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# Аспекты регулирования РИД, созданных по государственному контракту

# Aspects of regulation of results of intellectual activity, created under a state contract

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***Аннотация.*** *В последнее время активно разрастается сфера инноваций. Деятельность в этой сфере подразумевает работус интеллектуальной собственностью. И по добавлению новых мер в раздел, связанный с выполнением государственных контрактов, можно сказать, что государство активно изучает этот вопрос и решает возможные проблемы. Цель написания статьи – проработка проблем в описанной сфере. В статье описаны теоретические аспекты интеллектуальной деятельности, особенности регулирования прав на результаты интеллектуальной деятельности, которые создаются в рамках государственных контрактов. Также в статье рассмотрены отличительные черты управления исключительными правами Российской Федерации на данный вид РИД, и затронуты проблемы исполнения госконтрактов.*

**Ключевые слова:** Гражданское право, интеллектуальная собственность, результаты интеллектуальной деятельности, государственный (муниципальный) контракт, управление правами, исключительное право, исполнение государственных контрактов

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***Abstract.*** *Recently, the sphere of innovation has been actively growing. Activity in this area involves working with intellectual property. And by adding new measures to the section related to the implementation of government contracts, we can say that the state is actively studying this issue and solving possible problems. The purpose of writing the article is to study the problems in the described area. The article describes the theoretical aspects of intellectual activity, the peculiarities of regulating the rights to the results of intellectual activity, which are created within the framework of government contracts. The article also discusses the distinctive features of the management of the exclusive rights of the Russian Federation for this type of results of intellectual activity, and touches upon the problems of the execution of government contracts.*

**Key words:** Civil law, intellectual property, results of intellectual activity, government (municipal) contract, rights management, exclusive right, carry out government contracts

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Success for the prosperity of civilizations has always been a matter of developing various spheres of activity of these states - the cultural sphere, scientific, economic, technical, etc. The effectiveness of the state's solution of emerging problems in many aspects is related to the level of intellectual and cultural development of society. All aspects of the life of countries can continue to develop dynamically only under certain conditions, which also depend on how developed the problem of legal protection of various fields of activity is.

Development and the economy are closely linked. By expanding the scope of scientific and technical developments, it is possible to interact and popularize cooperation with many countries with which there are currently relations for the supply of products and equipment of our own production, this also applies to high-tech machines and devices or equipment using artificial intelligence [1, p. 210].

In recent decades, such a direction of activity as innovation activity has been developing in the Russian Federation. New legal acts regulating this sphere are being actively developed and applied. Particular attention is paid to resolving issues related to the protection and regulation of rights to the results of intellectual activity, which are produced under an agreement with the state or a person acting on its behalf. By addressing these issues, it is possible to avoid the stagnation of innovation processes and the Russian economy as a whole, since innovation and intellectual property have already taken root in almost all areas of the country's activity.

If you go from the top of the regulatory legal acts and laws of the Russian Federation, then the first thing to do is to check the Constitution of the Russian Federation. It states that the concept of "intellectual property" means a set of rights to any types of creativity and their forms. The Constitution also states that such types of creativity are guaranteed protection. In particular, protection refers to results in the field of literature, scientific and technical sphere, artistic orientation and others.

Considering the Civil Code of the Russian Federation, close attention should be paid to 4 parts, which are devoted to intellectual activity and all related issues. The first step is to understand the concept of intellectual property. Here it is understood as the exclusive right of persons (both individuals and legal entities) to any results of intellectual activity and equivalent means of individualization (the latter are described in detail in Chapter 76).

Turning to jurisprudence, it is impossible not to notice that here the concept of intellectual property is not a special case of property rights. It acts as a separate and independent legal regime, which consists of several groups of regimes.

With the development of a market economy, completely different means of individualization in various forms are gradually gaining more importance as objects of property. And it is quite natural that their owners want to protect themselves. In this regard, the question of the legal protection of such objects is actively raised, which is regularly considered by the state. But do not forget about a comprehensive analysis and study of the selected topic with the help of scientific papers, since a relatively new field of activity still causes controversial issues in practice.

Speaking more specifically about such a concept as “the results of intellectual activity” (or simply RIA), it is worth noting that from the point of view of civil law, they act as a kind of objects of civil rights. The Civil Code itself, unfortunately, does not provide any specific definition of RIA, but this is compensated by a multitude of interpretations and opinions from scientific publications. Summarizing scientific works, we can say that the essence of these results cannot be described only by some one property, it is a whole complex. Here is the concept of them as intangible results, and any products of an objective form, and various works of creativity that are fixed on some material carrier, and more.

Returning to the main topic of the article, it is worth talking about a specific type of RIA. The legislation itself does not contain a clear concept of RIA created under government contracts, however, there are a number of criteria that make it possible to separate this group of RIA from the general mass. These criteria necessarily include financing at the expense of money from the country's budget and the conditions on the basis of which relations arise for the creation of RIA [2, p. 66].

Based on these criteria, it is possible to draw up your own definition of this type of RIA - these are the results of intellectual activity that are created with the involvement of funds from the federal budget in full or in part.

In order to apply measures to protect rights to this RIA, the Russian Federation must be its right holder. According to the legal system, some types of intellectual property must undergo mandatory official registration with state authorities, or, in other words, be patented. The list of

such types of RIA consists of 3 objects - inventions, utility models and industrial designs. The right to obtain a patent for these types of RIA is the first step towards acquiring an exclusive right.

Recently, the state has been paying great attention to the implementation of various federal targeted programs, within the framework of which state contracts are concluded for the performance of various works, for example, research and development work (or R&D for short). Indicators for identifying the effectiveness of such work are certain RIA, which are provided with legal protection. These include the previously listed 3 objects that are subject to patent rights.

And before proceeding to the performance of work under the contract, it is worth saying what is meant by the execution of a state (municipal) contract. Like any other documented work, this is the fulfillment of obligations by both parties who have concluded such an agreement between themselves. In this situation, the obligations of the performer will be the creation of the necessary and patentable result of intellectual activity, which will subsequently be used by the customer, and the customer, for his part, must pay for the work actually done [3, p. 92].

And if he speaks specifically about the state (or its representative body) in the role of the customer and, taking into account all the advantages that it receives, then it is worth saying that it is quite problematic to observe the principle of equality of arms in such relations.

In terms of R&D performance, the key point is the effective interaction between the contractor (or co-executors) and the customer of the work. This is necessary in order to obtain patentable created results of activity protection at the right time. Various legal acts reflect the order of this interaction. At the same time, legislative sources contain information regarding the registration of such types of RIA [4, p. 287].

Such sources include the Civil Code, many Government Decrees (for example, Decree No. 1275 of September 26, 2013 or Decree No. 131 of February 26, 2002), some orders of state authorities (in particular, orders of the Ministry of Justice and the Ministry of Industry and Science regarding a single register for the results such works and recommendations on the state accounting of the considered results of activities).

Based on some points of the Government Decrees, it turns out that the contractor, after carrying out the work and obtaining a patentable result, must inform the customer about this. But it should be taken into account that in real life the terms of contracts may differ from each other, which can lead to problems in terms of obtaining legal protection. This is because specific notice periods for the customer may not be specified, which will affect the filing date of the application that establishes the priority date. And specifically, this may have a negative impact, since there may be a disclosure of the technical level of the RIA made by some other person who is not bound by the contract.

It is also worth mentioning that regarding the deadlines for filing an application after notifying the customer, there are clear time limits in the legislation - 6 months.

On the part of the customer under the contract, there are also obligations. He must inform the contractor of his decision on the legal protection of the result of the activity (up to two months). After obtaining permission from the customer, the contractor may not have enough time to properly complete all the necessary documents. In this case, there is a risk of filing an application that will not be sufficiently developed at the technical level, which entails additional requests for information during the examination, or other significant actions and additional deductions to the country's budget (additional fees). The worst consequence may be the loss of the right to obtain a patent on the part of the customer (this circumstance is spelled out in the second paragraph of Article 1373 of the Civil Code of the Russian Federation).

At the moment, it is worth paying close attention to the issue of specific deadlines for submitting this or that information between the parties to the contract. After all, the contractor himself cannot make a decision regarding the execution of documents for the legal protection of intellectual property. The customer must fully familiarize himself with the materials provided and decide whether the created result will be applied in practice, otherwise there is a high risk of a large number of RIAs that simply will not be in demand in the activity and will be listed only on paper.

In practice, there are also cases when the executors of the contract involve co-executors to assist in certain aspects of the work. In this case, of course, there is an increase in the price of the contract, but this change does not always pay off, since there is always a risk of not creating the necessary result of intellectual activity. That is, the implementation of such work is not only unreasonable, but also economically costly [4, p. 289].

In some cases, the obligations of the customer also include state accounting of the result either in a single register or in a single state register. accounting information system (this already depends on the specific purpose of the work).

Considering the previously mentioned recommendations of the Ministry of Justice and the Ministry of Industry and Science on the issue of accounting for RIA, we can conclude that the recommendations do not contain clear instructions that the RIA being created may be unprotected. Other legal documents may contain information on the need to distinguish between protected and unprotected RIA, as well as the need to draw up a separate form for each individual result of the activity [5, p. 212].

Returning to the issues of managing rights to intellectual property under government contracts and their protection, first of all, it is worth referring to the Civil Code of the Russian Federation. In more detail, in particular, we will consider the 4th part 1240.1 of the article, which contains information about the legal system for the specified type of RIA. So, according to this article, regulation depends on which subject of the contract owns exclusive rights. There are 3 options here: the rights of the Russian Federation (or its subject or municipality), the rights of the person involved in the execution of such an order, or the rights of both parties. the contract itself.

If the first situation is in action, the performer, through agreements with third parties and his employees, acquires (or ensures this) the exclusive right and the right to use for the purpose of their subsequent transfer to the other party to the contract.

If the second situation is in operation, after the request of the customer, the contractor provides a certain type of license (gratuitous non-exclusive) so that the customer has the right to use this RIA. This type of license is always issued only if the use of RIA is planned in connection with the needs of the country as a whole or its individual municipalities in particular.

If the third situation is in effect, together with the notification of the contract executor, the customer may grant the same license to third parties if the purpose of using the RIA is the needs of the country or its municipality.

With exclusive rights to other RIA objects (for example, a book or a picture), the situation is similar - the exclusive right belongs either to the author or the customer, or the right belongs to them jointly.

According to Government Decree No. 342, federal bodies and organizations that act as NIKOR customers on behalf of the Russian Federation are required to provide in the contract a clause according to which exclusive rights are assigned to the Russian Federation in a number of cases specified in clause 1 of the resolution. And according to it, exclusive rights are assigned to both parties if the RIA is produced with the aim of providing defense and security for Russia. In all remaining situations or under the conditions specified in the contract, the owner of exclusive rights will be considered the executor of the order.

Also, along with the specified article, the Decree of the Government of the Russian Federation dated March 22, 2012 No. 233 acts as a norm for disposing of rights. This Decree (specifically paragraph 7) states that all actions that are taken by order of the rights of the Russian Federation are carried out solely on the basis of the interests of the Russian Federation. There are cases in practice when such decisions were not made in relation to some type of RIA. In order to resolve these situations, this document also contains information on the obligatory annual check by the customer of the question of whether it is rational to continue securing exclusive rights to such RIA for the Russian Federation.

Other main laws in this area include federal laws on the contract system in the field of procurement for the needs of the country and its individual entities No. 44-FZ, on the State Defense Order No. 275-FZ, on procurement by certain types of legal entities No. 223-FZ.

Summing up everything described above, it is worth saying that over time, more and more new problems and questions regarding the regulation of relations in the field of intellectual activity are revealed. And with the development of a new direction of activity, questions will inevitably arise on the application of theory in practice. Both the adoption of new laws and the study of the topic in terms of scientific publications will play a big role in this.

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