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G-NEWS

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Merry Christmas and Happy New Year!

NEW STATE STANDARD FOR PATENT RESEARCH

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For more than 25 years, a State Standard on Patent Studies (GOST R15.011—96) has been acting in Russia. This State Standard has established unified requirements on scope of and procedure for patent studies in Russia, required for implementing by all business entities.

On March 1, 2023, a new edition of this State Standard, issued as GOST R15.011—2022 enters into force, replacing the old one, mainly due to a need to update a number of old terms, introduce new concepts, adjust the forms of reporting documents, and set modern patent studies approaches and methodologies.

One of the strong points of the new Standard is clearly dividing patent studies into types. In particular, the Standard determines specific types of patent studies by correlating its con-

• Analysing a complex item to identify elements capable of legal protection; etc.

The list of objectives for the target patent studies is non-exhaustive, thereby

DOCUMENT NAME	ГОСТ Р 15.011-2022 System of product development and installation for production. Patent research. Content and procedure
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duct with the development stages and technological life cycle phases. Thus, **prior art patent studies** is supposed to be conducted at the initial R&D stage, at defining the development areas, when the results of the studies can themselves become the R&D basis for further developing the identified prior art by creating over it new technical solutions.

Patentability patent studies is associated with the development stage of a specific technical solution when the results of studies can be used for preliminarily evaluating prospects of obtaining patent protection for such a solution.

Freedom-to-operate patent studies are linked to products that are about to be launched into manufacture.

The studies identify risks of infringement of third party patent rights in manufacture and (or) sale of a manufactured product or developed technical solution in a particular country. Another types of patent studies are contained in a separate section, which is named **Target Patent Studies**.

Among the target patent studies are:

- Analysing a strategy for protecting results of intellectual activity;
- Analysing a developer's intellectual property portfolio (scope and content of exclusive rights);
- Analysing a unique nature of a solution of an item appearance in an industrial design or artisan industry and its patentability as an industrial design;
- Analysing means of individualization for distinctiveness and registrability;

allowing other studies, such as e.g. searching and analysing information for challenging patent validity, to be conducted basing on methodology and with reporting forms provided by the Standard.

Requirements for reporting results of patent studies are contained in a special section of the Standard, with samples provided in appendixes of the Standard, thereby suggesting use of unified forms for reporting results of particular types of patent studies. The new edition of the Standard introduces long-awaited clear definitions of what are, in the sense of the patent studies, the **prior art and technical level**. Introducing of those two specific definitions, clearly distinct from alike by wording, but different is essence statutory definitions of prior art and technical level for patentability conditions of inventions is indeed an outstanding feature of the new Standard. Provisions of the old Standard being silent on both definitions resulted in vagueness and confusions.

Now, the Standard clearly defines that prior art is information that has become known in the world before the start date of patent studies, and technical level is a characteristic of the technological item, studied by comparing the parameters describing its technical advantage with the corresponding parameters of its peers.

Another new feature of the Standard is recognizing "**patent landscape**" as a type of patent studies. The new Standard defines patent landscape as results of analytical information study of patent documentation, which

reflects a patent situation in a specific technology or a patent activity of innovators as a function of time and geographical spread, based on statistics and graphically presented. Introducing such tool in the State Standard demonstrates general recommendation to use it as one of the studies, certainly not instead of the first mentioned above three main studies, but more as visually understandable map-looking document showing general tendencies. Finally, the new Standard gives special interpretation of the concept of information search, as a search other than patent and based on solely non-patent literature.

Undisputedly, the developers of the new Standard made it in much more clear than was the old Standard, what is very important in the situation when Russian local businesses started active filling in the gaps in local manufacture of many goods previously imported.

Following the methodologies set forth in the new Standard definitely allows avoiding patent infringement and properly defining a task for parent studies with expectation of clearly provided results by utilizing reporting forms provided by the Standard.

Own long-term experience of Patent Studies Department of Gorodissky and Partners Law firm shows that the methodology and reporting forms as set forth by the Standard are quite good accepted not only by local but also by foreign companies interested in local and worldwide patent studies.

OVERVIEW OF NEWS IN THE FIELD OF INTELLECTUAL PROPERTY (RUSSIA, CIS)

(March to August 2022)

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LAWS AND DRAFT LAWS

GOVERNMENT IS ENTITLED TO DETERMINE GOODS TO WHICH CERTAIN PROVISIONS ON PROTEC- TION OF INTELLECTUAL PROPERTY WILL NOT APPLY

To protect the national interests of the Russian Federation in connection with unfriendly acts of foreign states and international organizations, the Law on Amending Certain Legislative Acts of the Russian Federation (Federal Law No. 46-FZ dated March 08, 2022) has been adopted. As per one of the provisions of this law (Clause 13 of Part 1 of Article 18 of the Law), the Government of Russia is entitled to decide in 2022 on the list of goods (groups of goods), to which certain provisions of the Civil Code on protection of rights to the results of intellectual activity embodied in such goods and to the means of individualization applied on such goods.

PARALLEL IMPORTS OF SOME GOODS HAVE BEEN MADE LEGITIMATE

On June 28, 2022, Federal Law No. 213-FZ was published and became effective, which legalized parallel imports of goods, the list of which is made by the Ministry of Industry and Trade.

The law amends Article 18 of Federal Law No. 46-FZ dated March 8, 2022.

Article 18 is supplemented with Clause 3, under which using the results of intellectual activity expressed in goods (groups of goods), the list of which is prepared in accordance with Clause 13 of Part 1 of Article 18, and the means of individualization, with which such goods are labeled, is not infringement of the exclusive right to the results of intellectual activity or the means of individualization.

Thus, parallel import of goods, the list of which is established by order of the Ministry of Industry and Trade No. 1532 dated April 19, 2022 (published on May 6, 2022), is not infringement of the exclusive right to the result of intellectual activity embodied in those goods and the means of individualization applied on them.

DISPOSAL OF RIGHT UNDER A FRANCHISE AGREEMENT IS EXEMPT FROM VAT

In 2020, assignment of right to inventions, utility models, industrial designs, integrated circuits topographies, and know-how as well as granting of a license to use these results of intellectual activity (hereinafter the “results of intellectual activity”) were exempt from VAT (Sub-clause 261 of Clause 2 of Article 149 of the Tax Code of the Russian Federation, hereinafter the “Tax Code”).

Law No. 97-FZ dated April 16, 2022, On Amendments to Article 149 of Part II of the Tax Code of the Russian Federation supplements Clause 2 of Article 149 of the Tax Code with Sub-clause 262, under which granting a right to use results of intellectual activity under a franchise agreement is exempt from VAT as well.

This exemption applies if a fee for the grant of rights to those items is separately indicated in the price of the franchise agreement.

Thus, the law ensures equal conditions for VAT taxation of IP based on a license agreement and a franchise agreement.

As a result, the tax burden on Russian tax payers acquiring these rights under franchise agreements, including from foreign individuals and entities, is reduced, which should stimulate the use of IP rights.

The amendment becomes effective on July 1, 2022.

INCOME TAX RELIEF HAS BEEN RENEWED

On May 28, 2022, Federal Law No. 149-FZ On Amendments to Article 2 of the Federal Law On Amendments to Articles 251 and 262 of Part II of the Tax Code was issued.

Income based on property rights to IP, identified during the inventory count carried out by the tax payer, shall not be accounted for in the tax base (Sub-clause 36 of Clause 1 of Article 251 of the Tax Code).

The relief was in effect from January 1, 2018, to December 31, 2019.

In accordance with the adopted law, the relief is renewed and applies to the property rights to the results of intellectual activity identified and registered during the tax payer's inventory count from January 1, 2022, to December 31, 2024, for all entities or from January 1, 2022, to December 31, 2026, for the entities included in the unified register of small and medium-sized businesses as on January 1, 2022.

AMENDMENTS TO PART IV OF THE CIVIL CODE REGARDING GROUNDS FOR REFUSAL OF STATE REGISTRATION OF A TRADE-MARK AND REGARDING CONDITIONS FOR DISPOSAL OF THE EXCLUSIVE RIGHT TO A TRADEMARK HAVE BEEN MADE

On May 28, Federal Law No. 143-FZ On Amendments to Part IV of the Civil Code was adopted.

The law amends Articles 1483, 1488, and 1489 of the Civil Code in relation to registration as trademarks of designations that include, reproduce, or simulate protected geographical indications or appellations of origin of goods and to the procedure of assignment and issue of a license to such trademarks.

In particular, the amendment to Clause 7 of Article 1483 of the Civil Code mitigates prohibition against the registration of trademarks that are identical or similar to geographical indications or appellations of origin of goods. The law will enter into force on May 23, 2023. Currently, persons who are not entitled to use geographical indications and appellations of origin of goods cannot register a corresponding trademark for any goods.

The draft law proposes to allow such registration with regard to the goods that are not similar to those for which geographical indications or appellations of origin of goods are protected, provided that the use of that trademark with regard to those goods will not be associated by consumers with the geographical indications or the appellations of origin of goods and cannot impair the legitimate interests

of the holder of the exclusive right to the geographical indications or the appellations of origin of goods.

The amendments to Articles 1488 and 1489 of the Civil Code prohibit assignment of the trademark containing the designation similar to a geographical indication or an appellation of origin of goods and the issuance of a license for such a trademark to a person who is not entitled to use that geographical indication or appellation of origin of goods.

Currently, such a prohibition applies only when the trademark has a designation identical to the geographical indication or the appellation of origin of goods and is included therein as a non-protectable element.

THE CIVIL CODE HAS BEEN BROUGHT IN LINE WITH THE MARRAKESH TREATY

On June 11, 2022, Federal Law No. 176-FZ On Amendments to Article 1274 of Part IV of the Civil Code was issued.

The law is aimed at bringing the Russian law in line with the provisions of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise Print Disabled (hereinafter the "Marrakesh Treaty"), to which the Russian Federation acceded in 2018.

Article 1274 of the Civil Code has already provided for a possibility to use — with no intent to derive profit — works that are lawfully made public, without the right holder's consent and without paying the right holder a fee, by creating, reproducing, and distributing these works in special formats (using raised dots and other special methods) intended for use by those who are blind and visually impaired.

The new law also establishes the possibility to import copies of such works and expands the range of beneficiaries of this regulation: in addition to those who are blind and visually impaired, persons who are otherwise print disabled as defined in the Marrakesh Treaty also have the right of access to such copies.

The law also supplements Article 1274 of the Civil Code with a provision on the right of libraries and organizations indicated by the Government and protecting the rights and interests of disabled persons to perform cross-border exchange of copies of the works, created in special formats, in accordance with the Marrakesh Treaty.

The amendments became effective on June 22, 2022.

EXPANSION OF THE RANGE OF TRADE-MARK RIGHT HOLDERS AND MANDATORY REGISTRATION OF A PLEDGE OF AN EXCLUSIVE RIGHT TO COMPUTER PROGRAMS AND DATABASES

On June 28, 2022, Federal Law No. 193-FZ On Amendments to Part Four of the Civil Code was issued.

The law provides for expansion of the range of trademark rights holders: the restriction on the **registration of trademarks by individuals who are not individual entrepreneurs** is lifted. After the law becomes effective, any individual and entity will be able to register a trademark.

The law also stipulates that termination of the status of an individual entrepreneur will no longer be the basis for terminating the registration of a trademark. To inherit a trademark, an heir will not need to have the status of an individual entrepreneur either.

Moreover, in addition to the mandatory registration of assignment and license for computer programs and data-

bases included in the corresponding State Registers, which is already stipulated, the law provides for **mandatory registration of a pledge of exclusive rights to such computer programs and databases.**

The law will enter into force one year after its official publication, that is, on June 29, 2023.

AN ARTISTIC DIRECTOR HAS BEEN RECOGNIZED AS A CO-AUTHOR OF AN ANIMATED FILM

On July 14, 2022, Federal Law No. 354-FZ On Amendments to Article 1263 of Part IV of the Civil Code was published. In accordance with the provisions of Article 1263 of the Civil Code, the **director, scriptwriter, and composer**, who is the author of a piece of music specifically created for an audiovisual work, are recognized as the authors of that audiovisual work.

Other persons who have made creative input to an audiovisual work, including artistic director, each have the copyright to their own work, but are not granted the copyright to the audiovisual work as a whole (Clause 5 of Article 1263 of the Civil Code).

At the same time, the mechanics of creation of an animated film suggests that an artistic director makes no less, and in some cases greater, creative input than other authors.

The list of authors of an audiovisual work given in Clause 2 of Article 1263 of the Civil Code has been supplemented with an artistic director of an animated film by Law No. 354-FZ dated July 14, 2022.

The inclusion of an artistic director of an animated film in the list of authors of an audiovisual work automatically grants him an additional property right to receive remuneration for the free display of audiovisual works for personal purposes as provided by Article 1245 of the Civil Code (the remuneration is collected, allocated, and paid by an accredited organization for collective management of copyright and allied rights).

Also, as a result of the amendments, an artistic director of an animated film has moral rights to the audiovisual work (the right of authorship, the author's right to be named as the author, the right of integrity of the audiovisual work, the right of its publication, the right of withdrawal) and the right to protect the audiovisual work from distortions.

The new law applies only to the animated films created after the law became effective, that is, after July 24, 2022 (10 days after the official publication of the law).

ADDITIONAL GROUND FOR CHALLENGING AN ADDITIONAL PATENT

Draft law No. 115864–8 On Amendments to Part IV of the Civil Code (on invalidation of an additional patent for invention) has been submitted to the State Duma. The draft law provides for the introduction of an additional ground for challenging an additional patent (an extended patent for the invention relating to a medicinal product, pesticide, or agrochemical — Clause 2 of Article 1363 of the Civil Code).

As per the amendment to Article 1398 of the Civil Code, an additional patent may be challenged and invalidated if it has been issued in violation of the conditions for its issuance provided for by Clause 2 of Article 1363 of the Civil Code.

On June 21, 2022, the draft law was adopted by the State Duma in the first reading.

EXTERNAL MANAGEMENT OF ENTITIES OF PERSONS FROM “UNFRIENDLY” COUNTRIES

On May 24, 2022, the State Duma adopted in the first reading draft law No. 104796–8 On External Administration to Manage an Entity. It contains provisions relating to intellectual property. In particular, from the appointment date of an external administration, it is not allowed to terminate the entity's exclusive rights to intellectual property subject matters and the rights to use the same if the holders of exclusive rights are foreign persons associated with unfriendly states. If such rights are early terminated from February 24, 2022, their validity should be renewed. At the same time, no consideration for granting the right to use intellectual property subject matters before the expiration date of the term of office of the external administration is to be paid.

The draft law involves the entities which are critical to ensure stable economy and civil transactions and protect the rights and legitimate interests of individuals and in which a foreign person associated with an “unfriendly” foreign state is a person controlling the entity or directly or indirectly owns at least twenty-five percent of the entity's voting shares or participatory interests in its authorized capital.

The Government supports the draft law provided that a number of remarks are taken into account. In particular, according to the Government, the provisions in the draft law on using intellectual property subject matters should be further elaborated.

DRAFT LAW ON PROHIBITION ON AMENDING AND TERMINATING INTELLECTUAL PROPERTY AGREEMENTS

On March 22, 2022, Deputy P. Krashenninikov, Head of the State Duma Committee on State Building and Legislation, introduced to the State Duma draft law No. 92282–8 aimed at establishing special regulation of, among other things, intellectual property transactions. In particular, the deputy proposes to supplement the provisions of the Federal Law On Enactment of Part IV of the Civil Code with the provisions on prohibition on unilateral amendments to or termination of agreements related to exercise and protection of rights to results of intellectual activity and means of individualization. Exceptions are where the other party is in material breach of its obligations.

At core, the introduction of such a rule will block any unilateral amendments to or termination of the license agreement even if it expressly follows from the agreement concluded or the legal provisions. In addition, the draft law provides for the extension of agreements for the right to use results of intellectual activity and means of individualization for the period of the sanctions if the licensee (user) is a Russian resident and has not refused such an extension.

COMPULSORY LICENSING OF COPYRIGHT AND NEIGHBORING RIGHT

On August 19, 2022, Deputy D. Kuznetsov introduced to the State Duma draft law No. 184016–8 On Amendments to the Federal Law On Enactment of Part IV of the Civil Code. The draft law proposes supplementing the Introductory Law with Article 132, which provides for a possibility, during the period of anti-Russian sanctions, to file a claim with court against the right holder for granting a com-

pulsory license to use copyright and neighboring right works — movies, computer programs, pieces of music, literary and other works.

The condition for obtaining a compulsory license is the relevant copyright and neighboring right work becoming unavailable on the market, and its right holder refusing to grant a license on arm's length basis.

The licensee will be able to turn to court for a compulsory license if the licensor has unreasonably terminated the license agreement on the grounds not related to the violation by the Russian licensee of his obligations or takes actions that impede exercise of the right to use such a subject matter by the Russian licensee.

An organization for collective management of copyright and neighboring rights will be also able to turn to court for a compulsory license if any copyright or neighboring right is not used in Russia and such an entity has been contacted by a Russian person who wishes to use the same if the “unfriendly” right holder refuses to conclude a license agreement with that Russian entity on the terms and conditions compliant with common practice.

GOVERNMENT ENACTMENTS AND DEPARTMENTAL ENACTMENTS

THE GOVERNMENT HAS AMENDED REGULATIONS FOR DETERMINING A COMPENSATION FOR THE USE OF AN INVENTION WITHOUT PATENT HOLDER'S CONSENT

The regulations are supplemented with a provision under which, if the Government issues an authorization to use a patented invention, a utility model, or an industrial design without the patent holder's consent in accordance with Article 1360 of the Civil Code (i.e., **in extreme urgency related to the defense and security of the state and to the protection of the people's life and health**), no compensation for such use shall be paid to the patent holders from foreign states that commit unfriendly acts against Russian legal entities and individuals (Government decree No. 299 dated March 6, 2022).

THE GOVERNMENT HAS ALLOWED R-PHARM JSC TO PRODUCE REMDESIVIR USING THE INVENTIONS PROTECTED IN RUSSIA WITH THE EURASIAN PATENTS WITHOUT THE PATENT HOLDERS' CONSENT

On March 5, 2022, under Article 1360 of the Civil Code, due to extreme urgency related to the protection of the people's life and health, the Government allowed R-Pharm JSC to use the inventions protected by Eurasian patents Nos. 25252, 25311, 29712, 20659, 32239, 38141, and 28742 owned by the Gilead Group of Companies, **until December 31, 2022**, without the patent holders' consent, to provide the people of the Russian Federation with pharmaceutical drugs under international non-proprietary name Remdesivir (Government Order No. 429-r dated March 5, 2022).

THE MINISTRY OF INDUSTRY AND TRADE WILL DEFINE THE LISTS OF GOODS TO WHICH CERTAIN PROVISIONS OF THE CIVIL CODE ON PROTECTION OF THE RIGHTS TO THE RESULTS OF INTELLECTUAL ACTIVITY EMBODIED IN SUCH GOODS AND TO THE MEANS OF INDIVIDUALIZATION ON SUCH GOODS DO NOT APPLY

Based on the right granted to the Government by Federal Law No. 46-FZ dated March 8, 2022, the Government issued Decree No. 506 dated March 29, 2022, instructing the Ministry of Industry and Trade to prepare the lists of goods to which Sub-clause 6 of Article 1359 and Article 1487 of the Civil Code do not apply, provided that these goods are commercialized outside the Russian Federation by the right holders (patent holders) or with their consent (*in pursuance of this instruction, the Ministry of Industry and Trade has issued order No. 1532 dated April 19, 2022, see below*).

These norms of the Civil Code establish the so-called national principle of exhaustion of the right to inventions, utility models, industrial designs, and trademarks. In fact, parallel import allowed for some goods that are not available on the market.

As stated by the Chairman of the Government, the purpose of the decision is to legalize parallel imports of the goods in which the results of intellectual activity are embodied or which are trademarked.

THE GOVERNMENT ISSUED A DECISION TO USE INVENTIONS WITHOUT THE PATENT HOLDER'S CONSENT TO PRODUCE MEDICINAL PRODUCTS IN THE RUSSIAN FEDERATION FOR THE PURPOSE OF EXPORT

Based on Clause 2 of Article 1360.1 of the Civil Code, the Government approved the **Rules for Adopting a Decision to Use an Invention without the Patent Holder's Consent to Produce a Medicinal Product in the Russian Federation for Its Export, and Cancellation of Such a Decision, and the Methods for Determining a Compensation to Be Paid to the Patent Holder when Adopting Such a Decision, and the Procedure for Its Payment** (Government decree No. 947 of May 25, 2022).

The Rules are based on the provisions of Article 31bis of the TRIPS Agreement and its Annex establishing the procedure for deciding to use an invention without the patent holder's consent to produce and export a medicinal product to the relevant country requesting it. In accordance with the approved Regulations, the remuneration is set at 0.5% of the total value of the entire volume of the medicinal products exported under the decision of the Government. Compensation is paid to the patent holder by the person who has used the invention by the decision of the Government in the form of a lump sum payment after receiving funds for the medicinal product sold.

In addition, the said decree directs the Federal Customs Service to prevent the export of such medicinal products to the countries not provided for by the decision adopted by the Government.

THE MINISTRY OF INDUSTRY AND TRADE DEFINED LISTS OF GOODS TO WHICH CERTAIN PROVISIONS OF THE CIVIL CODE ON PROTECTION OF EXCLUSIVE RIGHTS DO NOT APPLY

As instructed by the Government, the Ministry of Industry and Trade approved the list of goods (groups of goods) to which Sub-clause 6 of Article 1359 and Article 1487 of the Civil Code do not apply, provided that those goods are commercialized outside the Russian Federation by the right holders (patent holders) or with their consent (order of the Ministry of Industry and Trade No. 1532 dated April 19, 2022, with amendments approved by order of the Ministry of Industry and Trade No. 2299 dated June 3, 2022, and order of the Ministry of Industry and Trade No. 3042 dated July 21, 2022).

The list includes goods of 52 groups as per EAEU TNVED (Customs Commodity Code). At the same time, the groups specify commodity codes and trademarks belonging to right holders from “unfriendly” countries, which should be used to determine whether a product is regulated by Government decree No. 506 dated March 29, 2022, or not.

DISPUTES OVER GRANTING AND TERMINATION OF PROTECTION

CHALLENGING THE GRANT OF A SUPPLEMENTAL PATENT OBTAINED ON AN APPLICATION DIVIDED FROM THE DIVISIONAL APPLICATION

The IP Court considered a claim filed by “Severnaya Zvezda” CJSC (hereinafter the “Company”) challenging a decision by Rospatent to extend the term of patent No. 2746132 and grant a supplemental patent. Patent No. 2746132 for the invention “C-Aryl glucoside SGLT2 inhibitors and method of their use” was issued on April 7, 2021, to AstraZeneca (Sweden) (hereinafter the “Patent Holder”) under application No. 2020135467 filed with Rospatent on October 28, 2020, as a divisional application from the original application No. 2017131447 with a filing date of May 15, 2003.

In support of its claims, the Company stated that patent No. 2746132 was extended in violation of the requirements of Clause 2 of Article 1363 of the Civil Code.

Upon the Patent Holder’s application, on August 21, 2014, the state registration of the pharmaceutical drug with the trade name Forxiga was performed and registration certificate of the Ministry of Health No. LP-002596 dated August 21, 2014, was issued.

Believing that this registration is the first authorization to use the invention protected by the patent, on April 22, 2021 (i.e., two weeks after the patent was granted), the Patent Holder filed an application with Rospatent for extension of its validity.

Rospatent granted the application, extended the validity of patent No. 2746132 until May 15, 2028, and issued a supplemental patent with the same number and claims characterizing the medicinal product, for which use the authorization was obtained.

The Company decided to challenge the extension of the patent because it was extended in violation of the provisions of Clause 2 of Article 1263 of the Civil Code.

In its complaint, the Company stated that the authorization to use a medicinal product related to the disputed patent had been obtained in 2014, while divisional application No. 2020135467, under which patent No. 2746132 was granted, was filed in 2020 only. Therefore, in the applicant’s opinion, the condition of Clause 2 of Article 1363 of the Civil Code, i.e. that the patent may be extended if more than five years have passed from the filing date of the application and until the obtaining date of the first authorization was not met.

According to the law, an application for extension may be filed with Rospatent until the expiry of six months from the date of the first authorization to use the product or from the issuance date of the patent, whichever is later. This condition was met by the Patent Holder since the application was filed two weeks after the issuance of the patent.

The Company’s arguments, in fact, were reduced to disagreement with the filing date of the application for disputed patent No. 2746132, set by the administrative body, and, as a result, with Rospatent’s conclusion that the conditions provided by law were met in this case.

In the applicant’s opinion, the filing date of the application for patent No. 2746132 should not be May 15, 2003 (filing date of original application No. 2017131447, from which application No. 2020135467 was divided), but October 28, 2020 (the date when the materials on divisional application No. 2020135467 were received by Rospatent).

The court disagreed with this legal position of the Company.

Clause 1 of Article 1363 of the Civil Code states that the right for an invention patent shall be valid for twenty years from the filing date of the application for a patent with Rospatent or, in case of division of an application (Clause 4 of Article 1381 of the Civil Code), from the date of filing of the original application with Rospatent. Since, until the first authorization is obtained, the patent holder, for reasons beyond his control, cannot fully exercise the right to the invention as part of a medicinal product, the legislature, balancing the interests of the patent holder and the public, has envisaged the patent holder’s right to extend the patent.

Thus, in accordance with the provisions of Clause 2 of Article 1363 of the Civil Code, two facts are relevant for the purpose of extension of a patent for a medicinal product:

- 1) Filing date of the application for a patent, from which its validity begins
- 2) Obtaining date of the first authorization to use the medicinal product (marketing authorization).

The IP Court noted that, contrary to the applicant’s assertion, the Rules for Preparation, Filing, and Consideration of an Application for Invention do not contain norms under which the filing date of a divisional application for a patent, from which the validity period of the exclusive right to the relevant invention begins, is exactly the date of filing a set of documents relative to this application.

At the same time, the court takes into account that, as specified in Clause 3.1 of the Guidelines for Consideration of Applications for Inventions, the filing date for the divisional application for an invention is to be established as per the rules set out by Clause 3 of Article 1375 of the Civil Code. In this case, the date of filing the original application with Rospatent, from which the application was divided, is taken into account as the starting date of the validity period of the patent.

In the court's opinion, based on the interpretation of the provisions of Clause 2 of Article 1363 of the Civil Code, for the purposes of applying the legal norms set out in it, it is not the actual filing date of a set of documents, including those related to a divisional application for a patent for invention, but the beginning date of the validity period of the right to the relevant technical solution is legally relevant.

Thus, the consistent interpretation of Clauses 1 and 2 of Article 1363 and Clause 4 of Article 1381 of the Civil Code allowed the court to conclude that, when extending the patent issued based on the divisional application, in accordance with Clause 2 of Article 1363 of the Civil Code, the filing date of the application is the filing date of the original application.

In the case under consideration, Rospatent proceeded from the fact that application No. 2020135467, under which the disputed patent was issued, was divided from the original application No. 2017131447 with the priority date being May 15, 2003, which is not disputed by the Company. Bearing in mind this fact, Rospatent reasonably believed that, for considering whether there are grounds for extension of patent of the Russian Federation No. 2746132 issued under divisional application No. 2020135467, not the date of its actual filing (October 28, 2020), but the filing date of original application No. 2017131447 (May 15, 2003) is legally relevant.

As a result, Rospatent correctly established that more than ten years had passed from the filing date of the original application No. 2017131447 for a patent (May 15, 2003) to the obtaining date of the first authorization to use Forxiga medicinal product (August 21, 2014).

Thus, taking into consideration the provisions of Clause 2 of Article 1363 of the Civil Code, the administrative body lawfully concluded that there are grounds for extension of patent No. 2746132 for the longest possible five-year period until May 15, 2028 (taking into account the twenty-year period of its validity expiring on May 15, 2023) (decision of the IP Court dated March 31, 2022, and of the Presidium of the IP Court dated August 29, 2022, on case SIP-1141/2021).

WILDBERRIES HAS NOT PROVEN THAT PURPLE COLOR HAD ACQUIRED DISTINCTIVENESS AS ITS MEANS OF INDIVIDUALIZATION



Application No. 2020724011

As a result of the examination of the application for registration of designation as a trademark, the application was refused. WILDBERRIES

LLC requested legal protection of the trademark for the services of classes 35 and 39 according to the ICGS as specified in the list. The claimed designation was color designation in the "purple" color combination and was composed only of purple color corresponding to Pantone 254C.

To explain its refusal, the examination panel noted that the color is a characteristic of a certain object, but not the object itself, and may not be registered as a trademark (service mark) due to the lack of distinctiveness, while the materials provided by the applicant do not confirm that the claimed designation acquired distinctiveness.

The applicant filed an appeal against the decision of refusal to register the trademark.

When considering the Company's appeal, Rospatent came to the following conclusions.

The claimed designation has no distinctiveness since it represents an individual image of purple color corresponding to Pantone 254C, which has no distinctiveness. At the same time, color is a characteristic of a certain object, but not the object itself. The presented image of purple color is not original and easy to remember, which does not allow the consumer to individualize the manufacturer's services. This evidences that the claimed designation, as it is claimed for registration as a trademark, has no distinctiveness, that is, it has no features necessary and sufficient for consumers to remember it.

The applicant believes that the claimed designation has distinctiveness, while the examination panel did not take into account the presented evidence of the acquired distinctiveness, including the results of the opinion polls.

The decision adopted following the consideration of the appeal states that the documents produced to the case are about the applicant's activities and also contain designations different from the claimed designation, namely, purple color is used together with other individualizing elements: "wildberries," "wb," , etc.



The monitoring report dated November 22, 2021, is about domains and applications including the elements "wildberries," "wb," "wbs," "wildbe," and the like and it does not contain a retrospective review and analysis of the claimed designation.

The Rospatent's analysis of the opinion survey results produced by the applicant showed that, first, they do not contain any retrospective data that would allow making any conclusions about the filing date of the application. Second, the produced data does not allow making a firm conclusion that consumers associate the claimed designation, purple color, with the applicant's services.

In addition, Rospatent pointed out that, in opinion polls, when assessing the awareness of the applicant and the services provided by it, no peer online stores using purple colors in their activities, including in the website design, for example, the largest marketplace tiu.ru (blue-violet shades are used), online store Allithave (purple color), or online good buy hypermarket Techport (purple color), were analyzed.

In the Rospatent's opinion, opinion surveys do not evidence the acquired distinctiveness of the claimed designation as at the filing date.

Thus, it does not appear from the appeal materials that the claimed designation, as it is claimed as a trademark, acquired the distinctiveness as a means of individualization of the applicant's services of class 35 according to the ICGS as at the filing date.

In view of the foregoing, Rospatent refused to satisfy the appeal and upheld the decision to refuse registration of the trademark (Rospatent's decision dated March 10, 2022, on application for trademark No. 2020724011). The IP Court upheld Rospatent's decision (case No. SIP-512/2022).

ROSPATENT REFUSED DEERE & COMPANY (USA) REGISTRATION OF THE TRADEMARK, WHICH IS A COMBINATION OF GREEN AND YELLOW COLOR



Application No. 2020726541

Following examination of application No. 2020726541, Rospatent refused Deere & Company (USA) registration of the designation as a trademark

for goods in Classes 07, 12, and 28. The refusal was based on the provision of Clause 1 of Article 1483 of the Civil Code prohibiting registration of designations that have no distinctiveness.

In the examination panel's opinion, a combination of various colors has the dominant position in the claimed designation, while color is a characteristic of a certain object, but not the object itself; it is used to make the designation in the selected color combination, which is taken into account during the examination of the designation along with its appearance.



IR No. 883509

The trademarks registered in the applicant's name and containing a similar color combination, including IR No. 883509 for the color trademark valid in Russia

since August 25, 2005, for the goods in Class 12 according to the ICGS, "agricultural machines, in particular, agricultural tractors," cannot be a convincing reason in support of registration of the claimed designation since the specified designations differ significantly from the claimed one. The examination panel took a critical look at the materials produced in support of the acquired distinctiveness (there is no mark or date in the available materials, there is another designation, etc.).

The applicant filed an appeal against the decision of refusal to register the trademark.

Rospatent's decision dated April 24, 2022, on application for trademark No. 2020726541, which was adopted based on the consideration of the appeal states the following points. The designation under application No. 2020726541 has no distinctiveness since it is an image of identical green and yellow parts. At the same time, the representation of two colors does not make the designation original and memorable allowing the consumer to individualize the manufacturer's goods.

The analyzed sign is perceived, rather, as a background, which, as a rule, does not draw special attention of the consumer when perceiving it.

This evidences that the claimed designation has no distinctiveness, that is, it has no features necessary and sufficient for consumers to remember it.

The law allows registration of this kind of designations as a trademark, provided that the designation acquires distinctiveness as a result of its use (paragraph 7 of Clause 1 of Article 1483 of the Civil Code).

The materials produced by the applicant in support of the acquired distinctiveness contain information about the applicant as a goods manufacturer and data on the applicant's goods in Classes 07 and 12 being delivered to the Russian Federation, including before the filing date of that application. At the same time, the word mark "John Deere," but not the requested color combination, appears as a trademark in these materials. And all documents available on file are about the use of the claimed

combination of colors on the agricultural and timber cutting machines, including with additional individualizing elements:



JOHN DEERE

The available documents show rather the green-yellow machines than the claimed designation as it is applied for registration as a trademark.

As per the statement, the approximate amount of money spent on the promotion of John Deere machines, which main colors are a combination of green and yellow colors, in the Russian market is: 95 million rubles in 2018, 80 million rubles in 2019, and 70 million rubles in 2020. These figures evidence a decrease in the applicant's advertising activities. The mark protected in Russia based on international registration No. 883509, despite matching description of the color combination, is a different designation: the colors make a different composition in space, are in a different proportion to each other, and create a completely different visual impression on the consumer.

The opinion poll results produced by the applicant show that, when analyzing the importance of a color scheme of timber cutting/agricultural machines to correctly identify its manufacturer, almost equal number of respondents stated: it is more likely to be important (49%) and it is more likely to be unimportant (43%). This evidences that the color cannot unambiguously perform the individualizing function of a trademark.

The opinion poll results produced by the applicant in support of the awareness of the claimed designation with regard to agricultural and timber cutting machines, in the Rospatent's opinion, evidence that most respondents associated the analyzed designation with nature or a flag, but not with the means of individualization of the applicant's goods. This evidences low awareness of the claimed designation as a means of individualization of the applicant's goods, that is, that the claimed designation has not acquired distinctiveness as a means of individualization of the applicant's goods.

In view of the foregoing, Rospatent refused to satisfy the appeal.

The applicant appealed the Rospatent's decision with the IP Court.

THE GROUNDS FOR INVALIDATION OF LEGAL PROTECTION TO A TRADEMARK MAY BE A COURT DECISION TO RECOGNIZE THE ACTIONS TO REGISTER A SIMILAR TRADEMARK AS AN ACT OF UNFAIR COMPETITION

On August 31, 2022, Rospatent adopted a decision following the consideration of the appeal against the granting of legal protection to trademark No. 396300, MULTIMANIA, due to the recognition of the right holder's actions related to state registration of another trademark as unfair competition.

A word trademark under certificate No. 396300 was registered on December 14, 2009.

On March 28, 2022, Rospatent received an appeal against the granting of legal protection to the trademark under certificate No. 396300 based on the fact that the right holder's actions related to the acquisition and use of the right to other trademarks No. 422874, MULTIMANIA, for some services in Classes 38 and 41 and trademark No. 708139, MULTIMANIA, for some services in Class 35 were recognized as an act of unfair competition based on the IP Court's decision dated July 5, 2019, on case No. SIP-754/2018.

Since the disputed word trademark "MULTIMANIA" under certificate No. 396300 is identical to the word trademarks under certificates Nos. 422874 and 708139, it is subject to the provision of Sub-clause 6 of Clause 2 of Article 1512 of the Code, under which the protection may be challenged not only of the trademark, the actions to acquire the right to which were recognized as unfair competition under the established procedure, but also of a confusingly similar trademark. Identity of trademarks is a particular case of confusing similarity.

As at the filing date of the appeal, the trademark was valid for part of the goods in Classes 09, 16, 25, 28, and 32 and for part of the services in Classes 35, 41, 42, and 43. The appellants requested that the registration of trademark No. 396300 be invalidated in full.

At the same time, the analysis of similarity of the goods and services, for which the registration was valid, with the services, for which the judgment was rendered, showed that only particular services in Class 35, "subscription of telecommunications services for third parties," under trademark No. 396300 are related to providing the telecommunications services in Class 38, for which the right holder's actions to acquire the right to the trademarks under certificates Nos. 422874 and 708139 were recognized as unfair competition: "television broadcasting; cable television broadcasting; information dissemination services; information dissemination services in computer networks," and "wireless broadcasting; message sending; computer aided transmission of messages and images; transmission of digital files; information dissemination in computer networks; transmission of electronic mail; streaming of data; information dissemination services included in class 38." The services under comparison may be referred by consumers to the same source of origin due to their nature and purpose.

For other goods/services from the lists under comparison, Rospatent determined that there is obviously no similarity. Thus, there are grounds to invalidate the grant of legal protection to the trademark under certificate No. 396300 in accordance with Sub-clause 6 of Clause 2 of Article 1512 of the Code for the services in Class 35, subscription of telecommunications services for third parties.

As to the right holder's argument that the appeal was filed (March 28, 2022) almost three years after the court rendered the relevant decision (July 5, 2019), Rospatent noted that Article 1513 of the Code, which regulates the procedure for challenging and invalidating the grant of legal protection to a trademark, does not limit the period for filing an appeal based on Sub-clause 6 of Clause 2 of Article 1512 of the Code during the validity period of the trademark.

WHEN RECOGNIZING THE DESIGNATION APPLIED FOR REGISTRATION AS CONTRADICTING PUBLIC INTERESTS AND THE PRIN-

CIPLES OF HUMANITY, ROSPATENT DID NOT EXAMINE IF THE DESIGNATION "БЕЛАЯ РУКА" (WHITE HAND) EVOKES IN A PRESENT-DAY RUSSIAN CONSUMER ANY ASSOCIATION WITH THE TERRORIST ORGANIZATIONS MENTIONED IN THE DECISION

An entrepreneur filed application No. 2020713342 for registration of the designation "БЕЛАЯ РУКА" ("WHITE HAND") as a trademark to individualize a wide list of goods of classes 5 and 32 and services of classes 35 and 39 according to the ICGS.

Based on the results of examination of the designation applied for registration, a decision was rendered to refuse the state registration of the trademark, which was reasoned by the non-compliance of the designation to the requirements of Sub-clause 2 of Clause 3 of Article 1483 of the Civil Code (contradiction to the public interests and the principles of humanity and morality).

The examination panel's opinion stated that, according to the information from Wikipedia, the claimed designation contradicts public interests and the principles of humanity and morality since it reproduces the names of a number of terrorist organizations, in particular: "Белая Рука" (Serbian: Бела Рука, English: White Hand) was a secret Serbian terrorist and nationalist organization established in the early 20th century; "Белая рука" (Spanish: Mano Blanca, English: White Hand) is a Guatemalan far-right terrorist organization like a death squad that was active from the mid-1960s to the early 1980s.

The applicant filed an appeal against this decision on refusal.

Based on the results of the consideration of the appeal, Rospatent refused to satisfy it. Rospatent's decision is reasoned by the same arguments: the designation applied for registration reproduces the names of a number of terrorist organizations of the same name "Белая Рука" (White Hand), which were engaged in terrorist activities in various foreign countries (Serbia, Austria-Hungary, Guatemala) in the beginning or in the second half of the twentieth century.

The applicant appealed the Rospatent's decision with the IP Court.

The IP Court disagreed with Rospatent (decision of the IP Court dated April 7, 2022, and Resolution of the Presidium of the IP Court dated August 5, 2022, on case No. SIP-17/2022).

The court noted that, actual existence and activities of terrorist organizations named "Белая рука" (White Hand) in Serbia, Austria-Hungary, and Guatemala are not grounds to apply the provisions of Sub-clause 2 of Clause 3 of Article 1483 of the Civil Code. Any conclusions whether this norm may be applied or not should be based on the study of the relevant associations evoked in the consumers and the nature of their perception of the disputed designation.

When recognizing the designation applied for registration as contradicting the public interests and the principles of humanity, Rospatent did not study whether the designation "БЕЛАЯ РУКА" (WHITE HAND) evokes in a present-day Russian consumer any association with the terrorist organizations mentioned.

Also, Rospatent did not establish how the designation applied for registration for a wide list of goods of classes 5 and 32 and services of classes 35 and 39 according to the ICGS can evoke negative associations with regard to specific goods and services from the application list.

The court acknowledged that the entrepreneur's arguments that he had not requested registration of the claimed designation for any other goods and services which could be somehow associated with the activities of terrorist organizations to be sufficiently grounded.

When checking the expert's conclusions that the claimed designation contradicts the public interests and the principles of humanity and morality, Rospatent did not produce evidence of associations evoked in consumers, from which it would follow that it was lawful to apply the relevant ground for refusal to register the trademark.

At the same time, the Rospatent's evaluation of the above facts is essential to establish that the designation claimed for registration complies with the provisions of Sub-clause 2 of Clause 3 of Article 1483 of the Civil Code. The lack of such evaluation in the Rospatent's decision indicates incomplete study by Rospatent of all the facts that may have effect on resolution whether the disputed designation complies with the legal requirements or not, which is a material violation of the procedure for consideration of the appeal, which implies the completeness of Rospatent's evaluation of the appeal's arguments.

The IP Court obliged Rospatent to reconsider the applicant's appeal against the Rospatent's decision to refuse to register the designation under application No. 2020713342 as a trademark.

Having considered the cassation appeal of Rospatent, the Presidium of the IP Court upheld the decision of the court of first instance.

At the same time, the resolution rendered by the Presidium of the IP Court dated August 5, 2022 emphasizes that the Presidium of the IP Court stated many times that information from a free content website (Wikipedia) is not considered to confirm the facts set out in it since such information can be entered and edited by everyone, it is not checked for reliability, for which reason it is not non-biased. The conclusion that the designation may not be registered as a trademark cannot be reasoned solely by references to Internet sources without studying the essential facts — in the present case, without evaluating the relevant associations evoked in consumers and without analyzing the nature of their perception of the disputed designation. It cannot be recognized as acceptable that Rospatent established the existence of the "Белая Рука" ("White Hand") organizations and the terrorist nature of their activities based on the data from the free content encyclopedia. In the challenged decision, Rospatent just stated that consumers have relevant associations without properly explaining its position and without producing any evidence.

Any associative bonds evoked in consumers cannot be determined solely on the basis of that some information is entered by an unknown person in the free content encyclopedia, without analyzing how long such information is posted on the Internet, the number of its views and citations, etc.

SCHENGEN BEER FROM ESTONIA



IR No. 1503811

of the trademark under international registration No. 1503811.

SAY Organization OÜ (Estonia) filed a claim with the IP Court to invalidate the Rospatent's decision to refuse legal protection in the Russian Federation

When deciding to refuse, Rospatent noted that the verbal element "SCHENGEN" included in the claimed designation reproduces the name of a village located in the Grand Duchy of Luxembourg, for which reason the verbal element "SCHENGEN" is non-protectable based on the provisions of Sub-clause 3 of Clause 1 of Article 1483 of the Civil Code since it is perceived as an indication of origin of goods or location of the person manufacturing goods and providing services. In addition, Rospatent noted that, taking into account the fact that the applicant is a foreign legal entity with its seat in Estonia, the claimed designation falls within the scope of Clause 3 of Article 1483 of the Civil Code as capable of misleading a consumer with regard to the manufacturing place of goods in Class 32.

By the decision of the IP Court (first instance), the company's claims were dismissed. Considering the cassation appeal filed by the company, the Presidium of the IP Court concluded that the court of first instance violated the established methodological approach.

With regard to the geographical name included in the trademark, two facts should be studied:

- Whether a target group of consumers perceives a specific element as a geographical name (as a general rule, registration of geographical names that are unknown to a reasonably informed target group of consumers (but not to geographers) is not prohibited);
- Whether the designation indicates a place associated with the goods or services claimed or whether it is reasonable to assume that the designation will be associated with these goods or services in the future or whether it may, from the point of view of consumers, indicate the place of origin of that category of goods or services (i.e., it is to be checked for the specific goods or services claimed).

The Presidium of the IP Court noted that the European Union Trademark Examination Guidelines specifically stated that refusal to perform state registration of a trademark cannot be grounded solely on the fact that goods may be in theory manufactured there.

The conclusions on possible associative bonds should not be based on the European Union's knownness in general as a manufacturing place, but on whether it is the village of Schengen that can be associated with the goods (services) by a target group of consumers and whether it is reasonable to assume that the verbal element "SCHENGEN" will indicate the place of origin of the disputed goods (services). The Presidium of the IP Court noted that neither Rospatent nor the court of first instance had established there being associative bonds between the village of Schengen and the goods of class 32 according to the ICGS (in particular, beer) in the target group of consumers.

As part of the examination of the claimed designation, it was necessary to prove that when perceiving the trademark through the associations evoked by the trademark, a probable idea of the manufacturer of the goods, which is not true, may come to mind of a consumer, thereby the consumer may be misled.

The decision of the court of first instance also fails to produce evidence that the specific goods, for which legal protection is requested, can be perceived by a consumer as the goods produced in the village of Schengen.

The Presidium of the IP Court noted that the court of first instance had failed to evaluate all the evidence produced to the files of the case in its entirety and interrelationship, to study the arguments of the parties to the case, and to adequately evaluate the applicant's arguments that there is no misleading with regard to the goods, their man-

ufacturer, and the place of origin of the goods. Meanwhile, this fact is material and may have an effect on the conclusions of the court when rendering a judgment on this case. Therefore, the conclusions of the court of first instance are based on incomplete fact finding of the case. On this basis, the Presidium of the IP Court reversed the decision of the court of first instance and remanded the case for a new consideration (Resolution of the Presidium of the IP Court dated April 18, 2022, on case No. SIP-822/2021).

DISPUTES OVER INFRINGEMENT OF THE EXCLUSIVE RIGHT

THE COURT DECISIONS PROHIBITING COMMERCIALIZATION OF SAMSUNG GALAXY SMART PHONES HAVE BEEN REVERSED

Sqwin S. A. (Switzerland) filed a claim with the Commercial Court of Moscow against Samsung Electronics Rus Company LLC and Samsung Electronics Co., Ltd (Korea) to protect the rights to patent No. 2686003.

In support of the claims, the claimant stated that Samsung Electronics Rus Company LLC is responsible for the operation of the Samsung Pay mobile payment system in the Russian Federation and implements the method in which the invention under patent No. 2686003 is used, and Samsung Electronics Co., Ltd. is a producer of the Samsung Pay payment service and is responsible for the operation of the Samsung Pay mobile payment system, through its actions it provides an offer for sale and other commercialization of products being the Samsung Pay payment service and implements the method in which the invention under patent of the Russian Federation No. 2686003 is used. The Claimant stated that the method under patent No. 2686003 is implemented by the Defendants without the Claimant's authorization. Since the Samsung Pay payment service uses all the essential features of claim 1 of the claims under patent No. 2686003, the implementation of the method by the Defendants under patent No. 2686003 infringes the exclusive rights of the patent holder being Sqwin SA.

When the case was considered by the court of first instance, an expert examination was commissioned.

As per the conclusions of the expert, the features of independent claim 1 of the claims under patent No. 2686003 when implementing alternative 2 of independent claim 1 of the claims or the equivalent features are used to operate the Samsung Pay payment service.

The expert stated that the infringement is proved due to the use of features 1 to 8 and 11 in the Samsung Galaxy A31 phone as well as due to the use of features equivalent to features 9, 10, and 12 (the numbering is in accordance with the examiner's report) of independent claim 1 of the claims under the Patent.

When deciding to satisfy the claim in full, the court of first instance was guided by the expert opinion.

Meanwhile, the court of appeal pointed out major shortcomings of the expert opinion and considered that it cannot prove the actual use of all the features of the Patent in the device under study.

If at least one feature of the independent claim of the claims under the Patent is not used, the Patent is not considered to be used, therefore, there is no infringement. The Defendants explained that they cannot use each feature of the independent claim of the claims under the Patent since some of them are directly related to the operation of payment systems.

In such circumstances, the court of appeal acknowledged that the Claimant had not proved the facts evidencing the use of all the features of the independent claim of the claims under the Patent in the Defendants' device and, accordingly, the actual infringement of the claimant's exclusive rights.

In addition, the court of appeal noted that the court of first instance had concluded that model 61 of the Defendants' smart phones infringes the Claimant's Patent, only on the grounds that all specified smart phones are devices, which operation as intended automatically implements the patented method. The court of appeal pointed out that this conclusion does not comply with the facts of the case and is disproved by the evidence produced.

In and of itself, a possibility to install and use the Samsung Pay application does not mean, first, that these applications are pre-installed on these models and, second, that their operation automatically implements the patented method. The court of appeal noted that, in and of itself, the Samsung Pay application does not violate the method protected by the Patent since the implementation of the patented method requires active actions of users and other persons. In this case, a smart phone can be used as intended without installing the Samsung Pay application on it as well. Therefore, it is impossible to say that the disputed device automatically implements the payment method protected by the Patent, if the disputed device can function as intended without installing an application that could implement such a payment method.

In addition, when considering the case, the court of first instance failed to evaluate the Defendants' arguments for the abuse of right.

By objecting to the Defendants' arguments, the Claimant argued that there was insufficient evidence to prove the abuse of right.

However, the court of appeal noted that, despite the fact that the invention under the Patent was developed in 2013, the Claimant had failed to produce evidence of the use of the invention in any product/goods, while the disputed payment system in the Defendants' devices was widely used by many consumers for a long time.

At the same time, the prohibition on use of products including the Samsung Pay payment service and the prohibition on import to the Russian Federation, offer for sale, sale, and storage for these purposes of the Defendants' devices, while there being no evidence of marketing or use of the Patent by the Claimant himself, with the availability of other means to protect the alleged infringement of the exclusive right, entails in this case infringement of the rights and interests of a large number of persons using, or planning purchase and use of, the Defendants' devices and upsets the balance of interests of the parties. The Defendants also stated that the actions of the entities that do not conduct the business and market activities, but only acquire rights to the known technical solutions and register patents for such solutions, after which they immediately file complaints and claims against the well-known global market players cannot be recognized as ordinary business activities.

Given the non-use of the invention under the Patent, the period of such non-use, the period between the grant of the Patent and the filing of the complaint, the actual awareness of the Defendants' technical solution, and the actual great success of operation of the Samsung Pay service, the court of appeal recognized the Claimant's actions to be an abuse of right. On this basis, the court of appeal reversed the judgment of the court of first instance and dismissed the claim (decision of the 9th Commercial Court of Appeal dated March 24, 2022). The court of cassation, the IP Court, agreed with the conclusions of the court of appeal (resolution of the IP Court dated July 20, 2022, on case No. A40–29590/2020). In addition, the IP Court noted that, after the inferior courts rendered their decisions, patent No. 2686003 was invalidated in full by Rospatent's decision, therefore, the actions of any other persons to use the invention, the patent for which was further invalidated, may not be recognized as infringement of the rights of the person, to whom the patent had been issued.

THE EXCLUSIVE RIGHTS TO PEPPA PIG AND HER DADDY HAVE BEEN SAFEGUARDED. THE REASONS GIVEN IN THE JUDGMENT OF THE COURT OF FIRST INSTANCE, FOR WHICH THE COURT DISMISSED THE CLAIM, HAVE NOT BEEN GROUNDED ON THE CORRECT APPLICATION OF THE PROVISIONS OF SUBSTANTIVE LAW

Entertainment One UK Limited (UK) filed a claim with the Commercial Court of Kirov Region against individual entrepreneur K.I.V. to recover compensation for the infringement of the rights to the trademarks under international registrations Nos. 1212958 and 1224441 in the amount of 10,000 rubles for each trademark and for the infringement of the exclusive rights to a work of visual art, **Peppa Pig** picture and **Daddy Pig** picture, in the amount of 10,000 rubles for each picture. By the decision of the Commercial Court of Kirov Region dated March 03, 2022, the claims were dismissed. When dismissing the claim, the court of first instance pointed out that the actions of the claimant, which is a foreign legal entity from an unfriendly country, have signs of an abuse of right. Having reevaluated the facts of the case, the court of appeal disagreed with the said conclusions of the court of first instance in view of the following points. Under Clause 1 of Article 7 of the Civil Code, the generally accepted principles and norms of international law and the international treaties of the Russian Federation shall constitute, in accordance with the Constitution, an integral part of the legal framework of the Russian Federation. The rights of the UK company are protected in Russia by virtue of the international treaties of the Russian Federation, namely the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Berne Convention for the Protection of Literary and Artistic Works. The Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention provide for the same legal protection to the works, created in one Contracting State, in other Contracting State as to the works created in that other Contracting State. In accordance with the Protocol Relating to the Madrid Agreement, the protection of a mark in each Contracting Party will be the same as if the mark was claimed and registered directly with the Office of that Contracting Party.

Thus, equal protection of the intellectual property of foreign entities, including those registered in the UK, is guaranteed in the Russian Federation. Therefore, in and of itself, the filing of a claim cannot be recognized as an unfair act in terms of Article 10 of the Civil Code. The reasons given in the decision of the court of first instance, for which the court dismissed the claim, have not been grounded on the correct application of the provisions of substantive law. The court of appeal satisfied the claim and recovered a compensation from the infringer in favor of the right holder (resolution of the 2nd Commercial Court of Appeal dated June 27, 2022, on case No. A28–11930/2021).

OTHER DISPUTES

THE LIST OF WAYS TO DISPOSE OF THE EXCLUSIVE RIGHT TO A TRADEMARK IS NOT EXHAUSTIVE AND IS TO BE USED AT THE DISCRETION OF THE RIGHT HOLDER. THE RIGHT HOLDER'S CONSENT TO USE OF ITS TRADEMARK BY ANOTHER PERSON MAY BE EXPRESSED IN THE FORM OF A SIMPLE LETTER NOT SUBJECT TO STATE REGISTRATION

In order to agree upon placing a sign on a pharmacy, in which trademark No. 719746 was used, Rigla-Moscow Region LLC (hereinafter the "Company") filed an application with the local administration attaching to the application, inter alia, the consent of AS-Bureau Plus LLC, which is the right holder of the trademark, to its use by the Company. Following the results of the consideration of the application, the administration refused to agree upon the sign due to the lack of documents confirming the authorization to use another person's trademark. The administration considered the right holder's consent provided by the Company to be inadequate evidence without registration of the Company's right to use trademark No. 719746 with Rospatent. The court of first instance agreed with the administration that the right to use another person's trademark may be granted based on a license agreement and must be registered with Rospatent. These conclusions of the court of first instance were supported by the court of appeal and the court of cassation of the circuit. Meanwhile, the Collegium on Economic Disputes of the Supreme Court of the Russian Federation (hereinafter the "Collegium") disagreed with these conclusions of the courts. In accordance with Clause 1 of Article 1233 of the Civil Code, the right holder may dispose of his exclusive right to a means of individualization in any way not contradicting the law and substance of such an exclusive right, **including** by granting another person the right to use the means of individualization within the limits established by an agreement (a license agreement). In accordance with Clause 1 of Article 1484 of the Civil Code, a person, in whose name the trademark is registered (the right holder), shall enjoy the exclusive right to use the trademark in accordance with Article 1229 of the Civil Code in any manner not contrary to the law (the exclusive right to the trademark), including by the means specified in Clause 2 of Article 1484, which provides, in particular, the use of the trademark on signboards.

It follows from the analysis of the above norms that the **list of ways to dispose of the exclusive right to a trademark is not exhaustive and is to be used at the discretion of the right holder.**

Thus, by providing the applicant with its written consent to the use of the trademark, the right holder lawfully disposed of its exclusive right, and the conclusion of the courts to the contrary contradicts the provisions of Clause 1 of Article 1233 and Clause 1 of Article 1484 of the Civil Code. Taking into account the right holder's authorization (consent) to use the trademark obtained by the Company, the courts had no legal grounds to conclude that the administration had rendered a lawful decision to refuse to agree upon the installation of the information display facility in the municipal entity due to the applicant's failure to provide an agreement for the use of the trademark registered under the procedure established by law. Taking into consideration the foregoing, the Collegium reversed the decisions of the inferior courts and compelled the administration to reconsider the Company's applications. The administration tried to challenge this decision in the exercise of supervisory powers, but the judge of the Supreme Court refused to examine the supervisory appeal filed by the administration to the Presidium of the Supreme Court for consideration (Ruling of the Supreme Court No. 305-ES21-23755 dated April 5, 2022, on case A41-13514/2020, Ruling of the Supreme Court No. 266-PEK22 dated September 5, 2022).

ROSPATENT PRACTICE

1. WELL-KNOWN TRADEMARKS

For the period from March to August 2022, Rospatent recognized the following trademarks as well-known.

TRADE MARK	
RIGHT HOLDER	MAREVEN FOOD HOLDINGS LIMITED (Cyprus)
GOODS/SERVICES	Broths; broth, soup, and mashed potatoes mixes; vermicelli; noodles; pasta
DATE OF BECOMING WELL-KNOWN	December 31, 2010
TRADE MARK	
RIGHT HOLDER	ROCKWOOL INTERNATIONAL A/S (Denmark)
GOODS/SERVICES	Insulation materials, namely, sound insulation materials, fireproof insulation materials, thermal insulation materials, rockwool (insulation material)
DATE OF BECOMING WELL-KNOWN	December 31, 2018
TRADE MARK	
RIGHT HOLDER	OJSC BELAZ – Management Company of Holding BELAZ-HOLDING (Belarus)
GOODS/SERVICES	Dump trucks, tractor units, their spare parts
DATE OF BECOMING WELL-KNOWN	January 01, 2016

TRADE MARK	
RIGHT HOLDER	OJSC BELAZ – Management Company of Holding BELAZ-HOLDING (Belarus)
GOODS/SERVICES	Dump trucks, tractor units, their spare parts
DATE OF BECOMING WELL-KNOWN	January 01, 2016

TRADE MARK	
RIGHT HOLDER	ROSBUSINESSCONSULTING JSC
GOODS/SERVICES	Business information; news media
DATE OF BECOMING WELL-KNOWN	February 01, 2022

During the same period, Rospatent refused BASF SE (Germany) to recognize its trademark “BASF” as well-known in Russia. In the Rospatent's opinion, the documents provided by the company were insufficient to prove the well-knownness of the mark in Russia for the goods of class 1 according to the ICGS, “chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry.”

2. APPELLATIONS OF ORIGIN OF GOODS AND GEOGRAPHICAL INDICATIONS

From March to August 2022, Rospatent registered ten geographical indications and five appellations of origin of goods:

NUMBER IN THE REGISTER OF GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN	GEOGRAPHICAL INDICATION/ APPELLATION OF ORIGIN	GOODS	GEOGRAPHIC LOCATION
281 (GI)	Tarusa embroidery	Decorative and utilitarian articles made from fabric with embroidery	Tarusa District of Kaluga Region
282 (GI)	Khłudnevo clay toy	Clay toy	Duminichi District of Kaluga Region
283 (AOG)	Ingushetia apple	Apple	Republic of Ingushetia
284 (GI)	Borok painting	Hand-painted decorative and utilitarian woodware	Arkhangelsk Region, Vologda Region
285 (AOG)	Ossetian dressed doll	Ceramic (souvenir, collectible, interior) dolls in men's and women's Ossetian national costumes	Republic of North Ossetia – Alania
286 (GI)	Bakhmetev crystal	Crystalware	Nikolsk of Penza Region
287 (GI)	Adygea salt	Salt with flavors and spices	Republic of Adygea
288 (GI)	Shadrinsk gingerbread	Gingerbread	Shadrinsk; Shadrinsk, Dalmatovo, Kargopolye, and Shatrovo Districts of Kurgan Region

289 (AOG)	Yaroslavl cheese	Semi-hard cheese	Yaroslavl Region
290 (AOG)	Uglich cheese	Semi-hard cheese	Uglich, Myshkin, Bolshoe Selo, Borisoglebsky, and Pereslavl Districts of Yaroslavl Region
291 (GI)	Vologda fireweed tea	Herbal tea (fireweed tea)	Vologda Region
292 (AOG)	Pisco Писко	Alcoholic beverage exclusively obtained by distilling fresh must of recently fermented grapes	Coast of the Departments of Lima, Ica, Arequipa, Moquegua and the valleys of Locumba, Sama and Caplina in the Department of Tacna (Peru)
293 (GI)	Fedosikha dumplings	Dumplings	Fedosikha Village of Kochenevo District, Novosibirsk Region
294 (GI)	Tagil beer	beer	Nizhny Tagil of Sverdlovsk Region
295 (GI)	Mordovia bog oak	Bog oak blanks and decorative and utilitarian bog oak products	Republic of Mordovia

During the same period, by the decision of Rospatent dated July 12, 2022, protection of appellation of origin of goods Jermuk (No. 118) in Russia was terminated.

Such a decision was rendered upon the application filed by Jermuk Group CJSC (Armenia), which informed Rospatent that protection of the designation “Jermuk” as an appellation of origin of goods in the country of origin, Armenia, was terminated. In accordance with Sub-clause 2 of Clause 1 of Article 1536 of the Civil Code, this fact is a ground to terminate the legal protection of the appellation of origin of goods in Russia.

INTELLECTUAL PROPERTY NEWS OF THE EURASIAN ECONOMIC UNION AND NEIGHBORING COUNTRIES

1. EAPO AND EAEU

THE PROTOCOL ON THE PROTECTION OF INDUSTRIAL DESIGNS BECAME EFFECTIVE FOR THE REPUBLIC OF BELARUS

On April 19, 2022, the Protocol on the Protection of Industrial Designs to the Eurasian Patent Convention adopted on September 9, 2019, at a diplomatic conference in Nur-Sultan (now Astana), Republic of Kazakhstan, became effective for the Republic of Belarus.

Belarus became the seventh party to the Protocol. Among the EAPO members, only Turkmenistan is not a party to the Protocol.

FROM MAY 1, 2022, THE EURASIAN PATENT OFFICE ISSUES EURASIAN PATENTS IN ELECTRONIC FORM

From May 1, 2022, the EAPO began issuing Eurasian patents for inventions and industrial designs in the form of electronic documents.

Eurasian patents in the form of electronic documents are to be posted in the Eurasian Patent Registers on the Eurasian Patent Office’s (EAPO) web portal and sent to the patent holder or his representative using the EAPO-ONLINE electronic exchange system. Along with the Eurasian patents in the form of electronic documents, the EAPO will continue to issue Eurasian patents in hard copy. The applicant/patent holder may refuse to receive a patent in hard copy, having notified the office thereof before the publication date of the information about the issuance of the Eurasian patent.

Certificates of transfer of a right to Eurasian patents, certificates of extension of Eurasian patents (certificates), and Eurasian patents will be issued simultaneously in hard copy and in the form of electronic documents.

In the future, the EAPO expects a transition to the issuance of Eurasian patents and certificates in electronic form with an option to obtain these documents in hard copy only at the patent holder’s request.

FROM JULY 1, 2022, FEES TO BE PAID ON EURASIAN APPLICATIONS AND PATENTS FOR INVENTIONS CHANGED

From July 1, 2022, a fee for filing a Eurasian application for invention, making changes to it, its examination, filing appeals against, and oppositions to, the decisions of the examination panel and the Eurasian patent, extension of missed deadlines and restoration of rights, for issuing a Eurasian patent for invention, and a number of other fees increased by about 25–30%.

Also, from July 1, 2022, new fees were introduced for performance by the Eurasian Patent Office of the functions of an international search authority and an international preliminary examination authority under the Patent Cooperation Treaty (PCT).

The changes were made by the decision of the Administrative Council of the Eurasian Patent Office at the meeting held on April 11 to 12, 2022.

Information on the change in the amount of fees is published on the website of the EAPO: <https://www.eapo.org/ru/index.php?newspress=view&d=1333>.

The table of fees for maintaining Eurasian patents in force is also published on the website of the EAPO: <https://www.eapo.org/ru/documents/norm/tabposh.html>.

2. BELARUS

DRAFT LAW OF THE REPUBLIC OF BELARUS ON AMENDMENTS TO THE LAWS ON LEGAL PROTECTION OF INTELLECTUAL PROPERTY SUBJECT MATTERS

On May 31, 2022, the lower house of the Parliament of the Republic of Belarus adopted in the first reading the draft law (No. 1496-dsp) prepared by the Government for comprehensive adjustment of the laws of the Republic of Belarus in the field of intellectual property.

The adoption of the draft law will, in particular, make it possible to:

- Bring the norms of the national legislation in line with the provisions of the Treaty on Trademarks, Service Marks,

and Appellations of Origin of Goods of the Eurasian Economic Union, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, and the Protocol on the Protection of Industrial Designs to the Eurasian Patent Convention, to which the Republic of Belarus is a party;

- Create a legal basis for registration of trademarks and appellations of origin of goods of the Eurasian Economic Union and for obtaining international registration of industrial designs;
- Improve legal regulation of relations in the field of collective management of property rights and the procedure for use of subject matters of copyright and allied rights during special state cultural events.

3. KAZAKHSTAN

ABOUT AMENDMENTS TO THE LEGISLATION IN THE FIELD OF INTELLECTUAL PROPERTY

On August 21, 2022, amendments to the legislation in the field of intellectual property (IP) provided for by the Law of the Republic of Kazakhstan On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Improving the Legislation in the Field of Intellectual Property (IP) and Provision of State-Guaranteed Legal Assistance (Law No. 128-VII dated June 20, 2022) became effective.

In particular, the Civil Code, the Patent Law, the Law on Trademarks, Service Marks, and Appellations of Origin of Goods were amended.

As a result of the amendments, a new intellectual property subject matter appeared — a geographical indication with protection similar to appellations of origin of goods.

The maximum term of protection of registered industrial designs is increased to 25 years.

Protection of non-registered industrial designs is introduced, which are granted the same legal protection as registered industrial designs for 3 years from the date of the first publication in Kazakhstan. The holder of a non-registered industrial design may prevent his non-registered industrial design from using, which results from copying.

When granting protection to trademarks, geographical indications, and appellations of origin of goods, the right of any interested person to send an opposition to granting protection to an expert entity as early as at the stage of consideration of the application is enshrined in law.

4. UZBEKISTAN

LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS HAS BEEN INTRODUCED

On March 3, 2022, the Law On Geographical Indications (No. ZRU-757) was adopted. In addition to the appellations of origin of goods that are protected in Uzbekistan under the Law On Trademarks, Service Marks, and Appellations of Origin of Goods, the new law introduces protection of yet another subject matter — geographical indications. Geographical indications are defined as designations that identify goods as originating in the territory of a certain geographical location, where a quality, reputation, or other characteristic of the goods (hereinafter the “characteristics of the goods”) is essentially attributable to its geographical origin. At least one stage of manufacturing of goods, which has a material effect on formation of goods characteristics, should be performed in this geographical location.

Geographical indications are to be registered in the State Register of Geographical Indications and a certificate is to be issued to the person entitled to use the registered geographical indication.

On July 13, the Government approved the regulations governing the registration of geographical indications (Decree of the Cabinet of Ministers No. 385 dated July 13, 2022). In accordance with the regulations, the Ministry of Justice registers geographical indications.

SOME LAWS OF UZBEKISTAN ON INTELLECTUAL PROPERTY WERE AMENDED

On May 3, 2022, amendments provided for by the Law of the Republic of Uzbekistan On Amendments to Certain Legislative Acts of the Republic of Uzbekistan in Connection with Improvement of Legislation on Intellectual Property Subject Matters (No. ZRU-749 dated February 02, 2022) entered into force.

In particular, amendments to the laws On Inventions, Utility Models, and Industrial Designs and On Trademarks, Service Marks, and Appellations of Origin of Goods became effective. Sections on fines for illegal use of protected intellectual property subject matters were introduced in these laws. The fine ranges from 100 to 200 basic units of account, i.e., from 30 to 60 million soms (~\$2,750 to \$5,500).

REORGANIZATION OF THE SYSTEM OF LEGAL PROTECTION OF INDUSTRIAL PROPERTY

By Decree of the President of the Republic of Uzbekistan No. UP-89 dated March 17, 2022, On Measures for Further Improving the Effectiveness of the Activities of Authorities and Institutions of Justice in Ensuring Civil Rights and Liberties and in Providing Legal Services, the Agency for Intellectual Property and its territorial centers are joined to the Ministry of Justice transferring it the Agency’s objectives, functions, and powers.

The Ministry of Justice is entrusted with:

- Elaboration of a unified state policy in the field of intellectual property and protection of rights to inventions, trademarks, copyright, and other intellectual property subject matters;
- Legal protection of inventions, utility models, industrial designs, trademarks, and other intellectual property subject matters.

To effectively fulfill the objectives entrusted, the Ministry and its territorial subdivisions are authorized to impose fines on legal entities for offenses in the field of intellectual property.

There is an Intellectual Property Department formed in the Ministry structure and an **Intellectual Property Center** established at the Ministry, **which is now** a specifically authorized organization that performs works in registration of intellectual property subject matters, including state examination of applications for their registration, and in central storage of the relevant information on the same.

NEWS

26 APRIL – 28 APRIL 2022

FORUM “INTELLECTUAL PROPERTY - XXI CENTURY”

Andrey Bazhenov, Partner, Russian & Eurasian Patent Attorney, and Maxim Gorbachev, Russian & Eurasian Patent Attorney (both - Gorodissky & Partners, Moscow), spoke at the round table “Issues of legal protection and disposal of rights on computer programs” within the forum “Intellectual Property - XXI Century”, organized by the Chamber of Commerce and Industry of the Russian Federation.

29 APRIL 2022

WEBINAR “IP RIGHTS ON THE MARKETPLACE: CHECKLIST FOR THE SELLER”

Nikita Maltsev, Ph.D., Russian Trademark Attorney (Gorodissky & Partners, Moscow) lectured at the webinar “IP rights on the marketplace: checklist for the seller”, held within the partnership program of Gorodissky & Partners and OZON marketplace.

1 JUNE – 3 JUNE 2022

20TH GORODISSKY ANNUAL SEMINAR “IP PROTECTION STRATEGIES FOR SUCCESSFUL DEVELOPMENT OF THE COMPANY”

The 20th Annual Seminar “IP protection strategies for successful development of the company” was held offline and online by Gorodissky & Partners.

Within 3 days, leading IP attorneys and lawyers of the firm branches (Moscow, Novosibirsk, Vladivostok, St. Petersburg, Dubna) as well as invited speakers from international corporations (India, Russia) and representatives of the Russian and Eurasian Patent Offices held 3 sessions: inventions, trademarks industrial designs and legal aspects. The Seminar covered the most important practical issues and development trends in IP.

The seminar gathered representatives of state corporations, lawyers, patent and trademark attorneys, R&D centers and representatives of industrial, insurance, commercial, food, chemical and pharmaceutical companies from 27 cities and 3 countries – over 210 registrants in total. Some attendees participate in the Gorodissky annual seminar year by year.

29 JUNE – 1 JULY 2022

THE 10TH ST. PETERSBURG INTERNATIONAL LEGAL FORUM

Yuri Kuznetsov, Partner, Russian Patent Attorney, Eurasian Patent & Design Attorney (Gorodissky & Partners, Moscow), participated in the Session “Russia and Eurasia: united patent space”, of the 10th St. Petersburg International Legal Forum.

The Forum was held by the Ministry of Justice of the Russian Federation and the Roscongress Foundation in St. Petersburg. The Forum gathered 3000 participants from 45 countries.

25 JULY 2022

LEXOLOGY LEGAL INFLUENCERS

Vladimir Biriulin, Partner, Russian Patent Attorney, Head of Special Projects (“Gorodissky & Partners”, Moscow) is recognised as a leading author in the Lexology Legal Influencers Q2 2022 for IP - Europe. The leading international online publication in the field

of jurisprudence regularly publishes a list of thought leaders, whose contributions have been read and interacted with by an extensive number of legal professionals.

23 AUGUST 2022

II NATIONAL TECHNOLOGY TRANSFER FORUM

Natalia Nikolaeva, Partner, Regional Director (Gorodissky & Partners, Novosibirsk), spoke at the Panel discussion “Intellectual property: “anti-sanctions mode” of the National technology transfer forum.

Experts and participants discussed issues of foreign right holders’ IP use under the sanctions pressure and efficient IP protection strategies considering current legal regulations and state support.

The Forum was organized by the Government of Russia, the Ministry of Education and Science of Russia, the Government of the Novosibirsk Region and the Siberian Branch of RAS. The Forum was held within the IX International Forum of Technological Development in Novosibirsk.



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