to the results of intellectual creative activity or the means of individualization (licensor) will grant to another party (licensee) a right to temporarily use the relevant object of intellectual property. Authorized state bodies and IP owners take effective measures to protect IP rights in Kazakhstan.

The Intellectual Property Rights Committee of the Ministry of Justice of the Republic of Kazakhstan (the IPR Committee is the authorized state agency for intellectual property matters. The IPR Committee is responsible for registration of IP and implementation of state policy relating to protection of copyrights, inventions, utility models, industrial designs and other intellectual property items, issuing copyright, patent and trademarks certificates, and recognition of marks as well-known.

The National Institute of Intellectual Property (NIIP) accepts applications for the issue of patents for inventions, utility models, industrial designs, as well as for registration of trademarks and carrying out their expertise, maintains State IP Registers and arranges official publications.

IP rights also enjoy the protection of customs authorities, which maintain a Registrar of goods containing IP objects, and goods are included into such Registration upon application of IP owners. The term "violation of intellectual property rights" was clarified and is now defined as the illegal

use of copyrights, inventions, utility models, industrial property objects, trademarks or appellations of origin, appropriation of copyright, etc.

Violators of IP rights are subject to civil, administrative or criminal liability, depending on the gravity and consequences of violation. Particularly, criminal liability is incurred for illegal use of a trademark, with the severest sanction being correctional labor for up to two years. Further illegal use of inventions, utility models, industrial designs, selection achievements or typologies of integrated microcircuits may cause incur punishment of up to five years imprisonment and confiscation of property.

According to the information of Ms. U Ninlin, the Third Secretary of the Embassy of the PRC on the exhibition of Chinese manufacturers on June 28 2006, the total volume of Chinese investments into Kazakhstan's economy in 2005 was 1.8 billion U.S. Dollars, while the volume of investments from the PRC is constantly growing. Such investment is not only directed to Kazakhstan, but also to other Central Asian Republics of the CIS, which are of great interest to Chinese investors due to their location, natural resources and similar legislation.

[Yuri Bolotov - "China Law & Practice", March 2008](#)