Russian IP Legislation
(legal protection of inventions; utility models; industrial designs).

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ABSTRACT

01.01.08 came into force CIVIL CODE OF THE RUSSIAN FEDERATION, part 4, which chapter 72 is devoted to the Patent Law of the Russian Federation.
CVRF discloses the following.
An invention patent is granted for any technical solution relating to a product (or its use) or a process.
An utility model patent is granted for any technical solution relating to an apparatus.
To be patentable, the claimed invention must be novel and inventive over the prior art and must possess industrial applicability. The claimed utility model must be novel and industrially applicable.
A design patent is granted for the artistic and design solution of a factory-made or home-made article which determines the appearance of the article.
An industrial design shall be granted legal protection if in its essential features it is new and original.
The effective terms of the exclusive right from the filing date to an invention — 20 years, utility model -10 years and 15 years - for an industrial design.
A decision on refusal of the grant of a patent; on the grant of a patent for or on recognition of an application for an invention, utility model and industrial design as withdrawn, may be opposed by the applicant by submitting an appeal to the Chamber for Patent Disputes.
Every decision on grant of a patent for an invention, utility model, or industrial design, shall be registered into the respective official register.
On the base of CVRF the new Administrative Regulations for the Acceptance Examination, Granting and Registration took effect on June 5, 2009.

Federal service for intellectual property, patents and trademarks (ROSPATENT) is the Patent Office of the Russian Federation. It includes two important divisions : Federal institute of Industrial property (FGU FIPS), where the examination of formal requirements and substantive examination take place, and the Russian State Educational Institute of Intellectual Property, its role is devoted to training and enhancing Professional Skills of Specialists in the field of intellectual property.

The place of Rospatent in the state structure is a department of the Ministry of education&science.

So the functions of FGU FIPS include receiving applications for patents, utility models and industrial designs; their examination and registration; legal protection of Trademarks and Service Marks and issuing certificates on trademarks; legal Protection of the Appellations of Origin and issuing certificates; examination of Applications for Official Registration of Computer Programs, Databases and Topologies of Integrated Circuits and issuing The Certificates of Official Registration.

As a result of last reorganization of FGU FIPS a new Division- the Chamber of Patent Disputes was established in the accession form of the second institute to the first one.

The view on all buildings of Rospatent

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Just now after reorganization of FGU FIPS almost all functions related to Rospatent decision preparation as well as the providing legal protection, as the appeal stage are focused in one organization - Federal Institute of Industrial Property.

The examination of applications for patents for inventions, utility models and industrial designs is conducted within a system of examining divisions, including division for formal examination, sixteen expert units for inventions and utility models; and division for industrial designs. Expert units united into two departments of FGU FIPS: Chemistry, Biotechnology and Medicine department and Physics & Applied mechanics Department. Examination of applications for inventions and utility models in the field of organic chemistry, biotechnology, medicinal chemistry and medicine is carried out in subject-related examining Chemistry, Agriculture, Biotechnology and Medicine department, which includes eight divisions:

* Organic chemistry
* Polymer & inorganic chemistry
* Biotechnology
* Food industry
* Medicine
* Medicaments (pharmaceutical)
* Agriculture
* Metallurgy & Engineering

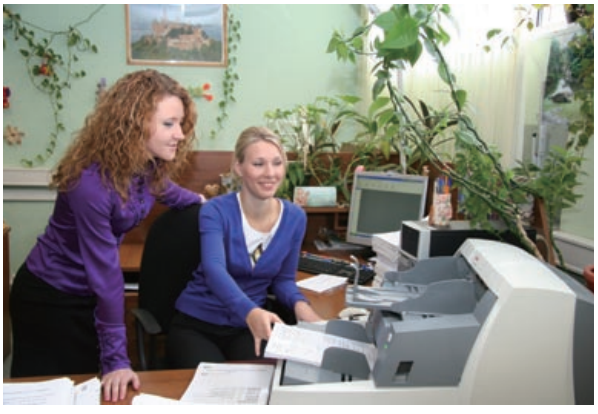
And examination of applications for inventions and utility models in the other Technical fields as Physics & Applied mechanics, computer engineering is carried out in subject-related examining Physics & Applied mechanics department, which includes also eight divisions:

* Heat-and-power engineering
* Electrical engineering
* Computer engineering
* Radio engineering
* Transport & special engineering
* Light industry
* Instruments-making industry
* Mining & fixed constructions

Data on Personnel of Rospatent. Administrative staff: 75. Total staff of FGU FIPS: about 2600 (including 600 patent examiners and about 200 trademark examiners and about 60 patent examiners of the Chamber of Patent Disputes).

The legal protection is been granted to inventions and utility models and industrial designs by virtue of the Patent legislation of Russian Federation (RF).

The first Patent Law of the Russian Federation in modern history, (the first Russian Patent law had been adopted in 1812 year) has been adopted in 1992 and it has been the most important statutory document from the standpoint of patent protection especially in the field



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of chemistry, biotechnology, medicine and medicinal chemistry, because a "substance", different microbiological objects, such as microbiological processes or the products thereof (microorganisms) and methods for diagnosis, preventing and treatment of diseases were included in a list of subject matter to be protected by patents. For the first time it has been suggested the list of the patentable subject matter of an invention.

Article 4, Paragraph 2 in Section II of the Law said:

Subject matter of the invention may be: a device, method, substance, microorganism strain, cell culture of plants or animals and the use of known before device, substance, strain for a new application.

An invention shall be granted legal protection if it is new, involves an inventive step and industrially applicable.

The importance of this fact can scarcely be exaggerated, since in fact it has determined an orientation of developing theory and practice of the legal protection inventions in the Russian Federation.

The Federal Law " On introduction of Changes and Additions to The Russian Federation Patent Law" dated February 7, 2003 came in to force in 2003.

The adoption and entry into force of this Law became the closing stage of works carried out in an effort to improve the Russian legislation in the field of intellectual property legal protection, with due regard for relevant amendments in laws of Russian Federation and requirements of a number international acts in the intellectual property domain.

The amendments that have been included into an updated Patent Law of the Russian Federation of February 7, 2003 had significant importance for practice of patent protection.

Adoption of a new wording made it possible to extend a range of patentable subject matter of inventions in the field of biotechnology and bring the rules of the Russian patent law closer to corresponding international rules. One of such amendments to an updated Patent Law of the Russian Federation is the abolition of the exhausting list of the subject matter of an invention.

Article 4, Paragraph 1of the Law said:

The subject matter of an invention may be a technical solution in any field that relates to a product (specifically a device, a substance, a microorganism strain, a culture of plant or animal cells) or a process (a procedure for performing acts in respect of a material object with the help of material means).

Due to the amendments, adopted in 2003, such subject matter as genetic construction and, specifically, genetically modified organisms: genetically modified (transgenic) plants, genetically modified (transgenic) animals and a transformed cell, became also recognized as patentable inventions.

So, transformed (genetically modified) prokaryotic and eukaryotic cells, transgenic plants and transgenic animals have become patentable in Russia.

And at last, 01.01.08 came into force CIVIL CODE OF THE RUSSIAN FEDERATION, part 4 where chapter 72 is devoted to the Patent Law of the RF. So Patent Law form a part of CIVIL CODE OF THE RUSSIAN FEDERATION (CC RF). And now CCRF is the single and the main statutory document in the legal protection of intellectual property in Russian Federation.

Besides chapter 72, chapter 69 plays a significant role in CIVIL CODE OF THE RUSSIAN FEDERATION and one of the central articles is the article 1225 which says the following.

Article 1225. Results of Intellectual Activity and Means of Individualization subject to protection.

1. The results of intellectual activity and means equated to them of individualization of legal entities, goods, work, services, and enterprises that are granted legal protection (intellectual property) shall be as follows:

1) works of science, literature, and art;
2) computer programs;
3) databases;
4) performances;
5) phonograms;
6) broadcasting or diffusion of radio- or television transmissions via cable;
7) inventions;
8) utility models;
9) industrial designs;
10) selection attainments;
11) topographies of integrated circuits;
12) secrets of production (know-how);
13) trade names;
14) trademarks and service marks;
15) appellations of origin;

16) commercial names.

2. Intellectual property shall be protected by statute.

CIVIL CODE OF THE RUSSIAN FEDERATION keeps in force determination of the invention as it is determined in the article 1350:

1. A technical solution in any area related to a product (including a device, substance, microorganism strain, cell culture of plants or animals) or method (process of affecting a material object using material means) shall be protected as an invention.
2. An invention shall be deemed new if it is not anticipated by prior art

An invention shall involve an inventive step, if having regard to the state of the art, it is not obvious to a person skilled in the art.

As regards to utility models, then utility model is a technical solution relating to a device, which shall be protected.

Patent is granted if an utility model is new and industrially applicable.

A utility model is new if the sum of its essential features is not anticipated by prior art.

As regards to an industrial design, then it is an artistic and design presentation of an article, manufactured industrially or by artisans, that defines its outward appearance, which shall be protected.

An industrial design shall be granted legal protection if in its essential features it is new and original.

The essential features of an industrial design shall include features determining the esthetic and/or ergonomic characteristics of the outward appearance of the article, including shape configuration, ornament, and combination of colors.

The development of the Russian legislation in the field of intellectual property legal protection allowed raising the effectiveness of the legal protection of the inventions.

It is important to underline that CIVIL CODE OF THE RUSSIAN FEDERATION, part 4 not only confirms positions of the Patent law, but also includes a number of exceptions from patentable objects. Article 1349 says.

The following shall not be the objects of patent rights:

1) methods of cloning of a human being;

Our Red square- the heart of Moscow

2) methods of modification of the genetic integrity of cells of the embryonic line of a human being;
3) use of human embryos for industrial and commercial purposes;
4) other proposals that are contrary to public interest, principles of humanity and morality.

The list is illustrative and non-exhaustive and is to be seen as giving concrete form to the concept of "order public" and "morality" in this technical field. For the purpose of exclusion a process of cloning of human beings may be defined as any process, including techniques of embryo splitting, designed to create a human being with the same nuclear genetic information as another or deceased human being. The exclusion of the uses of human embryos for industrial or commercial purposes does not affect inventions for therapeutic or diagnostic methods, which use stem cells (not from human embryos).

The Russian Patent legislation has another exclusions, which includes article 1350, items 5 and 6:

5. The following shall not be deemed inventions:
1) discoveries;
2) scientific theories and mathematical methods;
3) proposals concerning solely the outward appearance of manufactured articles and intended to satisfy aesthetic requirements;
4) rules and methods of games and for intellectual or business activity;
5) computer programs;
6) ideas on presentation of information.

In accordance with the present Paragraph these objects shall not be deemed inventions only if the patent

application refers to the above subject matter per se.

6. Legal protection as inventions shall not be granted to:

1) varieties of plants, breeds of animals and biological methods of obtaining thereof with the exception of microbiological methods and products obtained by the use of such methods;

2) layout-designs (topographies) of integrated circuits.

The article 1363, item 1 of CIVIL CODE OF THE RUSSIAN FEDERATION, part 4 determines the validity term of the Exclusive Rights:

twenty years - for inventions;

ten years - for utility models;

fifteen years - for industrial designs

And in item 3 it determines the exclusive right of an invention relating to medication.

The exclusive right to an invention, utility model, or industrial design shall be recognized and protected subject to official registration of the respective invention, utility model, or industrial design on the basis of which the federal executive authority for intellectual property shall issue a patent for the invention, utility model or industrial design.

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1967-1971 Moscow Pedagogical University, Chemistry department, specialization: organic chemistry, Moscow, Russia

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LANGUAGES：English