

Background Paper on the Zero Remuneration Rate

Under Article 1358 of the Civil Code of the Russian Federation, the exclusive right to use an invention, utility model or industrial design belongs to the patent owner.

The use of the patented object without the rightsholder's consent is possible in circumstances specified in the Civil Code. According to Article 1360 of the Civil Code, the Government of the Russian Federation has the right, in case of emergency related to defense and security of the State, protection of citizens' lives and health, to decide to use an invention, utility model or industrial design without the rightsholder's consent, notifying the owner of such a decision as soon as possible and paying him adequate compensation. This legal mechanism is based on international agreements of the Russian Federation, in particular, on the TRIPS Agreement (Article 30).

Decree No. 1767 of the Government of the Russian Federation dated 18 October 2021 approved the methodology for determining the remuneration payable to the rightsholder when the Government decides to use an invention, utility model or industrial design without the owner's consent, and the procedure for its payment (hereinafter referred to as the Methodology). Paragraph 2 of the Methodology specifies that the remuneration shall amount to 0.5% of the actual income of the person who has exercised the right to use an invention, utility model or industrial design without the rightsholder's consent. This percentage is based on the produced and sold goods, works performed or services provided using the relevant invention, utility model or industrial design.

Decree No. 299 of the Government of the Russian Federation dated 6 March 2022 amended the Methodology in terms of remuneration payable to the rightsholders associated with foreign states. Under the updated provisions, such a remuneration amounts to zero if the rightsholders commit unfriendly actions against Russian legal entities or natural persons.

The current procedure for restricting patent rights under Article 1360 of the Code does not imply the free use of patented objects without the rightsholder's consent. The Government of the Russian Federation may decide to use an invention, utility model or industrial design without the rightsholder's consent in case of emergency and under the necessary conditions in accordance with international agreements of the Russian Federation. This mechanism is introduced not only in the Russian legislation, but it is also implemented in other States.