



Center for Strategic & International Studies  
Washington, DC

EURO-ATLANTIC ACTION COMMISSION

June 27, 2004

TO: Participants  
Business-Judicial Roundtable for IPR Enforcement  
Bratislava, Slovakia

CC: Interested Members and Participants in the Euro-Atlantic Action Commission

FROM: George W. Handy  
Action Commission Director

**SUBJECT: REPORT OF ROUNDTABLE SESSION**

*Thanks to the participants in the June 10 Roundtable Session in Bratislava for your outstanding presentations and invaluable discussion. It has been the position of our Action Commission members that IPR enforcement is fundamental to the reputation of a nation, and crucial to the capacity of a nation to foster innovation and growth in high technology products and services. This report presents highlights of the June 10 session. The full report with presentation materials can be accessed on our website [www.csis.org/iac](http://www.csis.org/iac) under "Events and Reports."*

**OVERVIEW:**

On June 10, Slovak judges responsible for adjudicating IPR disputes, other Slovak government officials and business leaders were joined by judges, officials and business leaders from elsewhere in the Euro-Atlantic community. The purpose was for private sector leaders and legal experts to share experiences that would contribute to improved quality and consistency of the adjudication of IPR disputes in Slovakia.

A number of important observations and insights were shared that could further strengthen Slovak judicial actions and standards. These recommendations stressed the importance of predictable verdicts resulting from open processes in which communications were aided by clearly described laws and the coordinated action of all concerned government ministries and offices—as well as by continuing education available to judges, prosecutors and police.

Participants from other Central and Eastern European countries were invited to observe this session as a model for similar roundtables in their countries. In fact, planning has been begun for

a Business- Judicial Roundtable for IPR Enforcement in Bucharest, Romania this fall or winter. Lithuanian judges will recommend that a roundtable be held in their country.

#### **KEY OBSERVATIONS: (SEE OUR WEBSITE)**

1. Please note the openness of the Slovak judiciary as reflected by the opening statement of Judge Pristavkova that is attached; and by the comments of Judge Sebestova that are found on our website.
2. Please also note the recommendation of businesses that are the second attachment to this report.
3. The presentation by Dr. von Falck on the German Judicial System for IPR adjudication is particularly significant since German courts handle the majority of IPR disputes that are taken to court in Europe.
4. The presentations by Ms. Kouame of the US Department of Justice reminds us of concerns in areas in addition to pharmaceuticals that will challenge Central and Eastern European courts.
5. Mr. Martin of CEELI provides a clear understanding of the extensive training and education resources available through CEELI and that are explained on their web site at [www.abanet.org/ceeli](http://www.abanet.org/ceeli).
6. Mr. Schriek of Simons presents a structured and logical approach for understanding how a corporation manages IP.

#### **ACTIONS REGARDING THE SLOVAK REPUBLIC:**

1. A letter will be sent to the **Slovak Prime Minister** commending Slovak progress but highlighting the importance of improvement in inter-ministry and agency cooperation, and proposing a senior-level workshop for Slovak public and private sectors on IPR policy content and priority improvements, and their implications for WTO, EU and bilateral obligations.
2. A letter will be sent to **CEELI** pledging private sector support for CEELI education and training courses for judges, particularly those that bring together judges and government administrators from CEE countries with experts from the EU countries, the US and CEE countries.
3. A letter will be sent to **Slovak Ministers of Justice, Health and Culture and Slovak judges** regarding public-private cooperative actions for the following:
  - Approaches for improved inter-ministry and agency cooperation and communications.
  - Participation in CEELI's international courses on IPR enforcement.
  - Participation in a senior-level IPR workshop for Slovakia (as noted in Action 1).

- A proposal for improved legislation stressing steps that prevent the need to take a dispute to court, particularly requiring that checks be made by SUKL during the registration process in order to determine if the State Patent Office holds patents that protect the item being registered.
4. Recommendations to the **Minister of Justice** for:
- A Slovak language reference book on “Civil Procedure and Substantive Patent Law”—a step successfully taken in Germany.
  - Development of a website for the Slovak judiciary with a page for IPR issues.
  - Improved access to case law; but insuring that the relationship to basic Slovak law is preserved.

#### **ACTIONS REGARDING THE CEE COUNTRIES:**

1. Actions have been initiated with the **Romanian government** to organize a business-judicial roundtable on IPR within the next 6 to 9 months.
2. Initial consideration is being given by **Lithuanian judges** to a roundtable session in their country.
3. This report will be sent to the **Minister of Justice of each of the CEE member countries** of this Action Commission.

**REMARKS: JANKA PRISTAVKOVA, DIRECTOR, DEPARTMENT FOR CIVIL LEGISLATION**  
**MINISTRY OF JUSTICE OF THE SLOVAK REPUBLIC**  
**IPR ROUNDTABLE, JUNE 10, 2004**

“Thank you very much for the warm welcome. Such an acknowledgement is rare in the Slovak judicial community, so thank you again. I would like to greet you here today on behalf of the Minister of Justice of the Slovak Republic. He asked me to excuse his absence since he is very preoccupied these days -- he is having a business lunch with the Minister of Justice of Slovenia and he simply has to fulfill his duties. I personally, as a judge who has adjudicated IPR protection disputes and works these days at the regional court in Banska Bystrica, would like to greet you as well. I am very closely related to this topic since the Agency of Industrial Property is located in Banska Bystrica. It is the highest central institution of the state policy in this field.

“I would like to begin with an observation of the Ministry of Justice. The Ministry has two duties: one of them is to promote the reform of our judicial system in general, including the issue of IPR, and to prepare legislation in cooperation with the Agency of Industrial Property in order to ensure the application of law in this field (concerning material law first of all). At the same time, the Ministry prepares law for the judicial process, aiming at the effectiveness and speediness of the courts and the implications of law. It is a challenging agenda that has only become an issue in recent years for the broader judicial community that now has to resolve more sophisticated disputes than in the past, still based on the original legislation.

“I want to share one more thing with you. The Ministry of Justice respects the independence of the courts. This is the highest principle in our constitutional system. We try to ensure its independence because it represents a pillar of the state – it has to work so that non-partisanship and objectivity are guaranteed as well as making it possible for judges to avoid influences that could question this constitutional system. It will always be the judge and the court articulating the final sentence. If the court and the judge have any power it will be and should be them articulating the final decisions.

“It is a positive thing that participants hold a mirror to legislation and court decisions reflecting the weaknesses of the system. It is very good that attention, and not criticism, is the outcome of roundtables like this where by comparing national systems and steps taken by other states we can achieve a better structure. And, in addition to hearing about the experiences of colleagues from abroad, this session provides us with an opportunity to hear the opinions of private corporations that despite seeking their own interests (after all, that is their goal), can and should point out the weaknesses and obstacles standing in the way of an effective implementation of their rights. That is why I think that roundtables like this contribute a great deal to the judicial reform, legislation and the judicial community that has to (by law) evolve, continuously educate and achieve more objective results.

“Let me for this reason welcome and greet this roundtable once again. I considered last year’s meeting very valuable. I would like to wish you many good ideas and resolutions.”

**HIGHLIGHTS OF ISSUES RAISED BY PRIVATE SECTOR SPEAKERS**  
**IPR ROUNDTABLE, JUNE 10, 2004**

Slovak government should be commended for efforts at ensuring IP protection, especially compared to some of its neighboring CEE countries.

The case study presented during this roundtable session is apropos for two reasons:

- Slovakia as well as the other CEE countries is on the 301 watch list for IP protection, especially pharmaceutical protection, although there seems to be a strong commitment in Slovakia to address these issues.
- The issue is really not with the Judiciary or the Ministry of Justice, but rather with the interaction of the Ministries of Justice, Health and Culture and the agencies and offices involved with IP in the Slovak government.

Effective IPR requires an IP regime—it takes a coordinated effort. It is hoped that government and industry can work together for an effective regime with open communication.

Want to see IP protected, and to that end would like to see liability, consistency, fairness, and impartiality from the courts.

Specific problem related to pharmaceuticals and the proceedings before the State Agency for Drug Control (SUKL)—proceedings on generic drug registration are not carried out in a transparent manner.

- Secrecy is only proper in the part of the proceedings dealing with results of toxicological/biological tests (trade secrets).
- Cannot regard as secret the mere fact that there are proceedings—practice has no legal base given the Act on Administrative Proceedings.
- In this matter, the main role belongs to the Ministry of Health and the State Agency for Drug Control—not the Courts or the Ministry of Justice.

It is important to develop and maintain qualified courts and judges in case of trial, but there has not been enough done to prevent trials and litigation.

- One step that would prevent unnecessary trials is to require that the State Agency for Drug Control agency compare product being registered to the database of the patent office to see if it is patent protected or not.

With a patent application, there is a requirement to submit a copy of the original patent or a statement of whether the compound is patent-protected or not.

- It would be good to use this information afterwards to check if future compounds infringe patents.

Patent information must be taken into account when granting marketing authority for generic manufacture.

- Patent rights should be applicable from the time the application is submitted to the patent office.
- SUKL should also consider this information.

It is the job of the Slovak government to provide IP protection.

- There may be legal changes that need to be made, and so there must be communication between all Ministries to determine these steps.
- It is not the idea to copy U.S. or European patent legislation, but rather to look at what has already been invented and consider what can be applied to Slovakia.

In the U.S., dubious patents can be removed and there are time limits. The courts decide when legislation is finished.

- Proposal: it is important to look at the U.S. documents when preparing the legal basis for IPR in Slovakia.

The main task of judges regarding medical or product protection is the decision to apply or not to apply the **Bolar provision** within Slovakia.

Is there judicial review of decisions by regulatory bodies?

Answer: Yes, the central court has the authority to review any administrative body, and makes the final decision. This has not been tried, however.