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## The Problems of Legal Regulation and Protection of Intellectual Property

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### Abstract

The development of economy depends on the success of innovation activities. And in order to guarantee the success of innovation activities it is important to improve the system of intellectual property rights protection and the creation of inventions promotion mechanism. The main aim of the paper is to analyze the problems of legal regulation and protection of intellectual property. The research is based on interdisciplinary method of analyses in economic and law spheres. The authors reveal the main factors that influence upon the system of intellectual property rights protection, including innovation activities

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### 1. Introduction

The accurate and reliable fixation and protection of the intellectual property rights are very important for social and economic development of the countries.

Intellectual property rights protect innovations and creations and reward innovative and creative activity. Intellectual property rights are international in character and in that respect they fit in rather well with the economic reality of the global economy (Holyoak & Torremans, 1998).

The level of intellectual property rights protection reflects the level of social, cultural and economic development of the country.

Mass media more than once has mentioned that the existing innovational system in Russia does not correspond to the requirements of the effective national intellectual property commercialization, using the latest foreign technologies, attracting investments for financing innovational programs, first of all, in basic and defense industries and does not serve the purpose of Russian economy revival (Mingaleva & Mirskikh, 2010).

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Russian scientists create breakthrough technologies, which are able not only to provide the needs of the country, but also to create prerequisites for entering the external market of new kinds of competitive products and technologies. This can reduce the dependence on the export of raw energy resources, but scientists have to sell technologies to foreign companies due to the lack of innovational system that can establish conditions for financing the process of technologies implementing.

Unfortunately the legal regulation and intellectual property rights protection in Russia does not correspond to the requirements of successful economic development. This situation causes a lot of problems for the development of innovation activity.

## **2. Theoretical background**

### *2.1. Innovation and intellectual property*

According to Rogers, Innovation is an idea, practice or object perceived as new by an individual or other unit of adoption. The diffusion of innovations involves both mass media and interpersonal communication channels” (Rogers, 1996).

One of the negative tendencies of contemporary innovation development of Russian economy is a weak use of high-tech products and technologies in economics activities.

Federal government tries to stimulate innovation activity and creates special economic programs.

Innovations to a considerable degree depend on intellectual activity of several categories and groups of people as well as on their intentions and opportunities to implement the results of their scientific and creative activity in business and industry.

Intellectual property differs from other commodities, because it can bring in return only being effectively protected by the state and the society. Only sufficient legal protecting can prevent free uncontrolled use of intellectual property.

In the United States, intellectual property is regarded as a form of personal property, bringing with it the right to own, sell, use or market as the owner sees fit.

In Russia, intellectual property is regarded as something intangible, a result of intellectual activity (creations, inventions, know-how, etc.).

Intellectual property rights are property rights in something intangible.

“Patents and copyrights approach, nearer than any other class of cases belonging to forensic discussion to what may be called the metaphysics of the law, where the distinctions are, or at least may be, very subtle and refined, and, sometimes, almost evanescent” (Folsom v. Marsh, 1841).

Intellectual property is the result of intellectual creative activity and that is why it is closely connected with a person of the author. Only the creator has copyright, moral rights and exclusive rights.

A “copyright” is the exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, audio or visual. By Civil Code of Russia copyrights are protected for the lifetime of the author or creator and for a period of 70 years after his death.

A “patent” is the exclusive use granted by the government to an inventor to manufacture, use or sell an invention or a process for 20 years (Burnham, 2006).

Moral rights protect the author against unfair use of his or her work.

Moral rights are recognized in civil law as rights of creators and include the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work.

### *2.2. Legal regulation of intellectual property rights in Russia*

Before 2008 intellectual property in Russia was regulated by a number of separate laws: the Patent Law, the Law on Copyright, The Law on Trademarks, The Law on Commercial Secrets and others. The legal norms of these acts didn't satisfy the requirements on market economy.

This caused a lot of problems in judicial practice.

That's why it was decided to create a new systematized regulation within the framework of one legal act. It was a first attempt of codification in intellectual property sphere in Russia.

Part 4 of the Civil Code of Russian Federation, introduced in 2008, allowed to systematize the federal legislation on intellectual property. All legal norms regulating the relations in the sphere of intellectual property and a number of related norms are included now in the Civil Code of Russia. Some new legal norms appeared.

Introduction of the Part IV of the Civil Code of the Russian Federation has completed codification of the civil legislation of Russia. Introduction of the Part IV of the Civil Code of the Russian Federation allowed to systematize the legal regulation of all objects of intellectual property .

In the Part IV of the Civil Code of the Russian Federation subjective intellectual property rights for the results of intellectual activity and the means of individualization (for intellectual property) are recognized as exclusive ones.

The main problem of the Russian Civil Code (part IV) is that many rules (norms of Law) contradict the norms of International Intellectual property Law (i.e. protection of inventions, creations, ideas, know-how, trade secrets, innovations). Legal norms regulating patent applications are very complicated.

Inventors prefer not to take out a patent for inventions because it is a very difficult procedure, it takes a lot of time and is very expensive. That's why they try to protect their inventions as ideas, know-how, confidential information. An idea is the main element of any object of Intellectual property (creation, invention, innovation, know-how, etc.). But ideas are not protected by Civil Code of Russian Federation.

### 3. The methodology

The primary method of research is the panel survey of entrepreneurs, inventors, creators, engaged in innovation activity and patent agents.

By means of panel survey different problems of intellectual property protection were revealed.

The questionnaire of panel survey was conducted in April 2010 among the different social groups, connected with creating and using of intellectual property in Perm Kray (Perm region).

The aim of the panel survey was the identification of the main problems in intellectual property protection. Moreover, its dependence on legal regulation, bureaucracy, financing, information security and etc., was analyzed. There have been identified the main reasons of weak innovation activity. Through the panel survey, questionnaires were spread among entrepreneurs, inventors and creators engaged in innovation and among patent agents.

Panel surveys were conducted among 25 patent agents and 143 entrepreneurs and 56 inventors and creators (see Table 1).

Table 1. The assessment of legal environment of innovation and intellectual activities, in %

Answers	Patent agents	Entrepreneurs	Inventors and Creators
Ineffective legal regulation and dual interpretation of legal norms	57,7	55,3	60,2
Lack of competent specialists	31,0	27,1	36,7
Bureaucracy and administrative barriers	24,4	35,5	49,0
Ineffective legal protecting of intellectual property rights	22,0	28,2	36,4
Absence of intellectual property market	10,1	25,1	14,2
Lack of financing	8,3	5,2	16,3
Weak information security	4,2	10,6	14,6
Subjectiveness, disregard of law	1,8	12,7	1,2
Weak responsibility for violation of inventors' and authors' rights	1,2	29,5	27,8
Others	12,5	3,5	7,4

The data was obtained through a survey with respondents from each group engaged in innovation activity. The interview followed a script composed by the following items:

- The development of Russian legal regulation in the sphere of intellectual property rights protection.
- The main problems of innovation activities
- Suggestions for improvement of legal regulation

Table 1 represents the results of panel survey. The questionnaire was spread among 1) entrepreneurs who use innovations and who don't use innovations; 2) inventors, creators, engaged in innovation activity; 3) patent agents.

#### **4. The results and findings**

The panel survey took place, in 2010.

In 2008 part 4 of the Civil Code of Russia, dedicated to legal regulation of intellectual property rights came in to force.

Table 1 shows that the majority of the respondents (more than 50%) consider inadequate legal regulation of intellectual property to be the main problem of innovation and intellectual activity.

So introduction of the Part 4 of Civil Code didn't solve the problems of intellectual property protecting.

Negative attitude of respondents to the existing legal regulation in this sphere correspond to the opinion, that implementation of laws is rather subjunctive and arbitrary. This indicates that contemporary legal regulation of intellectual property is far from being perfect and requires improvement.

Moreover, in 2010 the majority of respondents pointed down the necessity to create a special Law on innovation activity, adequate to the requirements of free economy.

The analyses of Russian legislation development in the sphere of intellectual property rights protection made it possible to reveal serious problems, caused by the dependence of innovation activity on the level of intellectual property rights protection in Russia and other countries.

Among the other shortcomings of Russian legislation the respondents mentioned the following: weak legal regulation of several kinds of intellectual property (know-how, trademarks, ideas); lack of by law acts regulating the registration of applications and documentation on intellectual property and its translation into foreign languages; dual interpretation of Civil Code norms; weak correlation between theory and practice.

Bureaucracy and administrative barriers were marked out by inventors, and entrepreneurs as another very important reason of low innovation and intellectual activities. At the same time only 24,4% of patent agents mentioned bureaucracy as a serious problem.

Different assessment of bureaucracy level can be explained by the different role of respondents in innovation activity (process) and by different understanding of bureaucracy.

On the one hand 25% of patent agents were unsatisfied by of patent applications (administrative barriers). On the other hand inventors often regarded patent agents who rejected to help them in preparing of patent application as a kind of bureaucracy and administrative barriers.

Entrepreneurs in their turn, referred the state refusal to guarantee the innovation projects to administrative barriers.

Patent agent (31%), entrepreneurs (27,1%), inventors (36,7%) pointed down the problem of lack of competent specialists in the intellectual property sphere. But they meant different kinds of specialists. Thus entrepreneurs and inventors mentioned low professional level of patent agents as specialists, lack of their knowledge and practical experience.

25,1% of entrepreneurs consider the lack of demand for domestic inventions and the absence of intellectual property market to be a very serious problem in intellectual property sphere. At the same time only 10,1% of patent agents and 14,2% of inventors mentioned this reason. This can be explained by the different role of respondents in innovation process. This problem is closely connected with the problem of unsatisfactory legal protection of intellectual property.

Entrepreneurs consider the absence of inventions promotion mechanism to be the reason of lack of demand for domestic inventions.

Among the problems of information security in intellectual property sphere the majority of respondents pointed down the difficulty in search of information about inventions and trade marks from foreign countries. The respondents revealed some more shortcomings of legal regulation, such as unsatisfactory protection of some kinds of intellectual property; dual interpretation of legal norms, weak regulation of technical documentation on intellectual property.

Patent agents mentioned also the problem of equal access to the databases of Rospatent (information about patents and inventors); absence of detailed recommendations for patent applications, etc.

Among the other problems the respondents mentioned lack of funding (inventors and researchers) weak information security (inventors), subjectiveness, disregard of law and low level of responsibility, shortcomings in activity of Patent Agency (Rospatent), ineffective judicial system.

Ineffective protection of intellectual property becomes a very serious problem, too. Respondents mentioned piracy and infringement of copyright as the most frequent violations of author's and inventor's rights.

Part 4 of the Civil Code came into force in 2008. Judicial practice in the sphere of intellectual property protection is not formed yet. That is why juridical system doesn't function well. All these cause a lot of problems in juridical trials. Only 5,2% of entrepreneurs and 3,9% of inventors are satisfied by the state of legal regulation and protection of intellectual property.

## 5. Conclusions

New Civil Code of Russia (part 4) did not solve the problems of legal regulation and protection of intellectual property. Many legal norms contradict the norms of International Intellectual property Law. Judicial practice in the sphere of intellectual property protection is not formed yet.

The most serious shortcomings of legal regulation of intellectual property are unsatisfactory protection of some kinds of intellectual property; dual interpretation of legal norms, weak regulation of technical documentation on intellectual property.

Innovation activity suffers from lack of funding, weak information security, subjectiveness, disregard of law and low level of responsibility, shortcomings in activity of Patent Agency (Rospatent).

It is very important to improve the existing legal regulation and protection of intellectual property in Russia taking into account the requirements and needs of the developing market economy.

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