

(i) A Draft Reference Document on the Exception Regarding Farmers' and/or Breeders' use of Patented Inventions

**Chapter 72 "Patent Law"** of the Civil Code of the Russian Federation (Civil Code), governing the provision of legal protection to inventions and their utilization, does not contain specific provisions on exceptions concerning the use of patented inventions for agricultural and/or breeding purposes.

However, under Article 1359 of the Civil Code, agricultural producers and breeders, like other parties, may perform the following actions with respect to patented inventions without infringing patent rights:

- conducting scientific research on a product or method that incorporates the invention, or performing experiments with such products or methods (Article 1359 (2));
- using the invention to satisfy private, family, household or other needs not related to entrepreneurial activity, provided that such use is not intended to generate profit or income (Article 1359(4)).

Article 1422 of the Civil Code (**Chapter 73 "Right to Breeding Achievements"**) specifies a list of actions that do not violate the exclusive right to a breeding achievement:

- activities to satisfy private, family, household, or other non-commercial needs, provided the purpose is not profit;
- actions performed for scientific research or experimental purposes;
- use of a protected breeding achievement as source material for creating other plant varieties and animal breeds, as well as actions with respect to such newly created varieties and breeds specified in Article 1421(3) (see below), except for cases provided for by Article 1421(4) (see below);
- use of plant propagation material obtained on a farm within two years as seeds for cultivating plant varieties, specified in the list of genera and species established by the Government of the Russian Federation, on the territory of that farm. This provision applies to individual entrepreneurs and legal entities classified as small and medium-sized businesses under the law, and to citizens;
- reproduction of farm animals for their use within the same farm;
- any actions with seeds, plant propagation material, breeding material and farm animals that have been introduced into the market by the patent holder or by another person with the patent holder's consent, except for the following cases:
  - subsequent propagation of plant varieties and animal breeds;

- export from the territory of the Russian Federation of plant propagation material or farm animals, that allows propagation of a plant variety or animal breed, to a country where the relevant genus or species are not protected, except for export for processing for subsequent consumption.

Under Article 1421(3), the following actions with seeds and breeding material shall be considered as use of a breeding achievement:

- production and reproduction;
- preparation for sowing conditions for subsequent propagation;
- offering for sale;
- sale and other commercial distribution;
- export from the Russian Federation;
- import into the Russian Federation;
- storage for the purposes mentioned in points from 1. to 6. above.

Under Article 1421(4), the exclusive right to a breeding achievement also covers seeds and breeding material that:

- are essentially derived from other protected (original) plant varieties or animal breeds, if these protected varieties or breeds are not themselves breeding achievements that are essentially derived from other breeding achievements;
- are not clearly distinct from protected plant varieties or animal breeds;
- require repeated use of a protected plant variety for seed production.

Article 1421(4) also defines what is meant by a breeding achievement that is essentially derived from another protected (original) breeding achievement.

## (ii) Study on Substantive and Procedural Requirements Regarding Voluntary Division of Patent Applications by Applicants

Under Article 4(G)(1) of the Paris Convention (to which the Russian Federation is a Contracting Party), if the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any. The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

Articles 1384(4) and Article 1386(6) of the Civil Code allow filing of a divisional application where an invention application was filed in violation of the unity of invention requirement. If the examination reveals that the application was filed in violation of this requirement, the applicant is invited to indicate which of the claimed inventions should be considered and, if necessary, to make changes to the application within a three-month period from the date of the relevant notification. In this case, separate applications (divisional applications) may be filed for other inventions claimed in the application, of which the applicant is also informed.

The Civil Code does not prohibit division of an application at the initiative of the applicant. At the same time, the legislation of the Russian Federation does not contain any special procedural requirements regarding the voluntary division of patent applications by the applicants.

Under Article 1363(1) of the Civil Code, the exclusive right to a patentable subject matter, including an invention, and the patent certifying this right, issued on the basis of a divisional application, is valid from the date of filing the initial application if the requirements established by the Civil Code are met.

Article 1381(4) establishes the conditions for claiming priority based on a divisional application. The priority of a patentable subject matter in a divisional application is determined by the filing date of the original application filed by the same applicant with Rospatent and disclosing that patentable subject matter. If there is a right to claim an earlier priority for the original application, the priority date of the divisional application shall correspond to that earlier priority date. A key condition for establishing priority is that, as of the filing date of the divisional application, the original application for the patentable subject matter (including the invention) must not have been withdrawn or rejected. Additionally, the divisional application must be filed before either:

- the exhaustion of the opportunity provided by the Civil Code to file an objection to a refusal on the original application; or
- the registration date of the patentable subject matter (including the invention), if a decision to grant a patent has been issued for the original application.

Under Paragraph 52 of the Rules for Drafting, Filing, and Examining Documents Substantiating Legally Significant Actions for the State Registration of Inventions (Rules), approved by Order No. 107 "On the State Registration of Inventions" of the Ministry of Economic Development of the Russian Federation dated February 21, 2023, when claiming priority based on a divisional application, Rospatent examines whether the claimed invention is disclosed in the original application. If the divisional application is derived from a

convention application and priority is claimed based on its priority date, it must also be verified whether the claimed invention is disclosed in the first (convention) application.

Paragraph 15 of Section 4 of Part 2 of the Guidelines for the Administrative Procedures and Actions in the Provision of the Public Services for the State Registration of Inventions, and the Issuance of Patents for Inventions, and Their Duplicates (approved by Order No. 236 of Rospatent dated December 27, 2018) contains a reservation that a divisional application may not be identical to the original application.

**(iii) Document updating Sections V and VI of Annex to document SCP/35/7 (Artificial Intelligence (AI) and Inventorship)**

- Section V: National/Regional Legal Frameworks Regarding the Concept of Inventorship

The following information may be added to paragraphs 34 and 35 of Sub-section **A. INVENTOR'S RIGHT TO A PATENT**:

34.

In the Russian Federation the exclusive right to a result of intellectual activity created through creative work initially vests in its author (Article 1228(3) of the Civil Code). Pursuant to Article 1357(1) of the Civil Code, the right to obtain a patent for an invention initially belongs to its author. At the same time, such right may pass to another person (legal successor) or be transferred to such person in cases and on the grounds provided by law, including through universal succession or under a contract, including an employment contract (Article 1357(2) of the Civil Code).

35.

In the Russian Federation, special legal regimes apply where an invention is created by an employee in line of his/her employment duties, or when work is performed under a contract, or when work is carried out under a State or municipal contract (Articles 1370, 1371, and 1373 of the Civil Code).

The following information may be added to Sub-section **B. MORAL RIGHTS**:

Article 1356 of the Civil Code of the Russian Federation establishes that the right of authorship (i.e., the right to be recognized as the author of an invention<sup>1</sup>) is inalienable and

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<sup>1</sup> The legislation of the Russian Federation exclusively uses the term "author of an invention". It does not use the term "inventor", even though the meanings of the two terms may overlap in general discourse. This distinction is codified in Article 1345 of the Civil Code of the Russian Federation, which defines the author as the natural person whose creative efforts resulted in the invention.

non-transferable, including in cases where the exclusive right to the invention is transferred to another party or when another party is granted the right to use the invention. Any waiver of this right is void. In case of inventions, the information about the author(s) must be included in the patent application (Article 1375(2) of the Civil Code) and in the patent itself, which, among other things, certifies the authorship of the invention (Article 1354(1) of the Civil Code). This information is also disclosed when publishing details about the patent application and the patent granted.

At the same time, the author of the invention retains the right to decline being identified as such in publications related to the patent application or the issuance of the patent (Article 1385(1) and Article 1394(1) of the Civil Code).

The following information may be added to paragraph 75 of Sub-section **D. DETERMINATION OF AN "INVENTOR"**:

Under the legislation of the Russian Federation, individuals who have not made a personal creative contribution to the creation of a result of intellectual activity (including an invention) shall not be recognized as authors. This exclusion applies to:

- persons who provided only technical, consultative, organizational, or material assistance to the author;
- those who merely facilitated the formalization of rights to such result or its use;
- individuals who supervised the execution of the relevant work.

This provision is codified in Article 1228(1) of the Civil Code of the Russian Federation.

The following information may be added to paragraphs from 76 to 83 (addressing the criteria for determining co-authorship in different countries) of Sub-section **E. ESTABLISHING JOINT INVENTORSHIP**:

In the Russian Federation, citizens who created an invention through joint creative work are recognized as co-authors (Article 1348(1) of the Civil Code of the Russian Federation).

The following information may be added to paragraphs from 90-93 (addressing the middle-ground position) of the same Sub-section:

In the Russian Federation, each co-author is entitled to use the invention at their discretion, unless otherwise provided by an agreement among them (Article 1348(2) of the Civil Code). However, the right to obtain a patent for the invention is managed jointly by the authors. Article 1229(3) of the Civil Code applies to the relations among co-authors concerning the distribution of income from the use of the invention and the management of the exclusive right to the invention and specifies that:

- the exclusive right to the invention is exercised jointly, unless otherwise stipulated by the Civil Code or an agreement between the co-authors;
- income derived from the joint use of the invention or the joint disposal of the exclusive right is distributed equally, unless otherwise agreed by the co-authors who are the rights holders.

At the same time, each co-author may independently take measures to protect his/her rights to the invention.

The following information may be added to paragraph 97 of Sub-section **F. EMPLOYEE INVENTORS**:

In the Russian Federation, the right to obtain a patent and the exclusive right to an invention created under a contract for work or a contract for scientific research, experimental design, or technological work, which did not explicitly provide for its creation, belong to the contractor (executor), unless otherwise stipulated by the agreement between the contractor and the customer (Article 1371(1) of the Civil Code).

Similarly, the right to obtain a patent and the exclusive right to an invention created under a contract for the State or municipal needs belong to the executor of the contract, except in cases provided for by the Civil Code (Article 1373(1)).

At the same time, the author of the invention, if not the patent holder, is entitled to remuneration (Article 1371(3) and Article 1373(6) of the Civil Code).

The same Sub-section F may be supplemented with the information addressing the approach applicable when an employer, who obtained a patent for a service invention in its own name, decides to terminate the patent prior to its expiration.

Under Article 1370(4)(1) of the Civil Code, if an employer, who holds a patent for a service invention, decides to terminate the patent early, it is obligated to:

- notify the employee (the author of the invention); and
- upon the employee's request, transfer the patent to the inventor on a gratuitous basis.

The transfer of the exclusive right is formalized through a gratuitous alienation agreement. At the same time, the author of invention retains the right to file a lawsuit if:

- the employer refuses to conclude the gratuitous alienation agreement; or
- the employer fails to respond to the inventor's written proposal to conclude such an agreement within the statutory timeframe.

Additionally, if the employer fails to notify the author of the early termination of the patent, the inventor may sue the employer to compel the filing of a petition for patent reinstatement at the employer's expense.

Paragraphs 110 and 113 of Sub-section **G. LEGAL CONSEQUENCES OF INACCURATE DESIGNATION OF INVENTORS** may be supplemented with the following information:

110.

In the Russian Federation, changes may be made to the list of authors, specified in a patent application, prior to the State registration of the invention (paragraph 4(9) and paragraph 5(6) of the Rules for Drafting, Filing, and Examining Documents Substantiating Legally Significant Actions for the State Registration of Inventions, approved by Order No. 107 of the Ministry of Economic Development of the Russian Federation dated February 21, 2023). This requires documentary evidence of consent to the change in authorship, signed by all individuals previously listed as authors and those newly added. Such documentation must confirm:

- the absence of disputes among individuals previously listed as authors and those newly added;
- the revised list of authors;
- information about their creative contribution to the creation of the invention.

113.

Under Article 1398(1)(5) of the Civil Code of the Russian Federation, an invention patent may be declared invalid if it:

- identifies a person as the author of the invention or patent holder who is not entitled to such status under the Civil Code; or
- fails to identify a person as the author or patent holder in accordance with the Civil Code.

Under Article 1398(2) and 1406(1)(1) and (2) of the Civil Code, a judicial procedure is established for challenging the patent on these grounds.

(iv) Compilation of legislative and policy measures adopted by Member States relating to Standard Essential Patents to be presented on a dedicated page of the SCP website

Regarding the standard-essential patents, there are no specific legislative acts or judicial precedents in the Russian Federation.

At the same time, matters related to the development and approval of national standards (including those involving the inclusion of provisions on the use of patented subject matter) are governed by the National Standard of the Russian Federation GOST R 1.2-2020 "Standardization in the Russian Federation. National Standards of the Russian Federation. Rules for Development, Approval, Updating, Amendment, and Cancellation" (GOST) that was approved and enacted by Order No. 328-st of the Federal Agency on Technical Regulating and Metrology dated June 30, 2020.

According to paragraph 4.3.1 of the GOST, the requirements and rules set forth in the national standard must not alter the rights of participants in civil law relations established by the legislation of the Russian Federation or regulations of federal executive authorities.

Paragraph 4.3.6 of the GOST establishes requirements for including provisions on the use of patented subject matter, including inventions, in draft national standards. Under these requirements, the standard developer must:

- disclose information about patents owned by the developer that are used in the standard;
- disclose information about third-party patents known to the developer that are used in the standard;
- ensure royalty-free licensing of patents to comply with the standard's requirements.

At the same time, the standard must not include provisions on the use of subject matter protected by a patent unless the patent holder (licensor) has granted prior consent to license the patent on a royalty-free basis to fulfill the standard's requirements.

Information about the use of patented subject matter in the standard must be provided in the standard's foreword and the explanatory note to the draft national standard.

Disputes in this regard are resolved in accordance with the legislation of the Russian Federation and based on compliance with the goals and objectives of standardization.