



Development of intellectual property laws for the Russian Federation

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ABSTRACT

In most industrialized nations, the concept and body of intellectual property laws is well into its third century of development and testing. The Russian Federation, however, has created and implemented an entirely new body of intellectual property law since the collapse of the Soviet Union in 1992. As American and other western firms work with the Russian Federation as a supplier and customer, they must recognize that the new nation has abandoned a legal philosophy denying the existence of intellectual property in favor of intellectual property laws recognizing and favoring private development and ownership of such property. This paper examines the Russian intellectual property laws and points out adaptations that western nations should make when dealing with similar entities in the Russian Federation. The study assumes familiarity with Russian history, language, and geography. A caution to domestic firms is that they should retain experienced legal counsel to deal with negotiations and contracts with Russian business interests.

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1. Introduction: The Russian Federation, an overview

The Russian Federation is the successor nation of the Russian Soviet Federated Socialist Republic (RSFSR) which ceased to exist in January 1992. The Federation is a republic and federal rule-of-law state with a judicial commitment to the principles of democracy. The nation is known both as the Russian Federation and Russia and the names are used interchangeably. The Russian Federation is a member of the Commonwealth of Independent States (CIS), which includes ten nations not members of the Russian Federation. Together, they seek to develop an economic community coordinating economic policy to ultimately result in a free-market system.

By the terms of its Constitution, the Russian Federation includes republics, territories, regions, federal cities, an autonomous region, and autonomous areas, each of which is an equal subject of the federation. They total 84 entities. Each republic in the federation has its own constitution and legislative, judicial, and executive branches much as do the States of the USA, and possesses a substantial degree of political and economic independence. The other entities in the federation are somewhat less independent than the republics, with individual charters and legislation but not a separate constitution. (Constitution of the Russian Federation, Sec. 1, Ch. 1, Art. 5 et seq.)

The terms of the Russian Federal Constitution and federal legislation pre-empt the laws of federation member entities when the two conflict. The federal government possesses executive, judiciary, and legislative branches. The executive is led by the

President, who is officially Chief of State. Its other members are the Chairman of the Government (Head of Government or Prime Minister); Deputy Chairmen of the Government; and other Ministers, all of whom together comprise the Cabinet. There are other specialized branches of the executive such as the Presidential Administration (provides staff and policy assistance to the President) and the Security Council (coordinates matters of national security and reports to the President).

The judicial branch of the Federation government includes the Constitutional Court, the Supreme Court, the Supreme Court of Arbitration, and the Prosecutor-General's Office. Judges for all courts are appointed for life by the Federation Council on the nomination of the President.

The Russian legislature consists of two houses, the Duma (*Gosudarstvennaya Duma*) and the Federal Council (*Sovet Federatsii*). Together they are called the Federal Assembly. The Duma has 450 seats, elected on the basis of population from the various entities of the federation. The Council has 168 seats, two from each of the 21 Russian republics, 47 territories, 8 regions, 2 federal cities, 5 autonomous areas, and 1 autonomous region. (This section from the Constitution of the Russian Federation, in gross).

2. The Russian legal system

The Russian legal system is a civil (code) system which provides for judicial review of statutory law. The civil system of law, typical in much of the non-British-influenced part of the Western world, does not allow for law to be made in the courtroom but only by statute, and previous judicial decisions by themselves cannot be cited as precedent for subsequent decisions. Judicial review is designed to assure that the

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laws themselves are consistent with the thrust of the code in which they are embodied. Thus, a law may be declared unconstitutional by the appropriate court, but the interpretation of law as to the meaning is reserved solely to the Supreme Court of the Federation.

The US legal system in general follows the British model, generally known as Common Law, which allows courts at the federal level and in most of the states to interpret the law in reaching decisions. Three US states, California, Louisiana, and Hawaii, however, are Code Law states. All have a civil system of law that applies within them to the extent that their laws do not conflict with the US federal Constitution. Thus, the code system of law is not totally foreign to US jurisprudence because of its presence in those three states.

The Russian judiciary is composed of three parts: first, there is the regular court system (the courts of general jurisdiction) with its capstone being the Supreme Court; second, there are the courts of arbitration capped by the Supreme Court of Arbitration; and finally, there is the Constitutional Court, a single unit with no other courts in its ambit. Each of these three elements of the judiciary has its own subject-matter jurisdiction. The Constitutional Court, for example, is the court of constitutional review. That is its sole area of responsibility and it is the only court in the federation with the authority to nullify a statute by declaring it unconstitutional.

The courts of arbitration handle disputes between business entities. The Supreme Court of Arbitration is the highest court of appeal in this area of law. If, however, a legal dispute involves a business entity and at least one private citizen who are not involved in the business activities that gave rise to the dispute, then the courts of general jurisdiction are responsible for the adjudication.

The Supreme Court cannot nullify legislation, but it can interpret legislation as to meaning. The Supreme Court also guides the courts of general jurisdiction on specific matters of law and procedure. Decisions on these matters by the Supreme Court bind the lower courts and administrative agencies and also state officials who deal with the matters decided by the Court.

3. Intellectual property in Russia: history of the issue

The Constitution of the Russian Federation (For direct citation of this document, refer to <http://www.constitution.ru/en/1000-3000-3.htm>) replaces the Constitution of the Russian Soviet Federated Socialist Republic of 1978. As such, it is a far more democratic document on its face than its predecessor. It has no fewer than 47 articles (Constitution of the Russian Federation, Sec. 1, Ch. 2, Arts. 17–64) dealing with the human rights guaranteed by the document.

The history of Russian intellectual property rights follows the general western-European developmental history of such rights, albeit lagging the thrust of similar legislation by perhaps a century. Emperor Alexander I signed the “Manifesto on the Privileges for Inventions and Discoveries in the Arts and Sciences” on 17 June 1812. Subsequently, laws were passed such that, as the twentieth century approached, the “Regulations on Privileges for Inventions and Improvements” of 20 May 1896 included most of the components of a modern patent system, such as enablement, novelty, and utility requirements and a fifteen-year exclusive patent term. (Zegelman, undated, 4).

Following the Revolution of 1917, the Russian political and legal environment changed almost overnight. Gone was the Empire of the Czar and its capitalist structure. The new Soviet Republic featured a regulated, planned economy with subsidized production, a complete prohibition of private enterprise, and abolition of private ownership of property. The State now owned all but the most basic forms of property.

The aftermath of the Bolshevik overthrow revealed to the new Russian administration the problems inherent in a truly communist state and in 1921 the “New Economic Policy” was initiated, bringing back free enterprise and a market economy. During the period of the

New Economic Policy, which coincided with the primacy of V. I. Lenin as head of state, the terms of the 1896 law were apparently considered to be reinstated, though without repassage. (Country Studies, Russia) With the end of the New Economic Policy on the death of Lenin in 1928, efforts were set afoot by the new government dominated by Joseph Stalin to bring intellectual property rights policy into synchronicity with other Russian policy, resulting in the passage, in 1931, of the “Regulations on Inventions and Technological Improvements.” This statute abolished private ownership of intellectual property rights. Instead of the inventor or other rights-holder in due course of intellectual property rights being able to control their disposition, the state became the rights-holder and the inventor received a nominal remuneration and a “certificate of invention” for his or her work (Zegelman, undated, 5–6). This system remained in place for over fifty years until the mid-1980s when the instability of Russian politics and the economy finally induced Mikhail Gorbachev to reinstate some forms of private enterprise and relieve the strictures of the planned economy.

The continued instability of the socialist state after Gorbachev's action soon became obvious and by 1991 resulted in the failure of the Russian political system. It also became obvious that the pre-Soviet Union intellectual property laws were untenable. It took until 1992 to confect a new set of laws regulating the disposition of intellectual property rights. Those laws, embodying a number of amendments, remain in effect in substance today and will be discussed at length herein.

4. The 1992 Reforms: the legal framework of modern Russian intellectual property legislation

Remember that the underlying structure of the Russian legal system is the Legal Code which possesses both civil and criminal components. In the courts, arguments must be based on the determination of the facts in a case which are examined for merit by the court in the context of relevant law. Findings of courts in other jurisdictions concerning similar cases may NOT be used as the basis for argument or decision in new cases. In other words, the use of precedent set by rulings in earlier cases, and the resultant recasting of the law by judges known as Common Law, is not allowed under the Russian system. It was realized shortly after the collapse of the Soviet Union that intellectual property, in the new, non-Communist Federation, required regulation recognizing its new status. The major provisions of the resulting body of legislation are embodied in the five statutes that follow.

4.1. *The patent law of the Russian Federation of 23 September 1992, No. 3517-1 amended February 2003, No. 22FZ, in force 1 January 2004*

The Russian Federal Institute of Industrial Patents (Rospatent) administers this law, its successor, and the other laws that this section describes. The English language translations and abstracts in use here appear to be correct in detail with respect to the original language and meaning of those laws. These laws have been amended and many of their provisions replaced in the effort to create conformity with the Agreement on Trade-Related Aspects of Intellectual Property Rights and secure for Russia membership in the World Trade Organization. They do, nonetheless, differ somewhat from the laws of other nations. Comparisons between Russian and US law made here are made on the assumption that most readers of this document will be native speakers of Russian or English and that such comparisons will be relevant to them.

The Russian Patent Law of 1992 recognizes three things that qualify for patent protection: inventions, utility models, and industrial designs. By definition, inventions are new, novel, and useful applications of science or engineering. Generally, they improve in some way the means in which something is made, processed, or handled. The

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