IP deadlines under Martial Law in Ukraine

By Slobodan Petošević, PETOŠEVIĆ, Luxembourg

Until recently it was not quite clear how exactly IP deadlines are affected by the martial law in Ukraine. The martial law, which was first introduced in Ukraine on February 24, 2022, remains effective until May 25, 2022.

The Ukrainian IPO published several notices back in March, informing the IP community that the IPO continues to operate on a full-time basis to ensure uninterrupted functioning of the intellectual property system and explaining that the earlier published letter of the Ukraine Chamber of Commerce and Industry, certifying the events of force majeure, could be interpreted as applicable only to applicants and right holders residing or domiciled in Ukraine. The IPO did not have the discretion to prescribe the deadline-related procedural issues, which required adoption of a special law.

This uncertainty was finally resolved on April 1, 2022 with the adoption of the Law “On the Protection of Rights of Intellectual Property Subjects during Martial Law in Connection with Military Aggression of the Russian Federation Against Ukraine” No. 2174-IX (the Law). This Law, which entered into force on April 13, 2022, provides for:

1) **Suspension of deadlines** relating to protection and acquisition of IP rights to trademarks, inventions, utility models, industrial designs, semiconductor topography rights, geographical indications, copyright, and plant varieties for the duration of the martial law period, starting on February 24, 2022. Other than the general prosecution and IPR maintenance deadlines provided by relevant IP laws, the suspension also affects the deadlines for:
   - filing oppositions against national trademark applications and international registrations under the Madrid Agreement and Protocol;
   - challenging decisions of the Ukrainian IPO before courts;
   - filing appeals before the IPO Board of Appeals;
   - filing patent invalidation actions;
   - filing requests for reinstatement of the missed deadlines, etc.

According to the Law, these deadlines will continue as of the day following the date on which the martial law regime stops or is lifted, taking into account the time that passed before February 24, 2022.

2) **Continuation of validity** of IP rights for which the relevant deadlines were suspended. The respective patents and certificates remain valid and fully enforceable.

3) **Possibility to subsequently pay** the renewal and annuity fees, falling due within the martial law period, within 90 days after the martial law regime is lifted.

4) **Possibility for applicants/IPR holders to take necessary actions**, i.e. file relevant applications, requests, objections, responses, not later than 90 days following the day on which the martial law regime is lifted, without paying any extension or reinstatement fees.

In spite of all mentioned provisions of the Law in place, IPR holders and applicants are not explicitly exempt from the duty to perform all required actions aimed at securing and protection of IPRs.
It has to be made clear that the primary purpose of this Law was to establish additional protective mechanisms that can be used as a "safety blanket" by IPR holders and applicants in case they cannot comply with respective deadlines due to unforeseen circumstances caused by the war, or when performing certain actions becomes impossible or complicated.

Obviously, some actions may require extensive research and investigation, collection and securing of evidence, negotiating and/or formalising agreements, etc., which is often significantly jeopardised by unpredictability of war. Also, there is a number of troublesome circumstances that IPR holders and applicants, particularly those residing or domiciled in Ukraine, or those whose legal representatives are in zones of military conflict, can face under the martial law. For this particular reason, and understanding the importance of IPRs for future economic recovery and growth, the legislator quickly responded to legislative initiative aimed at preserving IP deadlines and adopting relevant protective mechanisms preventing possible loss of IPRs and damages from such loss of rights in this difficult time.

Still, given that the Ukrainian IPO operates on a full-time basis, and that the e-filing system is fully functional, IPR holders and applicants, particularly non-residents, are advised to follow the "normal" course of action in Ukraine, relying on the Law only in exceptional cases.

There are several reasons for this:

- As noted, the present Law is a "safety blanket" mechanism for the prevention of possible loss of rights and a formalised ground justifying reinstatement of missed deadlines. In its previous notices, the IPO had sent a clear message that the system is fully operational, hence there are no reasons for not meeting due deadlines, unless there are serious obstacles that prevent the applicant from performing the required actions;

- Given the mentioned provisions of the law, there will be only a relatively "narrow window" during which IPR holders will have to perform all actions that fell due within the period of the martial law. It is not difficult to imagine that this may result in a significant backlog in the IPO once the martial law is lifted and possibly create problematic situations;

- The potential backlog problem is coupled with procedural issues, particularly the need to correctly calculate relevant IP deadlines on a case-by-case basis, depending on whether the respective countdown date fell before the introduction of the martial law or during the martial law period, still complying with the provisions of relevant guidelines regulating the procedures of reinstatement. The IPO has not issued its recommendations yet.

Good planning and portfolio management under these difficult circumstances is key to avoiding possible future complications and delays with resumption of IPR prosecution and maintenance files and founding a solid base for the protection and enforcement of intellectual property rights in the post-war economy that will strive for innovation and growth.

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