[English translation by WIPO]

Questionnaire on Exceptions and Limitations to Patent Rights

The answers to this questionnaire have been provided on behalf of:

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Section I: General

This section is intended to obtain general information on exceptions and limitations to patent rights that are provided under the applicable laws. For the purpose of this questionnaire, the term "applicable law" refers to relevant national and regional statutory law and, where applicable, case law.

The terms used in the questionnaire are drafted in a general way aiming at providing a broad understanding of each concept used, assuming that the exact wording of these exceptions and limitations might differ under the applicable laws. More detailed explanations of the various exceptions and limitations may be found in the following documents: SCP/13/3, SCP/15/3 and CDIP/5/4.

1. As background for the exceptions and limitations to patents investigated in this questionnaire, what is the legal standard used to determine whether an invention is patentable? If the standard for patentability includes provisions that vary according to the technology involved, please include examples of how the standard has been interpreted, if available. Please indicate the source of law (statutory and-or case law) by providing the relevant provisions and/or a brief summary of the relevant decisions.

   Correspondingly, please list exclusions from patentability that exist in your law. Furthermore, please provide the source of those exclusions from patentability if different from the source of the standard of patentability, and provide any available case law or interpretive decisions specific to the exclusions.[1]

Answer 1: Specialist assessment methods are used to assess inventive solutions according to the following criteria: novelty (worldwide novelty of technical solution), inventive step, and industrial applicability. These requirements are enshrined in the Civil Code of the Russian Federation (hereinafter, 'the Code')[*]. Irrespective of the legislative definition of the conditions of

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[1] This question does not imply that the topic of exclusions from patentability is dealt with in this question exhaustively.

[*] Federal Law No. 230-FZ of December 18, 2006.

technical solutions' patentability, it must be noted that the starting point in identifying an inventive solution's patentability is its ability to be assigned to an actual technical solution.

Article 1349(1) of the Code states that "subjects of patent rights are the results of intellectual activity in a scientific and technical area, which satisfy the requirements established by this Code for inventions and utility models".

Russian legislation provides for exceptions to patent rights. Thus, under Article 1349(4) of the Code, the following "may not be subjects of patent rights:
(1) methods of human cloning;
(2) methods of modifying the genetic integrity of cells of a human being's embryonic line;
(3) using human embryos for industrial and commercial purposes;
(4) other solutions that are contrary to the public interest, principles of humanity and morality".

Article 1350 of the Code contains the following wording:
"A technical solution shall be protected as an invention in any field relating to a product… or process… Legal protection shall be granted where it is new, involves an inventive step, and is industrially applicable".
As a result, any result of human intellectual activity to which a form of patent protection may be applied is defined as a "product or process'.
Attention is drawn to the technical nature of the solutions which relate to inventions. The term "technical solution" is considered by specialists as a practical means of meeting specific human needs.
However, the legislator does not define "technical solution", and accordingly, no model "selection" of technical solutions is laid down from among a number of possibilities. The issue of assigning a claimed solution to a technical solution is resolved by identifying the problem and the technical result of the claimed invention.

Article 1350(5) of the Code contains a list of exceptions to patentable technical solutions, namely:
"5. The following shall not be deemed inventions:
(1) discoveries;
(2) scientific theories and mathematical methods;
(3) solutions only involving the external appearance of manufactured articles and intended to satisfy aesthetic requirements;
(4) rules and methods of games, and intellectual or business activity;
(5) computer software;
(6) solutions consisting solely of the presentation of information.
In accordance with this Paragraph, these subjects shall not be deemed inventions only where the patent application for the invention concerns said subject matter per se.
6. Legal protection as an invention shall not be granted to:
(1) plant varieties, animal breeds and biological methods for the obtaining thereof, with the exception of microbiological methods and products obtained by means of such methods;
(2) topographies of integrated circuits."

2. As background for the exceptions and limitations to patents investigated in this questionnaire, what exclusive rights are granted with a patent? Please provide the relevant provision in the statutory or case law. In addition, if publication of a patent application accords exclusive rights to the patent applicant, what are those rights?

Answer 2:
In accordance with the provisions of Article 1358 of the Code:
"1. The exclusive right to use an invention… under Article 1229 of this Code by any legal means (exclusive right in an invention), including by the means provided for in Paragraphs 2 and 3 of

this Article, shall belong to the patent holder. The patent holder may dispose of the exclusive right in an invention.
2. Use of the invention shall be specifically deemed to be:
(1) importing on to the territory of the Russian Federation, manufacture, use, offer for sale, sale, other form of introduction into civil circulation, or storage for such purposes of a product that incorporates the invention…;
(2) performance of acts provided for by subparagraph 1 of this Paragraph in relation to a product obtained directly by a patented process. Where a product obtained by a patented process is new, an identical product shall be deemed to be derived using the patented process, unless proven otherwise;
(3) performance of acts provided for by subparagraph 2 of this Paragraph in relation to a device, the functioning (use) of which, in accordance with its purpose, automatically involves a patented process;
(4) implementing a process in which the invention is used, specifically by applying said process.
3. An invention shall be deemed to be used in a product or process where the product contains, and the process involves, every feature of the invention stated in an independent claim of the claims for the invention contained in the patent, or a feature equivalent thereto that has become known as such in this art prior to performing the actions in respect of the relevant product or process specified under Paragraph 2 of this Article.
Where the use of an invention likewise involves all the features stated in an independent claim of the claims contained in the patent of another invention, the other invention shall also be deemed used.

Article 1392 of the Code provides for provisional legal protection of an invention, namely:
"1. An invention for which an application has been filed with the federal executive authority for intellectual property (Rospatent) shall enjoy provisional legal protection within the scope of the published claims of the invention, but not more than within the scope determined by the claims contained in the decision of said federal authority on the grant of a patent for the invention, from the date of publication of information on the application, until the date of publication of information on the grant of the patent (Article 1394).
2. Provisional legal protection shall be deemed not to have occurred where the invention application was withdrawn or recognized as withdrawn, or, with respect to the invention application, a decision on refusal to grant a patent has been taken, and the opportunity to file an appeal against this decision, as provided for by the Code, has been exhausted.
3. Any person using the claimed invention during the period specified in Paragraph 1 of this Article shall pay remuneration to the patent holder, after the grant of a patent thereto. The amount of remuneration shall be determined by agreement between the parties, or, in the event of a dispute, by a court."

3. Which exceptions and limitations does the applicable law provide in respect to patent rights (please indicate the applicable exceptions/limitations):

Answer 3:

x Private and/or non-commercial use;
x Experimental use and/or scientific research;
x Preparation of medicines;[2]
x Prior use;
x Use of articles on foreign vessels, aircrafts and land vehicles;
x Acts for obtaining regulatory approval from authorities;
x Exhaustion of patent rights;

[2] For example, extemporaneous preparation of prescribed medicines in pharmacies.

x Compulsory licensing and/or government use;

☐ Exceptions and limitations related to farmers' and/or breeders' use of patented inventions.[3]

If the applicable law provides for any of the above-listed exceptions and limitations, please fill out those parts of Sections II to X that apply to you. If the applicable law does not contain all of the exceptions and limitations provided in Sections II to X, then you should respond only to the other parts of the questionnaire. If the applicable law includes other exceptions and limitations that are not listed above, please answer the questions under Section XI "Other Exceptions".

Where reference is made to case law, please indicate, if possible, the official source in which the case has been published (for example, the publication number, issue, title, URL, etc.).

In general, the overall premise of introducing limitations of an exclusive right is "to ensure a balance between the patent holder's monopoly rights and the legal interests of others."[*]
This concerns so-called cases of free use of a patented solution, which means non-contractual use, i.e. the patent holder's consent is not required.

It should be noted that no cases of non-contractual use shall apply to counterfeit goods, since such actions always constitute an infringement of the patent holder's exclusive right.

The exceptions listed significantly limit the scope of the patent holder's exclusive right. This is done primarily to facilitate the country's scientific and technical progress, to address a range of social issues, and to fulfill the State's international legal obligations.

Furthermore, it should be clarified that Article 10 of the Code, which defines the limits of civil rights, establishes the provisions underlying the exceptions and restrictions that limit a patent monopoly. In accordance with that Article, in exercising civil rights the following are prohibited:
- actions undertaken with the sole purpose of causing harm to another person, as well as misuse of rights in other forms;
- exercising civil rights for the purpose of restricting competition, as well as abuse of a dominant market position.

In general, the limits of exercising civil rights are associated with reasonable actions performed in good faith by citizens and legal entities which are presumed by law.

Section II: Private and/or non-commercial use

4. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 4:
According to Article 1359(4) of the Code, "use of the invention for personal, family, domestic or other non-business needs shall not infringe the exclusive right in an invention where the purpose of such use is not to generate profit or income."

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[3] For example, in some countries where patent rights extend to propagated or multiplied material derived from patented biological material, certain uses by farmers of harvested plant material or of breeding livestock or other animal reproductive material under patent protection on his own farm do not constitute patent infringement. Similarly, in some countries, patent rights do not cover uses by breeders of patented biological material for the purpose of developing a new plant variety (see paragraphs 133 to 137 of document SCP/13/3).

[*] Determination of the Constitutional Court of the Russian Federation of May 28, 2009, No.613-O-O.

In this case, use is meant in a broad sense, but not, however, for the purpose of generating profit or income. Using the subject matter of others' patent rights is possible, mainly where a person directly manufactures a product containing the patented solution (with his own hands, or to order).
In addition, it is irrelevant as to whether the product is manufactured as a result of parallel, independent creative work, or using other people's ideas (including directly using patent application materials). It should be recognized that "importation into the territory of the Russian Federation" is also subject to the product's free use by a person intending to use the product for private purposes. It seems, moreover, that personal use must be presumed. The use of a patented process as a "process for implementing actions" is permitted in all cases.

The case under consideration relates to citizens, but is perhaps also applicable to legal entities. Moreover, by analogy with Paragraph 5 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of October 22, 1997, No. 18, "On Certain Issues Related to the Application of the Provisions of the Civil Code of the Russian Federation on the Supply Contract", it should be recognized that "under purposes unrelated to personal use, the intended use of the product or process must be understood in order to safeguard the organization or citizen-entrepreneur's business (office equipment, office furniture, vehicles, etc.). Accordingly, for a legal entity, applying a patented solution to the clearing of snow inside a plant for the passage of employees could, in particular, be considered personal use. But damp cleaning of floors in a shopping center, for instance, should be deemed as safeguarding business activity.

5. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 5:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

6. (a) What are the public policy objectives for providing the exception?

(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 6:
The need to establish limitations on the patent monopoly, otherwise known as ***cases of free use*** of patented subject matter, has principally been dictated by the needs of society which, under certain circumstances, has an interest in the unfettered access of their members and business associations to the protected results of creative activity.
The fundamental principles underlying the limitations are the ***principle of unimpaired moral rights*** of authors of technical and design innovations, and the ***principle of the non-exclusive nature of free use.***
Exceptions to the patent monopoly prescribed by the legislator are defined exhaustively.
Where the purpose of using the invention is not to generate income, and such use does not involve business activity, members of the public have an interest in unfettered access to the protected results of intellectual activity.

7. If the applicable law defines the concepts "non-commercial", "commercial" and/or "private", please provide those definitions by citing legal provision(s) and/or decision(s):

Answer 7:
Civil legislation of the Russian Federation defines the concept of "business activity", which is comparable to the concept of "commercial activity".

Thus, Article 2(1) of the Code provides that “business activity shall be an independent activity conducted at one’s own risk, aimed at systematically deriving profit from the use of property, sale of goods, performance of work or rendering of services by persons registered in this capacity in the prescribed legal process”.

Based on the definition of “commercial use”, “commercial purposes” means use of a technical solution for deriving profit, while “non-commercial” means using the invention for other purposes (personal, socially beneficial, including in emergencies). For instance, “use of an invention in an emergency (natural disasters, calamities, accidents), provided that the patent holder is notified of such use as soon as possible, and is subsequently compensated reasonably” (Article 1359(3) of the Code).

Cases of “private” use are stated in Article 1359(4) of the Code, namely “use of an invention for private, family, domestic, or other needs unrelated to business activity, where the purpose of such use is not to derive profit or revenue.”
The term “private use” has not been enshrined in legislation, although it means an individual citizen’s personal use.

Thus, current Russian legislation does not treat use for needs unrelated to business activity and the generation of profit or revenue as an infringement of exclusive rights in an invention.

8. If there are any other criteria provided in the applicable law to be applied in determining the scope of the exception, please provide those criteria by citing legal provision(s) and/or decision(s):

Answer 8:
Not applicable.

9. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 9:
Yes. The legal framework is considered adequate to meet the objectives sought.

10. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Answer 10:
None.

Section III: Experimental use and/or scientific research[5]

11. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 11:

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[5] Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

Under Article 1359(2) of the Code, “conducting scientific research on a product or process incorporating an invention, or the conduct of an experiment on such a product or process, shall not constitute an infringement of the exclusive right in an invention.”

Thus, in the Russian Federation, the application of this exception to the patent monopoly is limited only by ***conducting*** scientific research or experiments on the patented tool (in order to test it, and assess its effectiveness for scientific purposes, etc.) Development in this area should be the subject of research, and not a means thereof.

The Russian legislator does not treat scientific research on a product or process in which patented inventions are involved as an infringement of the patent holder’s exclusive right. The presence in the Code of such laws appears totally reasonable, in particular taking into account that any person, prior to taking a decision on the expediency of requesting the patent holder to alienate a patent, or to conclude a license agreement, should have the opportunity to satisfy himself that the relevant subject matter possesses the characteristics in which he is interested.

However, attention must be drawn to the fact that this only refers to an experiment or scientific research conducted in relation to the patented product or process ***itself***, and not to an experiment or scientific research conducted with their application, for instance in measuring instruments or in other equipment facilitating the performance of an experiment or scientific research.

12. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 12:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

13. (a) What are the public policy objectives for providing the exception?
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 13:
The provision of this exception is founded on the need to provide a person potentially wishing to acquire rights in an invention with an opportunity to assure himself that the relevant subject matter possesses the characteristics in which he is interested.
Attention should be drawn to the Opinion of the Constitutional Court of the Russian Federation*, which is directly related to issue examined above.

The complaint disputed the constitutionality of Article 11(3) of the Patent Law of the Russian Federation of September 23, 1992, No. 3517-1**, whereby performing scientific research or experiments on a tool containing a patent-protected invention is not recognized as an infringement of the patent holder’s exclusive right. In the applicant’s opinion, the practice of courts of general jurisdiction- to the extent that persons conducting scientific experiments or research on a product containing an invention, are permitted to derive profit (revenue)- contravenes Article 44 (Part 1) of the Constitution of the Russian Federation on the protection of intellectual property by law. The Constitutional Court of the Russian Federation failed to find grounds for accepting the complaint, and stated that the provision of Article 11(3), in conjunction with Article 10 of the Patent Law of the Russian Federation (as amended in 1992), could not be considered to infringe the applicant’s constitutional right to protection of his intellectual property by law, since ***“it (the limitation) has been established in order to safeguard the balance of interests of all persons for whom freedom of scientific and technical creativity has been guaranteed, and does not presuppose the introduction of the patented solution”***.

In other words, the disputed provision does not assume that the patent-protected invention will be marketed while a scientific experiment is carried out by third parties on a product incorporating the invention.

* Opinion of the Constitutional Court of the Russian Federation of October 16, 2003, No. 389-O, "On refusal to accept a complaint by Vladimir Filippovich Starokozhev regarding infringement of his constitutional rights by Article 11(3) of the Patent Law of the Russian Federation".

** Repealed, due to the enactment of Part IV of the Civil Code of the Russian Federation on January 1, 2008.

Taking into account the similarity of the contents of Article 11 of the Patent Law of the Russian Federation, as examined, with the contents of the current provision under Article 1359(2) of the Code, there can be no real doubt as to the Constitutional Court's motivation at present.
The experimenter or researcher is not permitted to apply the patented product or process.

14. Does the applicable law make a distinction concerning the nature of the organization conducting the experimentation or research (for example, whether the organization is commercial or a not-for-profit entity)? Please explain:

Answer 14:
No requirements regarding the status of the person conducting the experimentation or research are laid down in Russian legislation.

15. If the applicable law defines the concepts "experimental use" and/or "scientific research", please provide those definitions by citing legal provision(s) and/or decision(s):

Answer 15:
Under Russian legislation, third parties may only study the patented subject matter, and not use it as a means of conducting research, without infringing the exclusive right of the patent holder. With regard to such concepts as "scientific research", "scientific experiment", etc., these are important for defining the boundaries of a specific exception's effect beyond the scope of the patent right.

Thus, Article 2 of Federal Law No. 127-FZ of August 23, 1996, "On Science and State Science and Technology Policy", defines the following:
- **scientific (research) activity**- activity aimed at obtaining and applying new knowledge, including:
***fundamental scientific research**- experimental or theoretical activity, aimed at obtaining new knowledge on fundamental laws governing the structure, functioning, and development of man, society, and the environment;
***applied scientific research**- research aimed primarily at the application of new knowledge to achieve practical goals and to resolve specific issues.
- scientific and technical activity- activity aimed at obtaining and applying new knowledge in order to resolve technological, engineering, economic, social, humanitarian, and other issues, and to ensure the functioning of science, technology, and production as a single system.
- experimental design- activity based on knowledge acquired as a result of conducting scientific research or derived from practical experience, and aimed at preserving life and human health, creating new materials, products, processes, devices, services, systems or methods, and developing them further.

The Federal Law mentioned above does not give a legal definition of the concept “scientific experiment”. At the same time, a scientific experiment is taken to mean a method of learning which can help in investigating real phenomena under controlled and managed conditions.

Limiting the patent holder’s exclusive rights when conducting scientific research is therefore governed by prioritizing public above personal interests. The distinction between scientific research and experimentation is that with research, study is undertaken of the subject matter in its pure form (without any additional influence thereon), whereas with experimentation, the subject being studied is placed under certain conditions, i.e. subjected to a certain influence from external forces.

16. If the purpose of experimentation and/or research is relevant to the determination of the scope of the exception, please indicate what that purpose is:

Experimentation and/or research should aim to:

- ☐ determine how the patented invention works
- ☐ determine the scope of the patented invention
- ☐ determine the validity of the claims
- ☐ seek an improvement to the patented invention
- ☐ invent around the patented invention
- ☐ other, please specify:

Answer 16:
Article 1359 of the Code does not indicate the purpose of the experimentation and/ or research.

17. If any of the following criteria is relevant to the determination of the scope of the exception, please indicate:

X Research and/or experimentation must be conducted on or relating to the patented invention (“research on”)
- ☐ Research and/or experimentation must be conducted with or using the patented invention (“research with”)
- ☐ Both of the above

Please explain by citing legal provision(s) and/or decision(s):

Answer 17:
Under Article 1359 of the Code, conducting scientific research on a product or process which incorporates the invention, or conducting experimentation on said product or process, does not constitute an infringement of the exclusive right in an invention.

Conducting experimentation on a product in which an invention is incorporated (similar to conducting scientific research on a product in which a patented invention is incorporated) involves two situations.
Situation No. 1- where experimentation is conducted on such a product in which an invention is incorporated (for instance, a fuselage has been patented, but experimentation is conducted on the aeroplane in which the fuselage is incorporated; or a chemical compound has been patented, but experimentation is carried out on the foodstuff or medicine containing said compound).
Situation No. 2- where experimentation is conducted directly on the invention itself, since it also falls under the definition of a product in which every feature of the patented invention is incorporated (in the example above, in this situation the experimentation would be conducted directly on the chemical compound itself).

Accordingly, the first criterion, “Research and/or experimentation must be conducted on the patented invention”, is relevant to the determination of the scope of the exception.

18. If the commercial intention of the experimentation and/or research is relevant to the determination of the scope of the exception, please indicate whether the exception covers activities relating to:

- ☐ A non-commercial purpose
- ☐ A commercial purpose
- ☐ Both of the above
- ☐ The commercial intention of the experimentation and/or research is not relevant

Answer 18:
Russian legislation contains no special provisions relating to the intention of the experimentation and research.

19. If the applicable law makes a distinction between “commercial” and “non-commercial” purpose, please explain those terms by providing their definitions, and, if appropriate, examples. Please cite legal provision(s) and/or decision(s):

Answer 19:
Russian legislation contains no special provisions relating to the purpose of the experimentation and research.

20. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

Answer 20:
Not applicable.

21. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 21:
Yes. The legal framework is considered adequate to meet the objectives sought.

22. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Answer 22:
Not applicable.

Section IV*: *Preparation of medicines

23. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 23:
According to Article 1359(5) of the Code, “one-off preparation in pharmacies based on physicians’ prescriptions of medicines using the invention…
shall not constitute an infringement of the exclusive right in an invention.”

It is assumed that preparation of medicine for subsequent storage and sale may not be considered a single use; therefore, preparation of a similar medicine for future use may be regarded as an infringement of the patent holder's exclusive rights.

24. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 24:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

25. (a) What are the public policy objectives for providing the exception? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 25:
This rule concerns cases of use of inventions in the interests of the health of people and animals. These cases can take place in extreme situations when it is necessary to administer urgent medical help.
It should be noted that one-off preparation of medicine may be considered only in the amount specified in the prescription. Current regulation in Russian legislation of cases of free use of a patented drug or preparation process is excessively detailed: on the one hand, the essential features of preparation of a medicine according to a prescription assumes one-off preparation, while on the other hand, the number of preparations of new doses of medicine for one prescription may be very high.

26. Who is entitled to use the exception (for example, pharmacists, doctors, physicians, others)? Please describe:

Answer 26:
Medicines are always prepared either from a specific substance, or by a specific process, owing to which such technical solutions may only be inventions (see Part 1 of Article 1350(1) of the Code). In other words, medicines are patented under Russian legislation, but benefits are granted to the patent holder for extending the exclusive right's term of validity (see Article 1363(2) of the Code).

The large number of persons involved in this case warrants attention: for instance, the physician who writes the prescription, the dispensing chemist who prepares the medicine at the pharmacy, and the person for whom the medicine is prepared. In this case, there is no need to highlight the fact that for free use of the medicine, little is prepared, and it is still necessary to sell it, i.e. market it. However, there is no commercial transaction in this case: the medicine is prepared for a fee, but at the behest of the person presenting the prescription, i.e. there is a supply contract. Accordingly, this process does not pre-suppose marketing of the prepared medicine (sale by the customer of the prepared medicine would constitute an infringement of the exclusive right).
It should be noted that the physician is not restricted by the number of prescriptions that he may write for the same medicine to many patients.

27. Does the applicable law provide for any limitations on the amount of medicines that can be prepared under the exception?

☐ Yes
☐ No

If yes, please explain your answer by citing the relevant provision(s) and/or decision(s):

Answer 27:
Yes.
This case refers to “one-off preparation in pharmacies based on physicians’ prescriptions of medicines incorporating the invention” (Article 1359(5) of the Code).

However, one-off preparation in pharmacies based on physicians’ prescriptions of medicines is pointless if it is not accompanied by permission to sell them to patients. At the same time, such preparation of medicines should be genuinely one-off and not develop into preparation of inventories of said medicines for future sale, which in the context of large cities, could harm the patent holder’s economic interests appreciably.

28. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

Answer 28:
Not applicable.

29. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 29:
Yes. The legal framework is considered adequate to meet the objectives sought.

30. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Answer 30:
Not applicable.

Section V: Prior use

31. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 31:
Article 1361 of the Code provides that:
“Any person who, before the priority date of an invention, was using in good faith within the territory of the Russian Federation an identical solution created independently from the author, or made the necessary preparations for such use shall have the right to proceed with that use free of charge provided that the scope thereof is not extended (the right of prior use).”

In this case, the prior user’s actions shall not constitute an infringement of the patent holder’s rights, since “the right of prior use relates to conditions excluding responsibility for use of patented subject matter.”*

Prior use is qualified as a case of free (i.e. free of charge) use of a simultaneously created (i.e. his own, not that of others) invention. Therefore, the right of prior use is a subjective civil right with unique characteristics within the territory of Russia.
Independence is demonstrated through the independent nature of the prior user’s creativity: meaning that the solution had not been developed on the basis of descriptions and drawings of the person who obtained the patent.

32. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 32:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

33. (a) What are the public policy objectives for providing the exception? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 33:
Article 4 of the Paris Convention for the Protection of Industrial Property implies that when a convention application is filed, the right of prior use arises where a third party had started using the invention prior to the filing of the initial application. In addition, use of the invention, which took place between the filing of the initial application and the filing of the convention application, does not constitute a reason for the right of prior use to commence. Under said Article, rights acquired by third parties before the filing date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each State party to the Convention.

[*] Paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of April 26, 2007, No. 14, "On the practice for the examination by courts of criminal cases relating to the infringement of copyright and related rights, an inventor's and patent rights, and also on the unlawful use of a trademark".

The classical meaning of prior use is to incentivize parallel creativity of persons who, for one reason or another, were unable to patent the results of their technical work at the appropriate time. Thus, a person possessing the right of prior use is the first inventor who for some reason was unable, or did not wish, to patent the invention. The right of prior use is intended to protect the interests of third parties that have already invested capital in production.

34. How does the applicable law define the scope of "use"? Does the applicable law provide for any quantitative or qualitative limitations on the application of the "use" by prior user? Please explain your answer by citing legal provision(s) and/or decision(s):

Answer 34:
The legislation of the Russian Federation does not contain any conditions pertaining to the scope of "use" of an invention within the framework of the right of prior use.
The general concept of "use" of an invention is defined in Article 1358(2) of the Code, and more precisely, specific ways of using patented subject matter are listed therein. Thus, "use" of an invention is considered specifically to be:
"(1) importing on to the territory of the Russian Federation, manufacture, use, offer for sale, sale, other form of introduction into civil circulation, or storage for such purposes, of a product that incorporates the invention;
(2) performance of acts provided for by subparagraph 1 of this Paragraph in relation to a product obtained directly by a patented process. Where a product obtained by a patented process is new, an identical product shall be deemed to be derived using the patented process, unless proven otherwise;
(3) performance of acts provided for by subparagraph 2 of this Paragraph in relation to a device, the functioning (use) of which in accordance with its purpose automatically involves a patented process;
(4) implementing a process in which the invention is used, in particular by applying said process.

An invention shall be deemed to be used in a product or process where the product contains, and the process involves every feature of the invention stated in an independent claim of the claims for the invention contained in the patent, or a feature equivalent thereto that has become known as such in this art prior to performance in respect of the relevant product or process of the actions specified above.
Where the use of an invention likewise involves all the features stated in an independent claim of the claims contained in the patent of another invention, the other invention shall also be deemed used.

Use of an invention is permitted during the term of patent validity only if the scope does not exceed that achieved before the priority date, or, where use had not commenced before that date, if the scope does not exceed the level corresponding to applicable preparations. Therefore, if the prior user broadened the scope of use after the priority date, the patent holder is entitled to prohibit him from doing so, and the prior user may reserve such scope or broaden it further only with the patent holder's permission, specifically by means of a license agreement.

35. Does the applicable law provide for a remuneration to be paid to the patentee for the exercise of the exception? Please explain:

Answer 35:
No, free-of-charge use of an identical technical solution is provided for under the conditions stated in Article 1361 of the Code.

36. According to the applicable law, can a prior user license or assign his prior user's right to a third party?

X Yes
☐ No

Answer 36:
The holder of the right of prior use is not entitled to obtain a license to use the invention, as the right of prior use occurs under conditions specified in Article 1361 of the Code.
A similar decision is also contained in a court decision, namely, "The right of prior use arises not as a result of a court decision, but under the conditions specified in Article 12 of the Patent Law of the Russian Federation".* (These are currently the provisions of Article 1361 of the Code).

At the same time, Russian legislation makes it possible to transfer the right of prior use to a third party. Thus, Article 1361(2) of the Code prescribes a method for transferring the right of prior use to another person:
"The right of prior use may only be transferred to another person together with the enterprise at which use of the identical solution took place, or the necessary preparations for such use had been made."

The above means that the right of prior use comprising part of the enterprise is not permitted; a transaction is necessary in respect of the enterprise as a whole, and equally, neither is a transfer of said right permitted which is independent and distinct from this enterprise. In addition, it is possible the term "transferred" in the wording of the provision that "the right of prior use may be transferred to another person", has a narrow interpretation; for instance, on transferring the right of prior use within the framework of a sale contract for the enterprise (Article 559 of the Code), i.e. surrender of the right of prior use is only permitted together with the enterprise as a whole. However, the legislator apparently had a broad interpretation of this term in mind, including transfer of the right of prior use, and under an enterprise lease contract (Article 656 of the Code),

and also cases of the right of prior use passing to others without a contract (inheritance, reorganization of legal entity, and foreclosure of the patent holder's property).

37. In case of affirmative answer to question 36, does the applicable law establish conditions on such licensing or assignment for the continued application of the prior use exception?

X Yes
☐ No

If yes, please explain what those conditions are:

Answer 37:
Yes. The provisions of Article 1361 of the Code establish said conditions.
In addition, the following circumstances constitute the pre-conditions of the right of prior use:
- firstly, evidence of use of, or preparations to use, a technical solution;
- secondly, use must take place within the territory of the Russian Federation, and preparations to use within the territory of the Russian Federation, or outside its territorial borders;
- thirdly, the technical solution being used, or for which preparations are being made to use, must have been created independently of the author of the protected solution;
- fourthly, the technical solution being used, or for which preparations are being made to use, must be identical to the protected solution;
- fifthly, evidence of use or preparations to use must take place before the priority date of the claimed protected solution;

[*] Paragraph 8 of the Review of the Practice of Examination by Courts of Arbitration of Cases Involving the Use of Intellectual Property Law, as ratified by the Information Letter of the Presidium of the Supreme Court of Arbitration of the Russian Federation of December 13, 2007, No. 122.

- sixthly, any use must be bona fide, i.e. the person who used the technical solution neither knew, nor should have known, about the essential features of the claimed protected solution. These circumstances can arise and develop, as a rule, with the parallel development of the same scientific or technical problems by different organizations or inventors. In addition, according to the meaning of Article 1361(1) of the Code, a person vested by Law with the right of prior use, and the author of the technical solution being used, may be different persons.

38. Does this exception apply in situations where a third party has been using the patented invention or has made serious preparations for such use after the invalidation or refusal of the patent, but before the restoration or grant of the patent?

X Yes
☐ No

If yes, please explain the conditions under which such use can continue to apply:

Answer 38:
Yes.
Under Article 1400 of the Code, any person who, during the period between the expiry of the patent for the invention, utility model, or industrial design, and the date of publication in the Official Gazette of the federal executive authority for intellectual property of information on the

restoration of the patent, began using the invention, or made preparations necessary for this within the specified time limit, shall retain the right to its future use free of charge provided that the scope of such use is not expanded (right of subsequent use).
The right of subsequent use involves free (i.e. without a license) use of the invention by the subsequent user after the restoration of the patent monopoly without the threat of accountability for infringement of another person's patent.
Subsequent use is essentially one of the types of limitation of the patent monopoly, along with the right of prior use, for example. However, it is the legislator's intention that the right of subsequent use should differ from the right of prior use in terms of scope, since, unlike the right of prior use, it may not be transferred to another person together with an enterprise.
The right of subsequent use is granted with a number of conditions:

- use of the inventions began when preparations to that end had been undertaken during the period when the relevant subject matter was in the public domain (between the patent expiry date and its restoration);
- the scope of use of the invention for which patent protection has been reinstated must not be extended by the subsequent user.

The provision on the right of subsequent use has been introduced in order to preserve the balance of interests of patent holders and third parties. The three-year period prescribed for the restoration of the patent is sufficient so that in some cases the third party can begin using the patented invention or do everything necessary to that end after the patent expiry date (i.e. on a legal basis). Obviously, in the case of restoration of the patent, said party must not have infringed it. The right of subsequent use is also intended to protect the interests of third parties.

The essential features of the right of subsequent use consists of the fact that a person who has used, or who has made necessary preparations to use, a protected technical solution after a temporary and premature annulment of the patent monopoly, retains the right of future use of said solution and after restoration of the monopoly.
The right of subsequent use was introduced into Russian patent legislation relatively recently. Said right came into legal existence in the amended Patent Law of the Russian Federation of February 7, 2003 (repealed). The regulation on the right of subsequent use has been enshrined, virtually unchanged, in Article 1400 of the Code.

The assumptions underpinning the right of subsequent use are as follows:

- use of an invention, the validity of the patent for which was prematurely terminated because of non-payment of the maintenance fee for the document providing protection in due time may be reinstated, or necessary preparations to that end;
- use or preparations to that end took place between the date of premature termination of the patent because of non-payment of the fee (from the date of expiry of the prescribed time limit for payment of the patent maintenance fee) and the date of publication of information regarding the patent's restoration;
- termination of the patent was premature and was caused by non-payment of the maintenance fee of the patent for the invention within the prescribed time limit.

The substance of the right of subsequent use is the legally guaranteed ability of any person to use a technical solution unlicensed and free of charge from the moment of premature termination of the patent. A condition of implementing the right of subsequent use is the requirement not to extend the scope of use compared with that in the period between the expiry of the patent and the date of publication regarding the patent's restoration.

In contrast with the right of prior use, the transfer of which is possible under certain conditions (see Article 1361 of the Code), the right of subsequent use has been excluded from civil circulation, at least in relation to its alienation, combined with production. It is assumed, however,

that the right of subsequent use may pass in the order of succession, for instance, in the case of reorganization of a subsequent user-organization.
Another difference in the right of subsequent use from the right of prior use is the situation where the prior user works “his own” technical solution, created independently from the patent holder, at the same time as the subsequent user works “someone else’s” innovation, i.e. not created by him.

39. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

Answer 39:
Not applicable.

40. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 40:
Yes. The legal framework is considered adequate to meet the objectives sought.

41. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Answer 41:
In considering the expediency of challenging the right of prior use in court, the right holder should bear in mind that if use preceding the priority date by its nature was such that it could lead to information on the patented solution being made public, then that may constitute a reason for recognizing the patent as invalid on the grounds of the solution’s non-compliance with the condition of novelty.

Any applicant filing an application after public disclosure of information on an invention, and focusing on the benefit granted to him under the provisions regarding the grace period (Article 1350(3) of the Code - lasting six months from the date of disclosure of the essential features of the invention by the author), must bear in mind the possibility of other persons implementing the invention on the basis of that information, and the practical difficulties involved with proving that said persons could not have been related to the prior user.

Section VI: Use of articles on foreign vessels, aircrafts and land vehicles

42. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 42:
Under Article 1359 of the Code, “Use of a product incorporating the invention in the structure, in auxiliary equipment, or in operating vehicles (river and marine, air, automobile, and railway transport) or spacecraft of foreign States provided that such vehicles or spacecraft are located within the territory of the Russian Federation, **temporarily or accidentally**, and that the aforesaid product or device is used solely for the needs of vehicles or spacecraft… shall not constitute an infringement of the exclusive right in an invention. Such an act shall not be recognized as an act of infringement of the exclusive right with respect to vehicles or spacecraft of those foreign States that grant similar rights with respect to vehicles and spacecraft registered in the Russian Federation.”

Auxiliary equipment means equipment which facilitates the operation of the vehicle or spacecraft, but is not a constituent part thereof. For instance, for a car, a pump serves as such equipment.

The provisions of Article 1359 of the Code amend the territorial principle of the exclusive right's validity: if a solution used in a vehicle has only been patented in Russia, then foreign countries are not bound by said patent- in such countries, use of the solution is free. Accordingly, then, "importation" of these vehicles into Russia is classified as an infringement of the Russian patent holder's exclusive right (see Article 1358(2)(1) of the Code).
Thus, the following limitations typify contemporary regulation. Firstly, patented subject matter is required to be used exclusively for the vehicle's or spacecraft's needs. Secondly, the case examined of free use is to be applied reciprocally between States. So, for instance, under Articles 15 and 16 of the Federal Law of August 20, 1993, No. 5663-1, "On Space Activity" (Amended and Updated), spacecraft (on condition of State registration of rights therein) may be used by the owner thereof, or by a person to whom rights to use (work) the spacecraft have been granted by the owner, or a person authorized by the owner, under due legal process, and the results of intellectual activity obtained in developing the spacecraft and space technologies are legally protected, and also exclusive rights in the intellectual property subject matter are likewise enjoyed, under the process stipulated by the Civil Code of the Russian Federation, and by other intellectual property laws of the Russian Federation.

In sum, the general principles in applying the limitation of patent rights considered have been set out in Article 5-ter of the Paris Convention for the Protection of Industrial Property (the Convention), which prescribes certain limitations of patent rights in the interests of freedom of transport. In international practice, these rules are applied in relation to other States' vessels, sailing under the flag of those States, and also air and land vehicles registered in other State parties to the Convention. Equally, the regulations concerning aircraft are subject to the provisions of the Convention on International Civil Aviation of 1944, which, in Article 17, provides that "aircraft have the nationality of the State in which they are registered."

43. If the exception is provided through case law, please cite the relevant decision(s) and provide its (their) brief summary:

Answer 43:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

44. (a) What are the public policy objectives for providing the exception? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 44:
As previously noted, the provisions contained in Article 1359(1) of the Code correspond to the contents of Article 5-ter of the Paris Convention on the Protection of Industrial Property.

An important condition is the exclusive use of a product or device which has been patented in the Russian Federation for the needs of vehicles or spacecraft. This exception is limited by the condition of reciprocity, i.e. by cases where similar rights are granted by the relevant foreign State in relation to vehicles or spacecraft registered in the Russian Federation.

Furthermore, it should be noted that the legislator's instructions on the exclusive use of the product or device for transportation requirements removes other cases of use of patented subject matter from the scope of this regulation, e.g. manufacture, sale, and storage thereof for the purposes of introduction into civil circulation.

45. The exception applies in relation to:

X Vessels
X Aircrafts
X Land Vehicles
X Spacecraft

Answer 45:
The exception applies in relation to all listed subject matter.

46. In determining the scope of the exception, does the applicable law apply such terms as ”temporarily” and/or “accidentally” or any other equivalent term in relation to the entry of foreign transportation means into the national territory? Please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

Answer 46:
The specified terms are used in Article 1359 of the Code.
Thus, free use of patented subject matter in relation to foreign transportation means and spacecraft on the territory of the Russian Federation may be “temporary”, i.e. in transit, or when transporting internationally, in tourism, etc. In other words, these are recurring visits. An accidental visit means a temporary situation caused by losing one’s way or a natural disaster, which frequently results in an emergency landing of an aircraft, for instance.

Permission to cross the State border
http://89.1.1.2/noframe/law2?d&nd=9033575&nh=1&c=%CF%C5%D0%C5%D7%C5%CD%C8%C5+%C3%D0%C0%CD%C8%D6%DB&spack=111flist%3D%CD%E0%F7%E0%F2%FC+%EF%EE%E8%F1%EA%26intelsearch%3D%EF%E5%F0%E5%F7%E5%ED%E8%E5+%E3%F0%E0%ED%E8%F6%FB%26listid%3D010000000100%26listpos%3D2%26lsz%3D24617%26w%3D0;1;10;11;14;15;16;17;18;2;3%26 - C109#C109
for Russian aircraft undertaking special international flights from airports or aerodromes closed to international flights, as well as foreign and Russian aircraft performing ***emergency landings*** in unspecified locations, is granted jointly by federal security service authorities of the Russian Federation and the administration of airports and aerodromes, or on the command of aviation units of the Armed Forces of the Russian Federation, with subsequent notification of the authorities of the Russian Federation concerned (Law of the Russian Federation “On the State Border of the Russian Federation”, as amended, of February 7, 2011).

47. Does the applicable law provide for any restrictions on the use of the patented product on the body of the foreign vessels, aircrafts, land vehicles and spacecraft for the exception to apply (for example, the devices to be used exclusively for the needs of the vessel, aircraft, land vehicle and/or spacecraft)? Please explain your answer by citing legal provision(s) and/or decision(s):

Answer 47:
First of all, the product in which the invention is incorporated may be used ***exclusively for the needs*** of the vehicle or spacecraft.
Actions such as production on board a vessel of any products or devices covered by the patent, for example, where such products and devices are not used for the needs of the vessel, and the production process itself may also be covered by the patent for the process, will be considered an infringement of exclusive rights. Similarly, free sale on board a vessel of products covered by the patent will be deemed an infringement, or use of the vessel as a floating hospital while temporarily moored in a port, on board which surgical operations are to be performed using surgical instruments for which patents are valid on the territory of said State.

48. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

Answer 48:
Under Russian legislation, the use of a product which incorporates an invention shall not be considered an infringement of the exclusive right in relation to vehicles or spacecraft of those foreign States which grant the same rights in respect of vehicles or spacecraft registered in the Russian Federation.

In other words, these rules shall only be applied on a reciprocal basis, i.e. where similar rights are granted by the relevant foreign State in relation to vehicles registered in the Russian Federation.

49. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 49:
Yes. The legal framework is considered adequate to meet the objectives sought.

50. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Answer 50:
Owing to the fact that Russian airlines often lease aircraft belonging to companies from other States for freight and passenger transportation, a legal issue has arisen: do the regulations on temporary stationing of vehicles extend to leased aircraft, i.e. could the holder of a Russian patent sue for infringement of patent rights if, for example, the patented invention has been used in the engine of said foreign aircraft or any other part of its design?
Obviously, the decisive factor in this case is the aircraft's country of registration, and not the nationality of its owner. Where the leased aircraft has been registered in Russia, then clearly it could not be considered "foreign" within Russian territory. And in this case, general rules on prohibiting the use in civil circulation of articles which incorporate inventions patented in Russia without the permission of the patent holder, should apply. Where said prohibition is infringed, the aircraft lessor shall be subject to the provisions on liability for patent infringement.
An aircraft leased for passenger transportation in this case is clearly not accidentally in Russia, and the lease term is not evidence that it is on Russian territory "temporarily" in the sense defined by the Paris Convention.

Section VII: Acts for obtaining regulatory approval from authorities

51. If the exception is contained in statutory law, please provide the relevant provision(s):

52. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

53. (a) What are the public policy objectives for providing the exception? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

54. Who is entitled to use the exception? Please explain:

55. The exception covers the regulatory approval of:

- ☐ any products
- ☐ certain products. Please describe which products: ……

56. Please indicate which acts are allowed in relation to the patented invention under the exception?

- ☐
- ☐ Making
- ☐ Using
- ☐ Selling

- ☐ Offering for sale
- ☐ Import
- ☐ Export
- ☐ Other. Please specify:……

57. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

58. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

59. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

Questions 51 to 59 remain unanswered, as the legislation of the Russian Federation does not provide for the legal relations in the section title.

Section VIII: Exhaustion of patent rights

60. Please indicate what type of exhaustion doctrine is applicable in your country in relation to patents:

- X National
- ☐ Regional
- ☐ International
- ☐ Uncertain, please explain.……

If the exception is contained in statutory law, please provide the relevant provision(s):
If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 60:
The Russian Federation operates the **national principle** of exhaustion of patent rights. Any product which incorporates a technical solution patented in Russia may be imported into Russia provided that said product had previously been introduced into civil circulation within the territory of the Russian Federation by the patent holder directly, or by another person authorized by the patent holder.
Thus, for instance, Article 1359 of the Code directly specifies that “import into the territory of the Russian Federation, use, offer for sale, selling, other form of introduction into civil circulation or storage for these purposes of a product incorporating the invention, or utility model, or device, incorporating the industrial design, where such product or device had previously been introduced into civil circulation within the territory of the Russian Federation by the patent holder or by another person with the consent of the patent holder.”

Thus, the essence of the principle of exhaustion of rights is to limit the rights of the patent holder after manufacture of the patented product and its initial introduction into civil circulation by the patent holder himself or with his consent (by an authorized person who may be the licensee, for example) in relation to actions in furthering the commercial sale or use of said product (re-sale, lease, etc.). The patent holder’s control over such actions may be carried out on contractual terms, where this does not infringe anti-trust legislation, and, of course, where a counterparty infringes such terms, that party will not have tortious, but contractual, liability, i.e. he will not be

deemed to have infringed the patent. It is assumed that, as a result of the patented subject matter's introduction into civil circulation by himself or through an authorized person, the patent holder automatically exhausts his exclusive right, as he has already enjoyed the benefit of his monopoly.

Following the introduction of the product or device into civil circulation within the territory of the Russian Federation by the patent holder or any other authorized person, including a licensee, the principle of exhaustion of rights confers on said good (product) a property similar to that which is referred to as patent purity. It should be borne in mind that the principle of exhaustion of rights under the Code is territorial in nature, within the Russian Federation only, and re-sale of such products to other countries should take account of national patents and national legislation in relation to the interpretation of the principle of exhaustion of rights.

61. (a) What are the public policy objectives for adopting the exhaustion regime specified above? Please explain:

(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 61:
The basis of the provision on exhaustion of patent rights, as stated in Article 1359 of the Code, is the idea of by-passing artificial barriers to free trade which may be erected by the owners of exclusive rights. The essence of the rule on exhaustion of patent rights is that a patent holder, or other person acting with the permission of the patent holder, foregoes the legal monopoly on the use of the protected subject matter in an economic sense following its initial legitimate introduction into civil circulation. Subsequent movement of material bearers incorporating the technical solutions will be beyond the scope of the patent monopoly.

Opinion of the Constitutional Court of the Russian Federation of October 16, 2001, No. 211-O* noted that the limitation specified in the provision on exhaustion of rights extends only to patented industrial property which has a material form, and does not encompass patent holders' exclusive rights in relation to processes patented as inventions. Nevertheless, there are certain conditions under which the patented process, when used in conjunction with a device, is also exhausted, but only when performing the process with said device, the rights in relation to which have already been exhausted.
In the absence of provisions on the exhaustion of the patent holder's rights, the effect of the patent holder's exclusive right in relation to products and articles which he has already introduced into civil circulation would hinder the freedom of movement of goods on the market, thereby contravening the fundamental principle of freedom of trade.
Thus, for example, a patented car headlight manufactured at an optical-equipment factory under a license agreement with the patent holder who owns the patent for said headlight, would be subject to that same patent:
- where the headlight is sold in a retail store as a spare part for a car;
- where the car is sold by the car factory at which the headlights bought from the optical-equipment factory were fitted;
- where the patented headlights or cars equipped with said headlights are stored by re-sellers;
- where the car is subsequently sold by said re-seller;
- where the car or separate headlights are sold via a network of chain stores or trading firms involved in selling wrecked cars, and previously used, but intact spare parts, etc.

62. Does the applicable law permit the patentee to introduce restrictions on importation or other distribution of the patented product by means of express notice on the product that can override the exhaustion doctrine adopted in the country?

☐ Yes
☐ No
X Uncertain

Please explain your answer by citing legal provision(s) and/or decision(s):

Answer 62:
Uncertain.

* Opinion of the Constitutional Court of the Russian Federation of October 16, 2001, No. 211-O, "On Refusal to Accept a Complaint by Munir Munibaevich Bikchantaev Regarding Infringement of his Constitutional Rights by Article 11(7) of the Patent Law of the Russian Federation". The text of the Opinion was not officially published.

63. Has the applicable exhaustion regime been considered adequate to meet the public policy objectives in your country? Please explain:

Answer 63:
At present, amendments to Article 1359 of the Code are being envisaged, in accordance with which importing on to the territory of the Russian Federation, use, offer for sale, sale, other form of introduction into civil circulation, or storage for such purposes of a product that incorporates the invention, not only where said product had previously been introduced into civil circulation within the territory of the Russian Federation by the patent holder, or by another person authorized by the patent holder, but also where the specified acts are performed without the patent holder's approval, but provided that said introduction into civil circulation was performed lawfully in the cases prescribed by the Code, shall not constitute an infringement of the exclusive right in an invention.

64. Which challenges, if any, have been encountered in relation to the practical implementation of the applicable exhaustion regime in your country? Please explain:

Answer 64:
Not applicable.

Section IX: Compulsory licenses and/or government use

Compulsory licenses

65. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 65:
Article 1362 of the Code stipulates that:
"1. If an invention fails to be used or is insufficiently used by the patent holder during the four years from the date of grant of the patent, which leads to insufficient offer of the relevant goods, works or services on the market, any person willing and ready to use such an invention, given the refusal of the patent holder to conclude with such a person a license agreement on terms corresponding to common practice, shall be entitled to initiate a legal action against the patent holder for the granting of a compulsory simple (non-exclusive) license for use of the invention within the territory of the Russian Federation.
In the claim, said person should indicate the proposed terms of the granting to him of such a license, including the scope of use of the invention, and the amount, procedure, and terms of payments.

If the patent holder is unable to prove that non-use or insufficient use by him of the invention was for valid reasons, the court shall rule on the granting of the license indicated in the first sub-paragraph of this Paragraph, and the terms of its granting. The total amount of payments for such a license should be prescribed in a court decision at a level not lower than the cost of a license determined under similar circumstances.
A compulsory simple (non-exclusive) license may be terminated by judicial procedure under a suit initiated by the patent holder if the circumstances that resulted in the granting of such a license cease to exist and their recurrence is unlikely. In that case, the court shall prescribe the time and procedure for termination of the compulsory simple (non-exclusive) license, and of the rights that arose under this license.
Granting in accordance with the rules of this Paragraph of a compulsory simple (non-exclusive) license for the use of an invention related to semiconductor technology shall be allowed exclusively for non-commercial use in State, social or other public interests, or in order to change the position which, in the due process, is deemed to be infringing the requirements of the anti-trust legislation of the Russian Federation.
2. If the patent holder cannot use the invention to which he has the exclusive right, without infringing thereby the rights of the holder of another patent (the first patent) for an invention, who has refused to conclude a license agreement on terms corresponding to common practice, the patent holder (of the second patent) shall be entitled to initiate court action against the holder of the first patent for the granting of a compulsory simple (non-exclusive) license for use of the invention of the holder of the first patent within the territory of the Russian Federation.
The terms of granting such a license proposed by the holder of the second patent, including the scope of use of the invention, and the amount, procedure, and schedule of payments should be indicated in the lawsuit. If this patent holder, enjoying the exclusive right in such a dependent invention, proves that it is an important technical achievement and has significant economic advantages over the invention of the holder of the first patent, the court shall rule on the granting of a compulsory simple (non-exclusive) license to him. A right obtained under this license to use the invention protected by the first patent may not be transferred to other persons except in case of alienation of the second patent.
The total amount of payments for said compulsory simple (non-exclusive) license should be determined in a court decision at a level not lower than the cost of a license determined in comparable cases.
In the case of the grant of a compulsory simple (non-exclusive) license in accordance with this Paragraph, the holder of the patent for the invention, the right to the use of which is granted on the basis of said license, shall also be entitled to obtain a simple (non-exclusive) license for use of the dependent invention, in relation to which a compulsory simple (non-exclusive) license had been granted on terms corresponding to common practice.
3. On the basis of the court ruling provided for by Paragraphs 1 and 2 of this Article, the federal executive authority for intellectual property shall effect State registration of the compulsory simple (non-exclusive) license."

66. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 66:
The Russian Federation uses a statute-based system of civil law (Continental or Romano-Germanic), and in this regard Russia has no case law.

67. What grounds for the grant of a compulsory license does the applicable law provide in respect to patents (please indicate the applicable grounds):

- X Non-working or insufficient working of the patented invention
- X Refusal to grant licenses on reasonable terms
- ☐ Anti-competitive practices and/or unfair competition

- ☐ Public health
- ☐ National security
- ☐ National emergency and/or extreme urgency
- X Dependent patents
- X Other, please specify:

Answer 67:
Among other conditions for the grant of compulsory licenses, Russian legislation provides for:
- insufficient supply of appropriate goods, works or services on the market as a result of the specified non-use (insufficient use);
- the willingness of any person to use the patented subject matter specified.

It should be noted that under Article 1362 of the Code, the grant of a compulsory simple (non-exclusive) license for use of relevant patented subject matter within the territory of the Russian Federation is effected by bringing a court action against the patent holder while satisfying all the conditions listed (except dependent patents) **simultaneously**.

68. (a) What are the public policy objectives for providing compulsory licenses in your country? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 68:
In patent law, compulsory licenses are due to the public interest, the interest of society in using the latest technology, the need for the development of science and technology in the interests of the whole of society, and the need to balance the interests of the patent holder and society.

In the Russian Federation, compulsory licensing is regarded as a limitation of the exclusive right in terms of freedom of disposal of that right. This is based on the provisions of Article 5 of the Paris Convention for the Protection of Industrial Property, in which the compulsory license is treated as a measure “to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent”.

The compulsory license has a distinct penal character, which *inter alia*, its name implies. A court decision therefore serves as the basis of this enforced contractual obligation.

The compulsory license defined in Article 1362 of the Code is directed against misuse of the exclusive right in an invention, and is granted in the public interest in favor of private individuals.

69. If the applicable law provides for the grant of compulsory licenses on the ground of “non-working” or “insufficient working”, please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

Answer 69:
The concepts of “insufficient working” and “established practice” are subjective, and where disputed, are subject in every specific case to proof in court by a person ready and willing to use the relevant technical solution.
Assessment of the degree of “non-working” or “insufficient working” is carried out by confirming that the patent holder has the necessary financial wherewithal, production facilities, raw materials, skilled workers, production and sales capacity, etc., to launch production.
Article 1362 of the Code also contains a number of terms which are subjective concepts and, in the event of a dispute, are subject to proof in court by persons requiring a compulsory license to be granted or terminated. Such terms include the following:
- “readiness to use” patented subject matter;

- "insufficient supply" of relevant goods (works, services) on the market;
- "legitimate reasons" for non-working or insufficient working of patented subject matter;
- "license cost determined under comparable circumstances";
- "circumstances justifying the grant of such a license shall cease to exist, and their recurrence is unlikely".

Thus, the readiness of a person requesting a compulsory license should be understood as having sufficient funds to carry out non-working (insufficient working) of subject matter (financial resources, availability of material resources, raw materials, skilled workforce, components, production facilities, etc.). Valid reasons for non-working (insufficient working) of patented subject matter might simply be arguments of a lawful nature (including legal, technical and economic), confirmed by competent authorities.

70. Does the importation of a patented product or a product manufactured by a patented process constitute "working" of the patent? Please explain your answer by citing legal provision(s) and/or decision(s):

Answer 70:
Yes, it does constitute "working of the patent".
Under Article 1358 of the Code, the importation of a product obtained directly by a patented process, constitutes use of an invention.

71. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide for a certain time period to be respected before a compulsory license can be requested?

X Yes
☐ No

If yes, what is the time period?

Answer 71:
Yes.
Article 1362 of the Code prescribes that this period is four years for an invention.

72. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide that a compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons?

X Yes
☐ No

If yes, what are "legitimate reasons"? .....

Answer 72:
Yes.
The issue of classifying the reasons for non-working or insufficient working as legitimate is assessed by a court according to the circumstances of the case. The patent holder must prove the legitimacy of the reasons which resulted in the non-working of the patented solution. Acceptance of this proof by the court involves rejecting the claim.

73. If the applicable law provides for the grant of compulsory licenses on the ground of refusal by the patentee to grant licenses on "reasonable terms and conditions" and within a "reasonable period of time", please provide the definitions given to those terms by citing legal provision(s) and/or decision(s):

Answer 73:
It follows from the contents of Article 1362 of the Code that where the invention or industrial design is not in use or is being insufficiently used by the patent holder within four years from the patent grant date, which results in insufficient supply of relevant goods, works or services on the market, any person ready and willing to use said invention upon the patent holder's refusal to conclude with said person a license agreement **on terms consistent with established practice,** shall be entitled to initiate a legal action against the patent holder for the granting of a compulsory simple (non-exclusive) license for use of the invention within the territory of the Russian Federation. In the claim, said person should indicate the proposed terms of the grant of such a license, including the scope of use of the invention, and the amount, procedure, and terms of payments.

74. If the applicable law provides for the grant of compulsory licenses on the ground of anti-competitive practices, please indicate which anti-competitive practices relating to patents may lead to the grant of compulsory licenses by citing legal provision(s) and/or decision(s):

Answer 74:
The applicable law does not provide for this.
Federal Law No. 135-FZ "On Protection of Competition" (as amended on November 29, 2010) is in force in the Russian Federation. In accordance with the provisions of Article 10(1), actions (lack of action) of an economic entity occupying a dominant position, which result or can result in prevention, restriction or elimination of competition, and (or) infringement of the interests of other persons are prohibited. Such actions include (subject to other conditions) withdrawal of goods from circulation, imposing contractual terms upon a counterparty which are unprofitable for that party, or unconnected with the subject of the contract, as well as consent to conclude a contract provided it includes provisions concerning goods in which the counterparty has no interest, and other requirements, and economically or technologically unjustified reduction or termination of the production of goods.

In principle, these actions might lead to inadequate supply of goods on the market, which is one of the conditions for the grant of a compulsory license. However, in accordance with Article 10(4), these requirements **do not apply** to actions for implementing exclusive rights in relation to the results of intellectual activity, i.e. the above provisions of the Federal Law "On Protection of Competition" **do not apply to patented inventions**.

In relation to the provision of Article 1362(1) of the Code, in accordance with which the grant of a compulsory simple (non-exclusive) license for the use of an invention related to semiconductor technology shall be allowed including in order to change the position which in the due process is deemed to be infringing the requirements of the anti-trust legislation of the Russian Federation, it should be noted that this infringement, taken separately, does not constitute grounds for granting a compulsory license. The other grounds listed in Article 1362(1) of the Code must also be present for a compulsory license to be granted.
As is well known, the patent form of protecting technical solutions is based on the social contract expressed in the Law. The inventor discloses the essential features of his technical solution, and in return society is obliged to refrain from using it for a certain period, during which the inventor can profit from the monopoly granted to him. In this case, the monopoly on using the technical solution restricts competition. Thus, the very essence of the patent form of protecting technical solutions presupposes restricting competition.
Russian legislation does not link the grant of compulsory licenses with the patent holder's actions which constitute unfair competition.

Russia's anti-trust authorities are not empowered to take decisions on the grant of compulsory licenses based on the results of reviewing cases on the infringement of legislation on the protection of competition. Compulsory licensing is not a way to counteract unfair competition in accordance with civil legislation and legislation on protection of competition.

In sum, the compulsory license is designed to prevent possible misuse of the exclusive right in order to maintain the balance of interests of the patent holder and society, and the grant of a compulsory license may not be the result of the patent holder performing actions that constitute unfair competition in the sense meant by the legislation on protection of competition.

75. If the applicable law provides for the grant of compulsory licenses on the ground of dependent patents, please indicate the conditions that dependent patents must meet for a compulsory license to be granted:

Answer 75:
The grant of a compulsory license in the case of the so-called dependent invention, where the patent holder may not use his patented invention without infringing in so doing the rights of the holder of another (preceding) patent for the invention or utility model, is traditionally included among the exceptions to the patent monopoly. The rules governing this case of compulsory licensing are provided for in Article 1362(2) of the Code, which coincide with the provisions of Article 31 of the TRIPS Agreement.
A compulsory simple (non-exclusive) license valid within the territory of Russia in the case of a dependent invention is granted by the holder of a patent for a dependent invention bringing a court action against the holder of the first (independent) invention, with the simultaneous presence of the following conditions:

- inability of the holder of the second patent to use his invention (dependent invention) without infringing the rights of the holder of the first patent for the invention or utility model;
- refusal of the holder of the first patent to conclude a license agreement with the holder of the second patent on terms consistent with common practice;
- proof in court by the holder of the second patent that his dependent invention constitutes an important technical achievement and enjoys significant economic advantages over the preceding patented invention or utility model.
- Compulsory licensing in the case of a dependent invention differs significantly form compulsory licensing in the case of non-working or insufficient working of patented subject matter. These two cases of compulsory licensing are united by the fact that underlying both is the patent holder's misuse of his exclusive right (patent monopoly). In the case of the dependent invention, misuse of the patent monopoly takes the form of the refusal of the patent holder, whose patent impedes the use of an important technical achievement for society, to conclude a license agreement with the patent holder for the dependent invention, which constitutes, in principle, a brake on the development of scientific and technical progress in the country.

76. Does the applicable law provide a general policy to be followed in relation to the remuneration to be paid by the beneficiary of the compulsory license to the patentee? Please explain:

Answer 76:
In accordance with Article 1362(2) of the Code, the total payment for a compulsory simple (non-exclusive) license should be prescribed in a court decision at a level no lower than the cost of a license determined under comparable circumstances.

77. If the applicable law provides for the grant of compulsory licenses on the ground of "national emergency" or "circumstances of extreme urgency", please explain how the

applicable law defines those two concepts and their scope of application, and provide examples:

Answer 77:
Russian legislation does not provide for the grant of compulsory licenses for the use of inventions in national emergencies. Legislation does not treat the use of an invention in such situations as an infringement of patent rights if the patent holder is notified of such use as soon as practicable, and is consequently paid commensurate compensation.

78. Please indicate how many times and in which technological areas compulsory licenses have been issued in your country:

Answer 78:
There is no jurisprudence relating to the review of specific cases on the grant of compulsory licenses in Russia at present.

79. Is the applicable legal framework for the issuance of compulsory licenses considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 79:
Yes. The provisions regulating the procedure for the grant of compulsory licenses currently appear to be sufficiently enshrined in legislation.

80. Which challenges, if any, have been encountered in relation to the use of the compulsory licensing system provisions in your country? Please explain:

Answer 80:
Not applicable.

Government use

81. If the exception is contained in statutory law, please provide the relevant provision(s):

Answer 81:
Article 1360 of the Code provides the Government of the Russian Federation with the right to allow use of an invention without the consent of the patent holder in the interests of defense and security, whilst notifying him of such use in the shortest possible time, and compensating him commensurately.

82. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

Answer 82:
The Russian Federation uses a statute-based system of law (Continental or Romano-Germanic), and in this regard Russia has no case law.

83. What grounds for the grant of government use does the applicable law provide in respect to patents (please indicate the applicable grounds):

- ☐ Non-working or insufficient working of the patented invention
- ☐ Refusal to grant licenses on reasonable terms
- ☐ Anti-competitive practices and/or unfair competition

- ☐ Public health
- X National security
- ☐ National emergency and/or extreme urgency
- ☐ Dependent patents
- X Other, please specify: …….

Answer 83:
From the list, restrictions on civil rights in the Russian Federation are due to **national security** and **defense interests**.

Under Federal Law No. 390-FZ of December 28, 2010 “On Security”, security means the state of protection of the vital interests of the individual, society and State from internal and external threats. It is achieved by pursuing a single State policy, a system of economic, political, organizational and other measures adequate in the face of threats to the vital interests of the individual, society and the State.

Using patented subject matter in the interests of national security is not in the public interest (in the broadest sense), but in the interests of the State, which are only indirectly linked to the public interest.

Using subject matter in the interests of national security means a permanent limitation of exclusive rights. In essence, this is reminiscent of compulsory licensing; even specialists have been of the opinion that taking a decision on using subject matter in the interests of national security should precede the patent holder’s refusal to conclude a license agreement in the overall process.

Patented subject matter is used in the interests of national security on a non-contractual basis: the patent holder does not give permission to use the subject matter (and the court does not compel the patent holder to give his consent), but the State. Moreover, permission to use the patented subject matter in the interests of national security without the patent holder’s agreement- the latter only being notified of the granting of permission in the shortest possible time.

In general, the provisions on exceptions in the interests of national security are aimed solely at the granting of permission to use, but not at exercising compulsory alienation of patent rights.

In accordance with Federal Law No. 61-FZ of May 31, 1996 “On Defense”, defense means a system of political, economic, military, social, legal and other measures to prepare for armed defense, and armed defense of the Russian Federation, and the integrity and inviolability of its territory.

The legislator has not prescribed any real-life situations relating to exceptions in the interests of the defense of the country. Likewise, the legislator has not prescribed any particular way of notifying the patent holder that permission to use the relevant patented subject matter has been granted, as well as the amount of compensation and payment procedure.

The Russian model of using the patent-protected results of intellectual activity in the interests of defense and security is based on a simple, official license.

84. (a) What are the public policy objectives for providing government use in your country?
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

Answer 84:

85. If the applicable law provides for the grant of government use on the ground of “national emergency” or “circumstances of extreme urgency”, please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

Answer 85:
The exception relating to use of the invention in emergencies is stipulated in Article 1359 of the Code, but does not limit the number of persons entitled to said exception.

In accordance with Article 1 of Federal Law No. 68-FZ of December 21, 1994 “On Protecting Populations and Territories from Natural and Man-Made Disasters”:
*__emergency-__ this is a situation in a particular territory that has a risen as a result of an accident, natural hazard, disaster, natural or other disaster that might cause or has caused human casualties, damage to public health or the environment, significant financial losses, and disruption to everyday human life.

86. Please indicate how many times and in which technological areas government use has been issued in your country:

Answer 86:
There have been no cases of such use.

87. Is the applicable legal framework for the issuance of government use considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

Answer 87:
Yes. The legal framework is considered adequate to meet the objectives sought.

88. Which challenges, if any, have been encountered in relation to the use of the government use mechanism in your country? Please explain:

Answer 88:
Not applicable.

Section X: Exceptions and limitations related to farmers’ and/or breeders’ use of patented inventions

Farmers’ use of patented inventions

89. If the exception is contained in statutory law, please provide the relevant provision(s):

90. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

91. (a) What are the public policy objectives for providing the exception related to farmers’ use of patented inventions? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

92. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

93. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

94. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to farmers' use of patented inventions in your country? Please explain:

Breeders' use of patented inventions

95. If the exception is contained in statutory law, please provide the relevant provision(s):

96. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

97. (a) What are the public policy objectives for providing the exception related to breeders' use of patented inventions? Please explain:
(b) Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

98. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

99. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

100. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to breeders' use of patented inventions in your country? Please explain:

Questions 89-100 remain unanswered, as the legal relations referred to in the section title on the use of patented inventions by farmers and breeders are not governed by patent law in the Russian Federation.

Section XI: Other Exceptions and Limitations

101. Please list any other exceptions and limitations that your applicable patent law provides:

Answer 101:
Civil legislation of the Russian Federation provides for limitations of exclusive rights while performing duties and contracted work. Exceptions are set out below:
*where an employee (author) obtains a patent for a service invention as a result of his employer transferring patent rights to him, the employer shall be entitled to use said invention in his own business under a simple (non-exclusive) license (Article 1370(4) of the Code);
*where an employee (author) has obtained a patent for an invention created by the employee

using financial, technical, or other tangible assets of the employer, but not in the course of his employment duties or of a specific task set by the employer, the employer shall be entitled to demand the grant of a free-of-charge, simple (non-exclusive) license to use the invention for his own needs (Article 1370(5) of the Code);
*where a patent for an invention created in performing a contract or in undertaking scientific research and development or technological work, which did not specifically envisage its creation, is obtained by the contractor (the performer), the customer shall be entitled to use said invention for the purposes for which the relevant contract was concluded under a simple (non-exclusive) license without payment of supplementary remuneration, unless the contract provides otherwise (Article 1371(1) of the Code);
*where a patent for an invention created in performing a subcontract or in undertaking scientific research and development or technological work, belongs to the customer or third party designated by him, the contractor (performer) shall be entitled to use the invention created for his own needs under a free-of-charge, simple (non-exclusive) license (Article 1371(2) of the Code);
*where an invention is created while performing work under a State or municipal contract, a free-of-charge, simple (non-exclusive) license for performing work or supplying products for State or municipal needs, may be granted by the State or municipal customer, or at their demand, to a designated third party (Article 1373(4) and (5) of the Code);
*where an invention is used in emergencies (natural disasters, calamities, accidents), provided that the patent holder is notified as soon as possible of such use and he is remunerated commensurately (Article 1359(3)).

102. In relation to each exception and limitation, please indicate:

(i) the source of law (statutory law and/or the case law) by providing the relevant provision(s) and/or a brief summary of the relevant decision(s):

Answer 102:

A. According to Article 1370(4) and (5) of the Code (Service Invention):
"4. In the absence in the contract between the employer and employee of the provisions to the contrary (Paragraph 3 of this Article), the employee should notify the employer in writing of the creation while performing his employment obligations, or a specific task set by the employer, of any results which are patentable.
Where, within four months from the date of notification by the employee, the employer fails to file an application for the grant of a patent for the relevant service invention with the federal executive authority for intellectual property (Rospatent), fails to transfer the right to obtain a patent for a service invention to another person, and fails to inform the employee about keeping information on the relevant result of intellectual activity secret, the right to obtain a patent for said invention shall belong to the employee. In this case, the employer shall be entitled to use the service invention in his own business during the patent's term of validity under a simple (non-exclusive) license, and pay remuneration to the patent holder, the amount, terms, and payment method of which shall be determined by a contract between the employee and the employer, and where disputed, settled by a court.
If the employer obtains a patent for a service invention, or takes a decision to keep information on said invention confidential, and informs the employee of this, or transfers the right to obtain a patent to another person, or fails to obtain a patent on the basis of the application filed by him due to reasons for which he is responsible, the employee shall be entitled to remuneration. The amount of remuneration, the terms, and the procedure for payment by the employer shall be determined by a contract between him and the employee, and, in case of dispute, settled by a court.
The Government of the Russian Federation shall have the right to establish minimum rates of remuneration for service inventions.

5. An invention created by an employee using the employer's financial, technical, or other tangible assets, but not in the course of his employment duties or a specific task set by the employer, shall not be deemed a service invention. The right to obtain a patent and the exclusive right in such an invention shall belong to the employee. In this case, the employer shall be entitled of his own choosing to demand the grant of a free-of-charge, simple (non-exclusive) license for using the result of intellectual activity created for his own needs during the exclusive right's whole period of validity, or to reimbursement of the costs incurred by him in connection with the creation of such an invention."

B. Under Article 1371 of the Code (Invention Created in Performance of Work under a Contract):

"1. Where an invention is created in performing a subcontract or a contract for undertaking scientific research and development or technological work, which did not specifically envisage its creation, the right to obtain a patent and the exclusive right in said invention shall belong to
the contractor (the performer), unless the contract between him and the customer provides otherwise.
In this case, the customer shall be entitled, unless otherwise provided by the contract, to use the invention created in such a manner for the purposes for which the relevant contract was concluded, under a simple (non-exclusive) license for the whole patent validity term without payment of supplementary remuneration for said use. In case of transfer by the
contractor (performer) of the right to obtain a patent, or alienation of the patent as such to another person, the customer shall retain the right to use the invention on the aforesaid terms.
2. Where, under a contract between a contractor (performer) and a customer, the right to obtain a patent or an exclusive right in an invention has been transferred to the customer or to a third party designated by him, the contractor (performer) shall be entitled to use the created invention for his own needs under a free-of-charge, simple (non-exclusive) license for the whole patent validity term, unless provided otherwise by the contract."

C. Under the provisions of Article 1373 of the Code (Invention Created in Performance of Work under a State or Municipal Contract):

"4. Where a patent for an invention created in performing work under a State or municipal contract for State or municipal needs, does not belong under Paragraph 1 of this Article to the Russian Federation, a subject of the Russian Federation, or a municipality, the patent holder, at the behest of the State or municipal customer, shall be obliged to grant to the person designated by it a free-of-charge, simple (non-exclusive) license to use the invention for State or municipal needs.
5. Where a patent for an invention created in performing work under a State or municipal contract for State or municipal needs is obtained jointly in the name of the performer and the Russian Federation, or of the performer and a subject of the Russian Federation, or of the performer and a municipality, the State or municipal customer shall be entitled to grant a free-of-charge, simple (non-exclusive) license to use such an invention in order to perform work or supply products for State or municipal needs, after notifying the performer to this effect.

D. Under Article 1359(3) of the Code (Acts which do not Infringe the Exclusive Right in an Invention):

"using an invention, utility model, or industrial design in emergencies shall not constitute an infringement of the exclusive right in an invention, (natural disasters, calamities, accidents), provided that the patent holder is notified of such use as soon as possible, and is subsequently paid commensurate compensation."

(ii) the public policy objectives of each exception and limitation. Where possible, please explain with references to the legislative history, parliamentary debates and court decisions:

A. Article 1370 of the Code specifies the legal regime of the service invention, created during the performance of employment obligations, or a specific task set by the employer (within the framework of official duties), during the period of employment. In this Article, the enshrinement of the employer's exclusive rights in the service invention is presumed. Similarly, the right to obtain a patent belongs to the employer. Unless the author's rights in the service product are specified in the employment contract, then he has agreed to cede these rights to the employer.
One of the conceptual provisions of the Code is the enshrinement of the initial exclusive right in the result of intellectual activity created by creative work for its author (Article 1228(3) of the Code). This is particularly important for relations associated with a service product, the exclusive rights to which are transferred to the employer under an employment contract.

The contents of the Article imply that unless the administration, upon notice from the author, perform the appropriate acts demonstrating its commitment to securing the rights in the innovation created by the employee, the author's initial right in the unclaimed service product or invention shall be reinstated, and he may file a claim himself and obtain a patent on his own behalf, or assign the right therein to another person. In this case, the employer obtains the right to use the patented solution in his own business only under a simple license (i.e. without the right of disposal), upon payment of monetary compensation to the patent holder (the author or his successor).
Rights to obtain a patent are not transferred automatically to the employer (by virtue of the employment contract), but only when he precisely expresses his will to use the protected solution or to keep it secret.

B. Rights to so-called custom development, during the course of which new patentable solutions might be obtained, are discussed in Article 1371 of the Code.
At present, the volume of the latest scientific and technical developments performed under civil contracts is increasing in the Russian Federation, without raising funds from the federal or municipal budget, so therefore the enshrinement of these legal relations in legislation is important.
Provisions contained in the Code on governing the conditions for securing exclusive rights in the protected results of contractual work and research and development are optional in nature. The parties themselves must agree in the contract the essential issues for these relations, including deciding who will own the right to obtain a patent and the exclusive right in patentable results, the extent to which each party may use the results obtained and dispose of rights obtained, etc. Unless the parties include appropriate conditions in the contract, the relationship of the parties will be governed by the Code, whose purpose is to fill the gap resulting from the usual terms of disposal of exclusive rights to new developments prevailing in civil circulation. Securing the right to obtain the patent, and the exclusive right for the performer of works, is presumed. However, in this case, the customer is guaranteed the right to use patented contractual results for those purposes for which the contract had been concluded, under a "free-of-charge, simple license (i.e. without any additional payment, and without the right of disposal)."
Where the exclusive right has been secured for the customer, then the performer retains the right to use patented results for his own needs, likewise under a free-of-charge, simple license.

C. Article 1373 of the Code concerns State and municipal contracts. It is established that unless a State customer, on concluding a contract, secures the right to obtain a patent and the exclusive right in an invention, which may have been created while performing contractual work, for the Russian Federation, subject of the Russian Federation, or municipality, then said rights are assigned to the performer of the work.

D. Use of patented subject matter, e.g. an invention, in emergencies, has its own peculiarities:
*firstly, it is applied spontaneously (natural disasters, calamities, and accidents cannot be predicted);
*secondly, by any entity which remediates the impact of emergencies;
*thirdly, is short-term in nature (until remediation of an emergency's impact).

This exception to the patent holder's exclusive right can be explained by the importance of using the invention urgently in the public interest in emergencies, where it is essential to prevent or remediate the impact of a natural or other disaster. This exception to the exclusive right therefore only concerns emergencies, and does not extend to any other disasters or accidents. The public shall be informed of the emergency, for whatever reason, either by the specific country's State authorities, or by the international organizations providing assistance in such situations.

(iii) The entitlement and the scope of the exception and limitation by citing legal provision(s) and/or decision(s):

It would seem that the answer to this question follows on from the answers provided in relation to situations (i) and (ii) in question 102.

In addition, in relation to each exception and limitation, please explain:

(i) whether its applicable legal framework is considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen?):

At present, it appears that the existing legal framework is adequate to govern legal relations in the area of creating inventions in the performance of duty, and in the performance of work under contract.

(ii) if there have been any challenges encountered in the practical implementation of the exception in your country:

Not applicable.

103. If other mechanisms for the limitation of patent rights external to the patent system exist in your country (for example, competition law), please list and explain such mechanisms:

Answer 103:
Not applicable.

[End of Questionnaire]