

**FORMATION OF DAMAGES FROM VIOLATION OF INTELLECTUAL
PROPERTY RIGHTS**

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The generalization of the available scientific developments allowed the authors to identify, supplement and substantiate the following types (directions of formation) of economic losses of patent holders from infringement of intellectual property rights (the appearance of counterfeit, counterfeit).

1. Decreased consumer confidence in goods and services manufactured using a registered trademark. The presence of this type of damage occurs when counterfeit products have significant differences in quality compared to the original. As experience shows, a consumer who purchases a certain product or service is practically not at all interested in the fact whose exclusive rights to a trademark are violated or not.

2. Reducing the market share that was at the disposal of the trademark owner. The presence of this type of damage occurs when the counterfeit products do not have significant differences in quality compared to the original product. But for any product, the market capacity has corresponding limits, which are not so easy to expand. The appearance of additionally manufactured products with similar consumer qualities will inevitably lead to certain negative consequences for the

manufacturer: a decrease in sales of original products and the creation of excess stocks; the need to reduce prices to eliminate excess stocks (according to the law of demand). Note that in this case the capacity of the target market may not change, or may continue to grow, but the relative share of the right holder (licensor and/or licensee) will decrease rather than increase, or will increase at a slower pace.

3. Shortage of license fees by the right holder. The practice of patent-licensing market relations implies the existence of a license agreement between the patent holder (licensor) and the patent holder (licensee), which provides for the official permission of the copyright holder to use his intellectual product. For this permission, the licensee pays the licensor a certain fee in the form of a royalty or a lump sum, or a combination of both. If the rights to a trademark or other object of intellectual property are violated, then the right holder will not receive part of these payments under the current license agreements due to the fact that part of the products sold on this market was replaced by counterfeit or commercial offers for its supply to more profitable sellers and consumers (primarily in terms of price) conditions. Accordingly, its total income decreases, which leads to a decrease not only in the valuation of this intellectual property object, but also in the value of this business as a whole. Economic losses can be especially noticeable when the license fee is received by the licensor in the form of royalties.

4. Increasing the share of semi-fixed advertising costs. The value and prestige of the product and, accordingly, its trademark is largely ensured by the advertising and information impact of the subjects of the market process. All costs of financing this process, as a rule, are borne by the right holder, therefore, in case of violation of trademark rights, that is, the appearance of counterfeit (counterfeit) products on the market, the effectiveness of promotional activities will have an objective tendency to decrease. Under these conditions, in order to achieve the set goals related to this intellectual property object, it becomes necessary to increase the cost of additional advertising and information activities in order to restore business reputation and consumer confidence in connection with the violation of intellectual property rights.

5. Shortfall in income or profit (lost profit) by the right holder or owner of an exclusive license (licensee) due to the fact that part of the products sold on this market was replaced by counterfeit goods. At the same time, the right holder was unable to independently sell (deliver) the original product to the territory or market of the patent due to the supply by the infringer of counterfeit (falsified) products or the use of the patented method of its production in the territory of the patent. Our research indicates that lost profits or lost profits are extremely difficult to define and prove.

6. Shortfall in income or profit (lost profit) by the right holder due to the failure to conclude commercial agreements with potential licensees, directly related to the appearance on the target market of counterfeit (falsified) products or the use of a patented method of its production in the territory of the possible validity of a license that was supposed to be issued to a third party and interest in which the third party as a result of the actions of the offender has been reduced or completely disappeared. A similar situation may occur when there are opportunities to assign a patent on certain commercial terms, but due to the same circumstances, such an agreement may become impossible, which can potentially lead to the loss of potential income opportunities for the patent owner (lost profits).

7. Potential losses (lost profits) resulting from the total or partial refusal of existing counterparties to supply batches of products manufactured using intellectual property (inventions, utility models, industrial designs, etc.) that are protected by patents. Along with this, there may also be cases of contraction of negotiations with potential consumers of such products in connection with the appearance on this market of counterfeit (falsified) products or commercial offers for their supply on more favorable terms for sellers and consumers (in terms of price). The status of lost profits in this direction can receive the status of direct losses if the refusal to supply concerns already manufactured products. And such a situation is more than possible, since deliveries do not always occur evenly, stocks of finished products can vary from zero (there are no stocks at all) to very impressive sizes.

8. Direct economic damage, along with lost profits, arises from the licensor (right holder) even when the licensee, on its own initiative, exceeds the amount of exclusive rights transferred to it under the license in relation to production volumes; the territories where it is produced, sold and consumed; type of license, etc.

9. Increase in specific costs of right holders for logistics. When counterfeit products appear on the market, the rate and quantity of sales of original products decreases, which can lead to an increase in the inventory of products from the copyright holder (and, accordingly, to an increase in the cost of their maintenance), changes in the schedule and rhythm of transporting products both to warehouses and to places direct sale.

10. Direct economic damage to the licensor in connection with the early termination of license agreements at the initiative of the licensee due to existing losses in the use of the license and making a decision on its inefficient use. Moreover, a number of measures that were or could be taken to eliminate violations in the field of exclusive rights did not give positive results. Or these consequences were not effective enough.

11. Economic damage from the production of excess products. In some cases, losses in this area can be very significant, since the future of a part of the already manufactured original products, when the potential demand for it is replaced by counterfeit (fake), remains uncertain.

12. Collateral economic damage, the essence of which lies in the fact that difficulties in the production, sale and use of original products may affect other products that are in some way related to the main product.

13. Moral damage (damage) inflicted on right holders as an individual (in addition to direct and potential economic losses by court decision) or damage caused to the business reputation of the right holder as a legal entity (decrease in the value of goodwill). The latter can be determined on the basis of certain quantitative economic calculations, since, unlike non-pecuniary damage to an individual, there is a certain scientific and methodological basis for calculating the value of goodwill before the violation of the rights of the copyright holder and after this violation has been committed.

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