

**Association of European Businesses**

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**The results of the survey on  
intellectual property in the  
Russian Federation**

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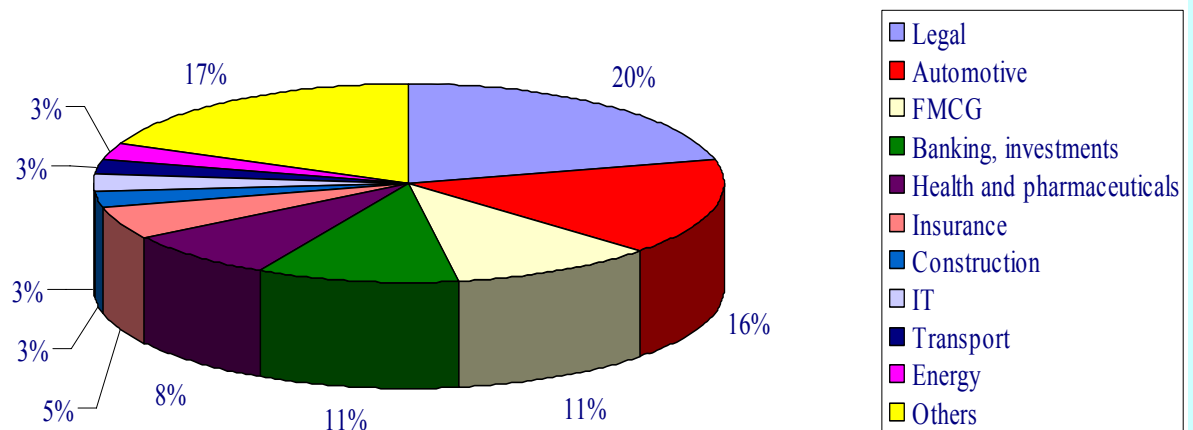
**May 2009**

# Association of European Businesses

## 1. Introduction

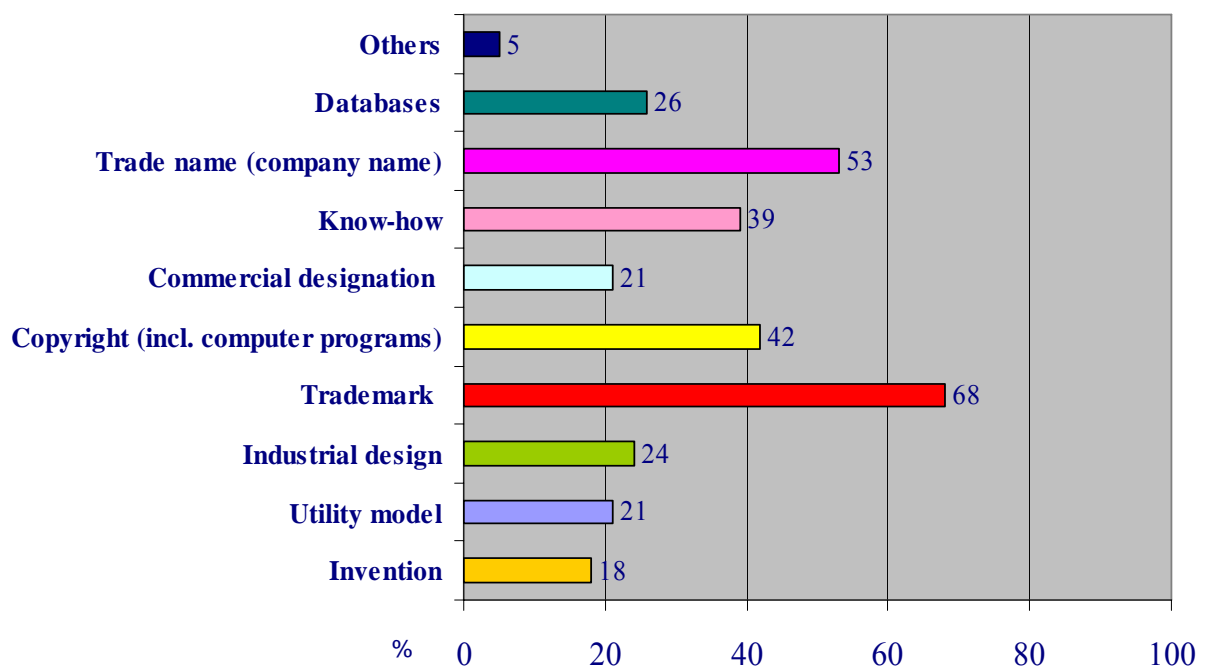
The Association of European Businesses is pleased to release the results of the qualitative survey on the intellectual property in the Russian Federation conducted by the AEB in April and May 2009 among its member-companies. 40 respondents from different industries took part in the questionnaire and the most involved in IP issues were the legal (20%), automotive (16%), banking and investments (11%) and FMCG (11%) industries.

Chart 1. Participation in the survey by industries



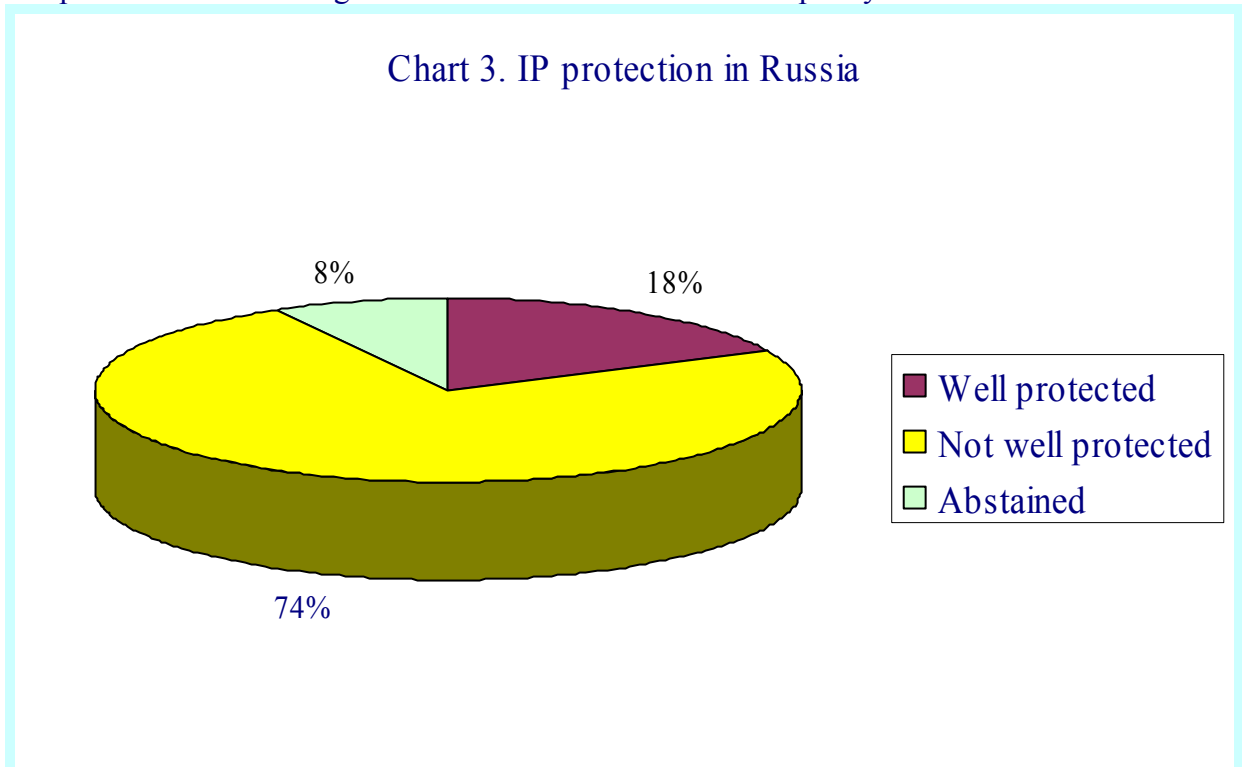
## 2. Intellectual property rights owned by the respondents, by types

Chart 2. Types of IPR owned by respondents



### **3. Intellectual property protection**

Most of the respondents (74%) consider that intellectual property is not well protected in Russia and point to the lack of regular and constant law enforcement policy as the main reason of it.

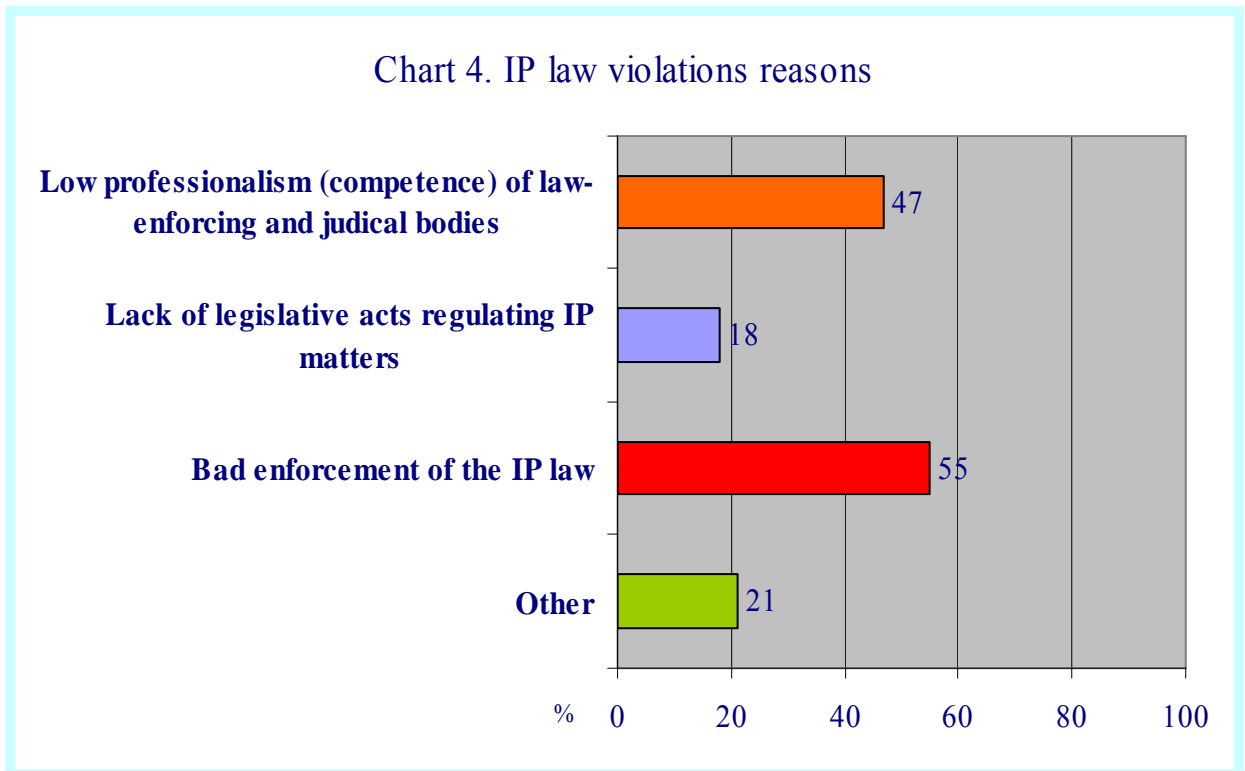


### **4. Infringements of intellectual property rights**

The illegal or unauthorized use of trademarks, patented rights, trade names (corporate names), software and other copyrighted works were mentioned as typical examples of IPR infringements. The automotive companies (83%) especially emphasized on the illegal use of trademarks by the “parallel” importers of vehicles and spare parts.

### **5. Basic reasons for the violation of intellectual property legislation**

The respondents pointed out bad enforcement of the IP law (55%) and low professionalism (competence) of the law-enforcing and judicial bodies as the main reasons of IP law violations. Corruption, lack of effective instruments to fight the infringements, low understanding of the importance of IP, contradiction of statutory interpretation and statutory provisions per se, over complicated procedures and low living standards of population were mentioned, among other reasons.



## **6. Control over the implementation of the IP legislation**

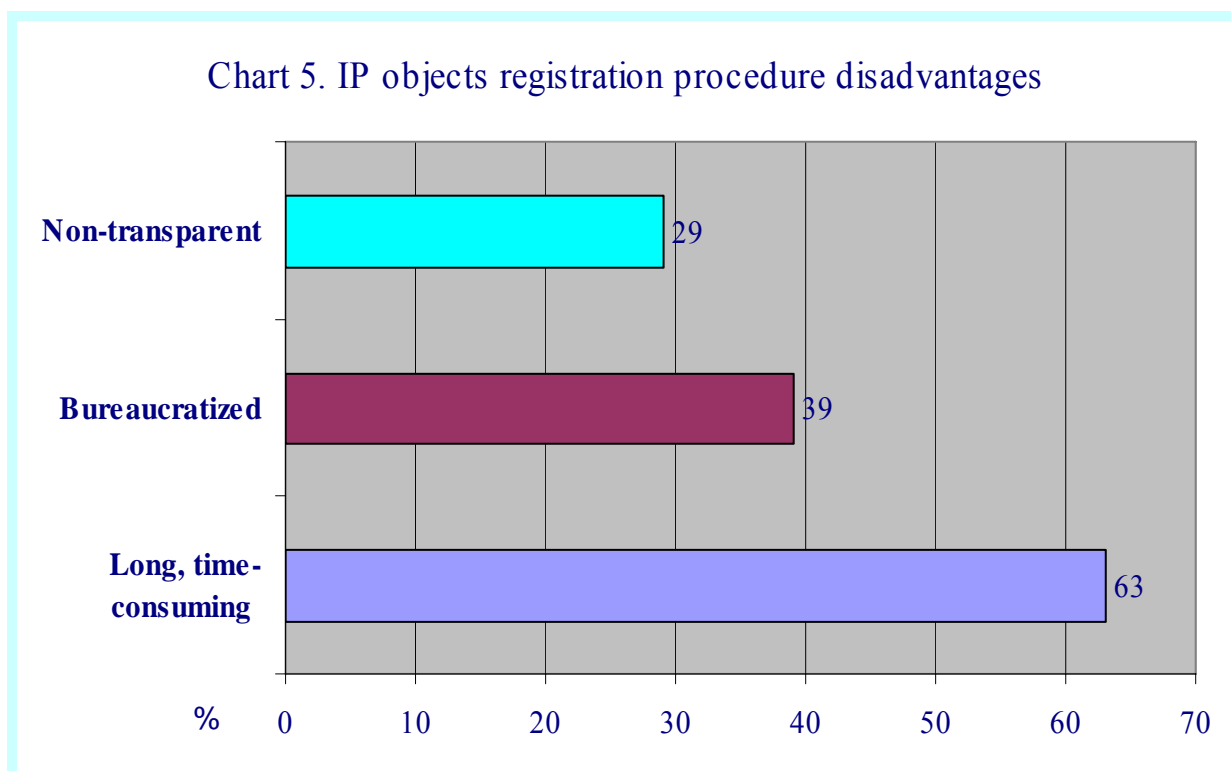
76 % of respondents believe that Russian law-enforcing bodies are not properly monitoring the implementation of the IP legislation. 13% responded positively and 11% abstained.

45% gave their votes to the Federal Custom Service as the best IP legislation monitoring law-enforcing body; 21% went to the Federal Antimonopoly Service; 13% to the Special Divisions of the Ministry of Interior Affairs and 37% abstained.

64% of respondents don't think that Russian courts have gained sufficient experience in IP matters; thus, can't be an effective body of IP rights protection. 29% believe that Russian courts have gained enough experience and 7% abstained.

### **7. Problems with the registration of intellectual property**

Most companies (74%) did not encounter any problems when registering or patenting their trademarks, company names, inventions, utility models and other intellectual property rights, but they consider the registration procedures too time-consuming and complicated.

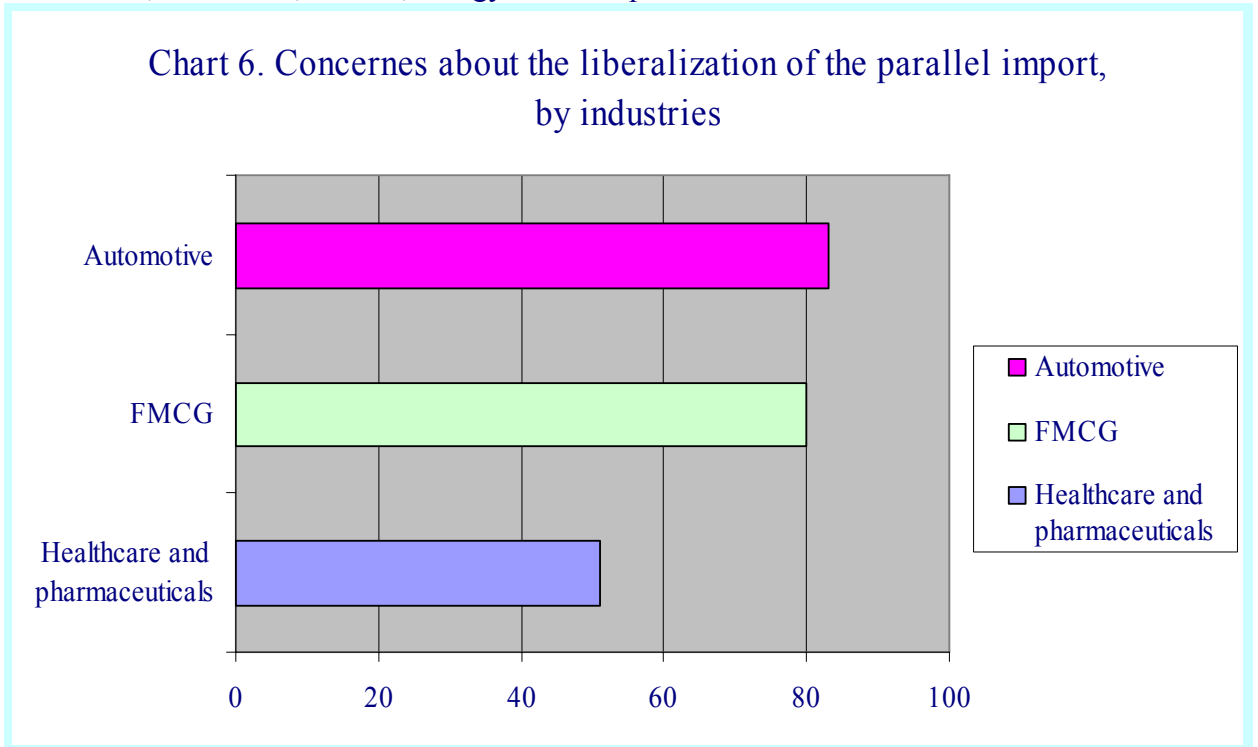


### **8. Taxation issues with regard to intellectual property**

The determination of the amount (rate) of royalty payments and inclusion of royalty into taxpayer's tax base are considered as the most relevant taxation issues with regard to intellectual property. Among other issues, companies named the inclusion of the royalty payments into the customs value declared by companies and they stressed the importance of the transparency of the royalties paid by the Russian subsidiary to the mother company, as it is an internal cash flow for international companies with consolidated finances.

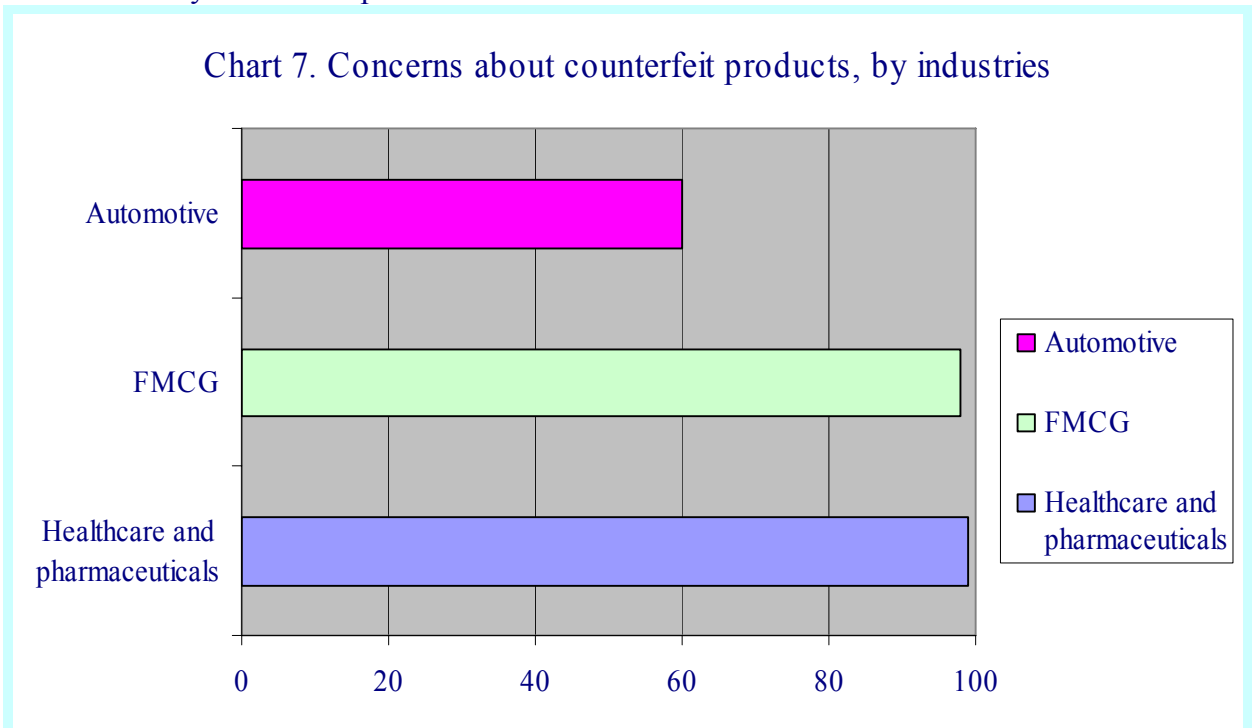
**9. Possible liberalization of parallel import**

The possible liberalization of parallel import was referred to as an issue of big concern by the automotive, healthcare, FMCG, energy and transport industries.



**10. Counterfeit products problems**

Almost 100% of respondents from the healthcare and FMCG sectors answered that they were still troubled by counterfeit products.



## **11. The most needed changes in the Russian IP legislation to grant better IP protection**

### **Suggestions concerning registration of IP rights:**

1. To make registration and patenting of trademarks, patented rights and domain names quicker and more transparent.
2. To introduce an opposition procedure so that third parties may oppose a decision to grant a patent to utility model, after which, a substantive examination may be initiated.
3. To introduce e-filing of the application for registration of the IP rights (notably for trademarks and corporate names).
4. To make the list of the results of all intellectual activity and the means of individualization provided by article 1225 of the RF Civil Code non-exhaustive.
5. To introduce trademark protection similar to the European methods (i.e. combination of the picture and text or abbreviation).
6. To either abolish the requirement to register license agreements with regard to trademarks and patented rights or to significantly decrease fees for registration of such agreements; to simplify the registration procedure.

### **Suggestions concerning enforcement:**

1. To toughen administrative liability for some IPR infringements (parallel import).
2. To introduce a liability for cyber squatting and consequently, to provide for a responsibility of domain names' registrars to coordinate their activities with the Russian trademark office.
3. To add to the Ministry of Health's duties, the responsibility of cross-checking patent protection, while registering medicines.
4. To clarify the rules on the inclusion of royalties under intellectual property license agreements into the customs value of imported goods.
5. To clarify the rules on tax treatment of royalties paid under intellectual property license agreements

### **General IP issues:**

1. To provide for a partial assignment of IP rights
2. To make provision for salary packages to include and cover a compensation for any intellectual property created by an employee in the course of his/her employment, unless otherwise agreed by the parties involved.
3. To make provision for the conclusion of specific copyright assignment agreements in the event that the creation of intellectual property in the course of an employee's employment is optional.
4. To introduce the data exclusivity legislation (Law On Medicines).

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