Abstract
For more than 70 years the Former Soviet Union, which includes Russia and the Central Asian Republics, maintained a different Intellectual Property Rights (IPR) framework from that of Western economies. Over the last decade, Russia has been attempting to improve its IPR regime as part of the transition process from a command-control economy to a market economy. Given its large science base, Russia is assumed to have more imitative/innovative capacity than other countries at a similar level of economic development. Strengthening Russia’s IPR regime is seen as a prerequisite for commercializing its R&D outputs. This paper evaluates the levels of statutory and effective IPR protection in Russia. Statutory protection of IPR is measured with the Ginarte and Park index of patent rights. Effective protection of IPR is measured by incorporating the Corruption Perceptions Index into the Ginarte and Park index of patent rights and by use of case studies of legal experiences in Russia. Despite improvements in statutory protection, Russia’s effective IPR protection remains weak in comparison to advanced countries.

1 Introduction

Intellectual Property Rights (IPR) are conferred by national governments and valid only within the relevant jurisdiction. Consequently, national IPR systems have largely focused on what is perceived to be in the best interests of the country concerned. With the globalization of markets and the resulting increases in trade and investment flows across borders, particularly flows of technology and technology-intensive products, the difference in national IPR standards has taken on additional significance. The efforts of national governments to harmonize the international IPR protection regime resulted in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), a product of the Uruguay Round (1986-1994) of trade negotiations.¹

The TRIPS Agreement is the first comprehensive global set of rules that cover IPR protection.² It sets minimum standards for IPR protection to be provided by each World Trade Organization (WTO) member: according to Article 1, “Nature and Scope of Obligations” of the TRIPS Agreement, members may, but shall not be obliged to, implement more extensive protection in their law than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. It also requires countries to develop mechanisms to enforce these rights: according to Article 41 of the TRIPS Agreement, members shall ensure that enforcement procedures are available in their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent against further infringements.

Russia has been seeking membership of the WTO since 1995. Most observers of the situation concur that the enforcement of IPR law remains one of the major hurdles to Russian accession to the WTO.³ Russia’s enforcement failures are symptomatic of deeply-rooted cultural assumptions and a lack of awareness of IPR that dates back to the Soviet era, when intellectual property was owned by the state and made available to the people either for free or at heavily subsidized prices. The FSU (Former Soviet Union) countries such as Kyrgyzstan and Georgia were

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¹ The TRIPS Agreement is Annexure 1C to the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.
² There have been international agreements on IPR since the nineteenth century. Until recently the main instruments of international law regarding the substantive protection of IPR were the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).
³ The survey (2007) of 48 multinationals, conducted by the Paris-based International Chamber of Commerce, ranks China and Russia as the worst protectors of intellectual property, followed by India and Brazil. China’s accession to the WTO took place in 2001. Although China made some efforts to curb IPR infringement in the five to seven years leading up to accession, piracy continued to expand after membership had been secured. Industry sources now complain that China’s responses to questions in the enforcement sections of the Working Party Report were overly vague. The experience with China suggests that the leverage of the international community is at its greatest before and not, as some have argued, following WTO accession. It will be impossible to eliminate the problem fully before accession, but it is expected to demonstrate political will through the concrete actions required in the agreement (November, 2006) between the United States and Russia. Considering Russia’s burgeoning intellectual property-based industries, Russian IPR holders demand effective IPR enforcement as much as their international counterparts.
accepted into the WTO despite high piracy rates, whereas WTO members have taken a tough stance on Russia’s IPR enforcement issue. In view of these facts, this paper attempts to evaluate the level of IPR protection that Russia has achieved as at the end of 2006 in order to conform to TRIPS standards by using the IPR index and actual legal experiences.

Russia shares a common historical background with the rest of the FSU, including the Central Asian Republics. Considering Russia’s leading role in the socio-economic life of the FSU region, Russia’s IPR system can be used as a benchmark for Central Asian economies. The results of this study will be used in further research for an intraregional comparison of IPR protection.

2 Factors Positively Correlated with IPR Protection

Following the TRIPS Agreement, numerous studies have examined the potential impact of IPR on various aspects of economic activity. These studies have revealed a positive correlation between IPR protection and such factors as: a) a country’s level of economic development; b) the openness of the economy; c) the capacity for innovation; and d) the motivation for technology transfer. On the one hand, there are countries like the US and Japan, open market economies with a high per capita income which have many innovators with a motivation for technology transfer. These developed countries have fulfilled the above-mentioned factors and have tended to opt for relatively strong IPR systems, with the aim of encouraging inventive and creative activities. On the other hand, developing countries with limited resources for innovative activities have taken a different approach, providing only weak protection, if any, as a way of allowing the rapid diffusion of knowledge.

Russia is a transition economy with factor endowments different from those of most developing economies. It is a middle-income country with a per capita GNI\(^4\) of USD 4,460 (2005). The level of openness of the Russian economy is reflected in its poor performance in attracting foreign direct investment (FDI). On a per capita basis, FDI inflows represented USD 28 per head in 2002 in Russia, as against, for example to USD 818 per head in the Czech Republic’s transition economy.\(^5\) Given Russia’s human capital endowment and its large science base, it probably has greater potential for innovation-based growth than most developing countries.

The lack of engagement between the science sector and business contributes to poor performance with respect to innovative output. One indicator of this weakness is the relatively small number of patents held abroad. Russia has 0.4 triadic patent families\(^6\) per million people (2003) as compared to Japan’s 106.3 and the 66.0 of the United States. Moreover, a large proportion of patents held abroad are not Russian but foreign-owned. Russia has the second highest level of foreign ownership with 62.3% of domestic inventions filed at the European Patent Office (EPO) in 2000-02 being owned or co-owned by foreign residents. Concerning patents held in Russia, Gokhberg (2003) estimates that only 5% of usable models produced during 1992-2002 became the objects of commercial agreements.

These facts indicate that Russian inventors prefer to transfer their technology abroad because of the difficulties they face in turning their inventions into commercial products in the domestic business environment. In an enterprise survey conducted by the Interdepartmental Analytical Centre (MATs), 50% of respondents cited weaknesses in the IPR regime as a major impediment to the commercialization of R&D output and only the lack of access to financing (57%) was cited more frequently. Thus, strengthening the IPR protection regime is seen as a prerequisite for realizing Russia’s innovation potential.

3 The Role of Patents among Various Categories of IPR

The TRIPS Agreement includes such IPR protection categories as copyrights, patents, trade secrets, trademarks and service marks, geographical indications and integrated circuit layout designs. Copyright protection is given to literary and artistic works, whereas all other categories of IPR protect industrial property. These IPR categories vary in nature and this paper assumes that patent rights represent a barometer for an IPR system because of the distinctive features described below:

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4 The studies include research work on IPR by Chin and Grossman (1990); Mansfield (1994); Gould and Gruben (1996); Ginarte, J.C. and W.G. Park (1997); Falvey, Foster and Greenaway (2004); and Falvey and Foster (2006).
5 Gross National Income (GNI) per capita is the World Bank’s criterion for classifying economies as low income, middle income (subdivided into lower middle and upper middle), or high income.
7 "Triadic patent families" are defined at the OECD as a set of patents registered at the European Patent Office, Japan Patent Office and United States Patent and Trademark Office. In terms of statistical analysis, they improve the international comparability of patent-based indicators, because only patents applied for in the same set of countries are included in the "family" so the influence of geographical location is therefore eliminated. Patents included in the family are typically of higher value: patentees only take on the additional costs and delays of extending protection to other countries if they deem it worthwhile.
1) The importance of innovation and technology diffusion

Patents encourage innovation by providing an incentive to invent a new technology or products. Through the publication of claims, patents add to the stock of public knowledge and can encourage technology diffusion. On the other hand, copyrights which protect literary and artistic ideas do not encourage industrial innovation.

2) Scope of Protection

Patent protection prevents someone else from developing and marketing a product by using the original novel idea of a patent holder, whereas copyright allows this as long as any aspects of the original work may not be copied directly.

3) Application procedure

A patent application is a complicated and expensive process which requires a patent attorney’s expertise. Copyright protection is given to creative works automatically and does not have accompanying expenses.

Given the simple nature of copyrights, their infringement is rife in the Russian market and easily noticed. Russia is on the priority watch list of the International Intellectual Property Alliance (IIPA) for copyright piracy and the estimated piracy level is 80% (2006) for business software, 65% (2006) for records and music, 81% (2005) for motion pictures and 72% for entertainment software. However, it is difficult to disclose patent infringement because it requires expertise and Russia is in the initial stage of developing an effectively functioning legal framework for patent rights protection. In view of these facts, copyright protection is assumed to be weaker than patent rights protection.

This paper originally aimed to cover IPR issues in transition economies. Due to the scarcity of information and statistical data on IPR issues, however, previous studies have been severely limited and only quite recently have arguments centering on patents been expanded. Even so, the arguments have been mostly confined to Russia and there has been little discussion of IPR issues in transition economies in general. In these circumstances this paper is obliged to focus on patent issues in Russia but the author believes it would be very indicative to analyze the patent-related issues in Russia in order to extend the analysis to IPR issues in transition economies.

4 Measurement of IPR Protection in Russia

There have been numerous studies on patent systems in the past decades but few have reflected the overall strength of the system in a particular country. The available studies have evaluated patent systems through such approaches as: 1) dummy variables; 2) surveys of firms; and 3) a composite index of patent law indicators.

Bosworth (1980) and Ferrantino (1993) applied a dummy variable approach in developing various indicators of whether or not certain features of patent laws exist, but their method does not provide a composite index of those indicators. Mansfield (1994) applied a survey approach to sample the views of 94 U.S. multinationals on the adequacy of patent rights in 16 countries during 1991. Rapp and Rozek (1990) aggregated patent law indicators into a composite index known as the Rapp and Rozek Index (RRI). RRI indicators focus on the standards proposed by the United States Chamber of Commerce (1987). These standards include guidelines for patent examination procedures, the term of protection, compulsory licensing, coverage of inventions, transferability of patent rights and effective enforcement against infringement. The RRI measures patent rights protection on a zero to five scale, where zero represents a country with no patent rights protection laws, one is equal to inadequate protection laws; no law prohibiting piracy, two is equal to seriously flawed laws, three is equal to flaws in laws, some enforcement laws, four is equal to generally good laws, and five represents a country with protection and enforcement laws fully consistent with minimum standards proposed by the U.S. Chamber of Commerce.

Ginarte and Park (1997) developed a new patent rights index known as the Ginarte and Park Index (GPI)9. The GPI examines whether or not patent laws conform to the standards set by TRIPS. TRIPS standards for patents include such guidelines as subject matter coverage, plant breeder’s rights, severe restrictions on compulsory licensing, a minimum 20-year patent duration from the filing date, and the reversals of the burden of proof in process patents. In comparison to the RRI, the GPI indicators describing the patent system are more finely defined so that the measuring of patent rights exhibits greater variability across countries.

In addition to the indices of patent rights, two other methods are commonly used in the literature for IPR
measurement: the IPR rating in the World Economic Forum’s Global Competitiveness Report (GCR) and the International Property Rights Index (IPRI)\(^{10}\).

### 4.1. Distinctive Characteristics of IPR Measurement Methods

Among the above-mentioned measurement methods, the GPI, the GCR ratings and IPRI have been used for international comparisons in recent studies on IPR. Each of the three methods has distinctive features.

1) The GPI reflects the conformity of each country’s patent law to international standards. The GPI does not provide information on the effective protection of IPR, but reflects only the statutory protection of patent rights (i.e., laws on the books). Additionally, the GPI does not cover other categories of IPR like copyrights and trademarks.

2) The GCR ratings are based on opinion surveys or the experiences of firms or individuals. The GCR ratings cover intellectual property as a whole. Survey participants are asked to rate the intellectual property regime of each country, which can cover quite a broad spectrum of issues—from patent rights to trademarks to copyright to geographic indications. Although the GCR ratings reflect the effective protection of IPR, measuring actual experiences by using questionnaires can be subject to bias and these do not provide information on the statutory protection of IPR.

3) The IPRI focuses on legal property rights of which intellectual property rights form part. This index comprises a total of eleven factors, which are divided into three main categories: the Legal and Political Environment (LP); Physical Property Rights (PPR); and Intellectual Property Rights (IPR). The IPRI calculates an IPR category by combining the GCR ratings, GPI, copyright piracy level and trademark protection. The majority of data included in the IPRI stems from expert survey responses. Only older information on patent rights (2000) and trademarks (1998) is provided in the IPR category of this index. In addition, although the category of Legal and Political Environment (LP), which includes such factors as judicial independence, confidence in the courts, political stability and corruption, can help measure effective IPR protection, it is not applied directly to IPR but to both physical property rights and intellectual property rights.

Accordingly, this paper applies the GPI for patent rights measurement in Russia because this index is the most suitable for purposes of revealing the conformity of a country’s legal framework with the requirements of the WTO and Russia’s GPI score will be used for intraregional comparison of statutory IPR protection in further research.

As for effective IPR protection, two approaches are used to evaluate the implementation of law. Firstly, a comprehensive approach incorporates Transparency International’s Corruption Perceptions Index (CPI)\(^ {11} \) into the GPI. However, the CPI is subject to bias because it is based on people’s opinions and not on substantive facts.\(^ {12} \) Therefore, a selective approach is used in addition to the comprehensive approach. This selective approach captures the actual experiences of IPR enforcement through case studies of selected GPI categories.

### 4.2. Statutory Protection of Patent Rights in Russia

The GPI examines five categories of patent laws: (1) coverage (the subject matter that can be patented); (2) duration (of the protection); (3) enforcement (the mechanisms for enforcing patent rights); (4) membership in international patent treaties; and (5) restrictions or limitations on the use of patent rights. For each of these categories, a country is given a score, ranging from 0 to 1. Except for the duration category, each category consists of several conditions that, if satisfied, indicate a strong level of protection in that category.\(^ {13} \) Each condition is of a binary nature: yes, it has been satisfied or no, it has not been satisfied. For example, if a country satisfies all three conditions required for strong enforcement, it scores 3 out of 3 and earns a value of 1 for enforcement; if it satisfies only one condition, it receives a score of 1/3 for enforcement. The overall score for patent rights is the unweighted sum of the scores of the five individual categories. The maximum potential score is therefore, 5. Higher index values indicate stronger levels of protection. This should not be interpreted as maximum strength but rather as scoring perfectly on the minimum international standards set by TRIPS.

Park and Wagh\(^ {14} \) performed international comparisons of the GPI for the years 1995 and 2000. Countries with strong IPR regimes are selected in addition to Russia and their GPI scores are shown in Table 1.

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10 International Property Rights Index (IPRI) 2007 Report, Study conducted by Alexandra C. Horst, 2006 Hernando de Soto Fellow.
11 The CPI focuses on corruption in the public sector and defines corruption as the abuse of public office for private gain. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of businesspeople and analysts from around the world, including experts who are resident in the countries evaluated.
12 Similarly to the CPI, other factors such as judicial independence, confidence in courts and political stability are also based on perceptions. Application of these factors along with the CPI will be considered for measurement of effective IPR protection in the future research.
13 These conditions will be discussed in the following section 4.3.
Russian legislation has changed since 2000. In Russia, patent rights protection is provided for in the Patent Law (amended in February 7, 2003), Administrative Law (amended in July 22, 2005), Criminal Law (amended in July 21, 2005), Civil Law (amended in July 21, 2005) and Code of Civil Procedure (amended in July 21, 2005). This paper investigates amendments made to these patent-related laws in order to calculate Russia’s GPI for year 2006. The results of the calculation are summarized in Table 2, which shows that Russia’s GPI has increased by 29% since 2000. Russia’s GPI of 4.53 for 2006 corresponds to the score Germany had in 2000. The increase in the GPI score is due to improvements in the categories of enforcement and protection from restrictions on patent rights.

The nature of IPR treatment in Russia has changed considerably in the last two decades. From 1919 to 1991 only foreigners could obtain exclusive rights to an invention. The state owned most registered inventions and the inventor received an Inventor’s Certificate. An Inventor’s Certificate recognized the individual inventor’s authorship but provided the state with the right to practice the invention. Inventors could receive a modest remuneration from their employer. In addition, anyone could use the invention without the inventor’s permission. Likewise, the Inventor’s Certificate could not be sold or licensed. This intellectual property protection situation and the rights to implement the technology was the result of the FSU policy that new technical solutions did not belong to anyone in particular. The Patent Law adopted on September 23, 1992 allows the patent owner to have an exclusive right to the invention, so that no one else shall have the right to use a patented invention without permission from the patent owner (Article 10). However, the use of a patented invention for private purposes, which are not business-related and not for profit, does not constitute an infringement of the exclusive rights of the patent owner.

### 4.3. Background of Russia’s Statutory Protection

Russian IPR legislation is in the process of transformation and it is difficult to find sources that provide a systematic explanation of the current patent legislation. Together with ascertaining whether the Russian legislation satisfies those conditions crucial to relevant categories, this section tries to refer to various legal databases in order to formulate a perception of Russia’s current IPR system:

1) Coverage

Russian legislation has yet to fully satisfy the category of coverage and the score of 0.86 for this category has not changed since 2000.

The patent law covers inventions which can be used only in industry, agriculture, public health and other sectors of the economy. While the patent law covers all conditions of the GPI’s coverage category, IPR related to plants and animal varieties is protected by the Law on Selection Achievements.

2) Duration of protection

Russia receives a score of 1.00 for this GPI category because it provides 20 years of protection for inventions from the date of the patent application. The term of patent protection for pharmaceuticals or chemicals, the utilization of which requires duly issued permission, can be extended upon request from the patent owner, for a period not exceeding five years. The term of a utility model patent is five years from the date of application and the term may be extended at the request of the patent owner, for a period not exceeding five years.

<table>
<thead>
<tr>
<th>Categories</th>
<th>Coverage</th>
<th>Duration</th>
<th>Enforcement</th>
<th>Membership in international treaties</th>
<th>Protection from restrictions on patent rights</th>
<th>Total for Year 2000 A</th>
<th>Total for Year 1995 B</th>
<th>% Change, 1995-2000 A—B</th>
</tr>
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<td>1.00</td>
<td>1.00</td>
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<td>3.52</td>
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</tbody>
</table>

exceeding three years.

3) Enforcement

According to Article 32 of the Patent Law, a breach of this law entails civil law, administrative law or criminal law responsibility. Depending on the severity of damage caused to the patent holder, one of these laws is applied to protect patent rights. There is controversy regarding the application of criminal law to the protection of intellectual property in Russia because this is a new field in the practice of law and judges face difficulties in proving the validity of patents. The existing criminal law could punish innocent people severely because of an immature IPR system.

The GPI category of enforcement could be tested by three conditions: (a) preliminary injunctions; (b) contributory infringement; and (c) burden-of-proof reversals.

a) Preliminary injunctions

A preliminary injunction is a provisional injunction issued pending the disposition of litigation, the purpose of which is to preserve the status quo and to protect the respective rights of the parties pending a determination on the merits. Preliminary injunctions protect the patentee from infringement until a final decision is made at trial.

According to Article 140 of the Code of Civil Procedure “Measures for securing suit”, the court can order a defendant to cease certain actions upon the plaintiff’s claim. This article allows the conclusion that the Russian law satisfies the condition of preliminary injunctions.

b) Contributory infringement

The contributory infringement rule assesses the liability of a third party who contributes to the infringement of a patent. Firms can be accused of direct infringement if they use an innovation protected by a patent illegally, but they can also be accused of contributory infringement (also called indirect infringement) as soon as they help to sell or promote products or services of a company that infringes upon a patent.

The Administrative Law and the Criminal Law have articles against such direct or indirect infringements.

c) Burden-of-proof reversals

Burden-of-proof reversals are procedures that order the defendant to prove that the process used to obtain an identical product is different from the patented process. This procedure is applicable if the patent holder is unable

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Source: Calculated by the author.

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16 For instance, the Civil Law’s Article 15 on compensation for damages says that the patent holder can claim payment from the infringer of the amount of damages caused as a result of patent infringement. Likewise, the Administrative Law and the Criminal Law stipulate penalty against illegal use of a patented product or process.


18 The Civil Law’s Article 11 “The legal defense of civil rights” says that the defense of infringed or disputed civil rights, which include the rights of a patent holder, is implemented in court in accordance with stipulations in the Code of Civil Procedure.

countries impose on patentees that their patented product or process must be used or produced in the patent granting country. This condition has the effect of forcing foreign patentees to situate production facilities within the patent granting country. Russia’s Patent Law does not stipulate working requirements and the patentees do not have to put the invention into practice in order to enjoy patent protection.

Compulsory licensing refers to the practice of governments allowing parties other than the original patentees to exploit patented products and processes. In such cases, the patentee is forced to grant a license to a third-party licensee to exploit the patented product or process, in return for which the patentee generally receives a royalty payment at the rate set by legislative fiat. The Paris Convention prohibits the imposition of compulsory licensing within 3 or 4 years from the date of the patent grant or application. Russia’s Patent Law does not impose compulsory licensing within 4 years from the date of patent grant, but it has an exception where the patent is part of another more important technical achievement with significant economic advantages.

Finally, Russia’s Patent Law does not revoke patents for non-working.

Russia receives a score of 0.67 for this category because its legislation satisfies only two of the three conditions.

As the GPI score shows, Russia has been revising its IPR law over the years in order to comply with TRIPS requirements. However, the GPI is based primarily on the statutes themselves and not on their implementation, which means that Russia’s GPI score of 4.53 is nominal and does not necessarily reflect effective IPR protection in the country.

4.4. Effective Protection of Patent Rights in Russia

In order to reveal whether or not there is any gap between statutory (or nominal) and effective protection, this
section takes two approaches to measuring possible deviation between Russia’s nominal GPI and effective GPI scores: comprehensive approach and selective approach.

The comprehensive approach is based on incorporating Transparency International’s Corruption Perceptions Index (CPI) into the nominal GPI in order to obtain an effective GPI. The CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It ranks countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption.

The comprehensive approach calculates the effective GPI with the following formula:

$$\text{Effective GPI} = \text{Nominal GPI} \times \left( \frac{\text{CPI}}{\text{Maximum CPI Score}} \right)$$

Based on 4.53 as Russia’s nominal GPI, its effective GPI 1.13 is obtained by incorporating the Corruption Perceptions Index 2.5 divided by the maximum CPI score 10 (1.13=4.53×2.5/10). Similarly, each country’s effective GPI is shown in columns A’ and B’ of Table 3. Although advanced countries’ nominal protection of IPR is most likely to improve with their solid IPR regimes, it is assumed here that their nominal GPI scores for 2006 remain the same. Their effective GPI scores are obtained by incorporating the Corruption Perceptions Index divided by the maximum CPI score.

Because of the observation in this section that the effective GPI in advanced countries remain largely unchanged over time, it could be expected that Russia’s level of IPR protection will approach the levels of advanced countries. Contrary to expectations, although there was a 53% improvement in Russia’s effective GPI over six years, the level (1.13) of effective IPR protection is still much lower than in advanced countries.

The selective approach is based on examining the execution of laws by studying lawsuits and patent applications. This approach obtains the effective GPI through IPR protection scores perceived from case studies of selected conditions of the GPI categories. Three IPR cases analyzed below cover areas of the GPI such as burden-of-proof reversals, patentability of utility models and patentability of pharmaceuticals. These areas were chosen for analysis because they are of particular importance to the Russian economy at its current stage of development:

(1) Russia’s lack of IPR enforcement is emphasized as a major hurdle for its WTO accession and this country needs to improve its uncertain IPR environment in order to realize its innovative potential.

(2) Utility models are patents of a shorter duration awarded to incremental inventions that build upon more fundamental discoveries. This form of IPR could encourage local firms to invent around patents and improve their manufacturing methods.

(3) Pharmaceuticals account for an exceptionally large share of Russian health expenditure. Household expenditure on drugs accounts for around 30% of total healthcare spending in Russia, measured against an average of just less than 12% in OECD countries.

Case study (1): Burden-of-proof reversals

On 13.12.06 The Arbitration Tribunal of Russia’s Krasnodar Territory granted an injunction against Russian

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Source: Calculations done by the author are marked with *; Park, Walter G. and Smita Wagh (2002); Transparency International's CPI.

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companies Avanta and Torn Cosmetics for infringing the patent on a toothpaste invention of a Belarusian cosmetic company Modum. Modum’s claims to prevent production, storage, advertising and sale of the toothpaste by infringers were upheld in the court’s ruling. A study of this case infers the following implications. Patent-related legal proceedings are new in Russia’s transition economy and the judges do not have expertise regarding the technical details of the invention. In this case, the expertise was provided by the plaintiff, whereas the defendants’ suggestions of providing evidence on the toothpaste were rejected by the court. The condition of the burden-of-proof reversals in the enforcement category of GPI was breached in this case. There are many similar cases when the judge’s inexperience leaves patent disputes unsolved or arbitrarily solved. Although the nominal score for burden-of-proof reversals is 1.00, the effective score could be perceived as 0.00.

Case study (2): Patentability of utility models

Utility models first appeared in Russian legislation in 1992 and gained popularity because the requirements for acquiring a utility model are less stringent than for invention patents. In Russia, patent offices did not examine the substance of applications for utility models prior to registration. This simple registration procedure has created a situation whereby old inventions are being patented. The Russian patent office claims that these developments foster unfair competition. As a counter-measure, the patent office adopted the “Temporary Criteria for Utility Model Patentability” in October 2005. As a result, the application process has become time-consuming and there are cases where applicants have to wait for longer than a year to receive approval. Applications for utility models were increasing at an average annual rate of 15% during 2000-05 but the increase in 2006 was only 2%. Patent attorneys suggest that Russia is taking the wrong path by restraining patentability of utility models. Instead, in order to prevent abuse of utility models, it is recommended that Russia learn from international practice and amend its patent law, so that the patent holders and not the patent office are responsible for the content of utility model and that patent holders must prove the non-existence of prior art before filing a lawsuit against utility model infringement. Although the nominal score for patentability of utility models is 1.00, the effective score could be perceived as 0.50.

Case study (3): Patentability of pharmaceuticals

The Soviet IPR system provided protection only for the method of obtaining pharmaceutical chemical compounds; the compounds themselves belonged to the state. Under current law, both the methods of production and the pharmaceutical itself belong to the patent holder. As for defects in the patent system, pharmaceutical companies complain that Russian legislation does not oblige the Ministry of Health to check the novelty of registered inventions, which leads to infringement of original patents. An exemplary case of this is a lawsuit (1998) filed by the pharmaceutical company Pfizer (USA) against Dr. Reddy’s (India) to stop infringement of its patent on amlodipine besylate, a substance used in its medicine Norvasc. Despite the fact that Pfizer was the first in the Soviet Union to obtain a patent on the method of producing Norvasc, several years of litigation did not help stop another pharmaceutical company from copying the medicine and selling it under a different name. Although the nominal score for patentability of pharmaceuticals is 1.00, the effective score could be perceived as 0.50.

The above-mentioned legal cases indicate a deviation from Russia’s nominal GPI score (4.53). In the selective approach of evaluating IPR protection, the effective GPI is calculated by substituting the values of the nominal GPI with perceived values obtained from the case studies. As shown in Table 3, the effective GPI score is 4.05 based on the selective approach, which is still higher than the result from comprehensive approach (1.13). If more case studies are undertaken in the selective approach, its effective score will be lowered further, implying that it will approximate the one produced by the comprehensive approach and that the effective Russian IPR protection remains much lower than in advanced countries.

5 Conclusion

Despite diverse levels of IPR protection among members of the WTO, which includes both economies with strong IPR regime like those in the Nordic region and economies with weak IPR regime like the FSU region, the lack of IPR enforcement is emphasized as a major hurdle for Russia’s WTO accession. IPR is positively correlated with an economy’s innovative capacity and given Russia’s human capital base and scientific achievements it may have more imitative/innovative potential than countries at a similar level of economic development.

This paper measured the level of statutory (or nominal) IPR protection in Russia using the Ginarte and Park index of patent rights, and evaluated effective IPR protection by incorporating Corruption Perceptions Index into the GPI and by use of practical case studies. Russia has been

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improving its legal framework over the last decade in order to conform to international standards, but effective IPR protection is still very low compared to the level in advanced countries. Russia is expected to continue upgrading its IPR regime because this process is an essential part of transforming its centralized economy into a free market economy which will help to realize its innovative potential.

Other approaches to evaluating IPR protection will be attempted and the results of IPR protection measurement obtained in this paper will be used for further research on IPR in the FSU region, including the Central Asian Republics.

References
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