

**LEGISLATION IN INNOVATION FIELD OF
RUSSIAN FEDERATION**

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In the Russian Federation innovations considered as the basic component of sustainable economic development of the state [1]. In modern conditions, the development of the innovation economy dictates the necessity of creation an effective legal framework, that will adequately reflecting the interests of all layers of the society and first of all the interests of innovation activity subjects.

The mediation of production diversification process, arrangement of conditions for moving from the hydrocarbon raw materials export to high technologies export, in author's opinion, - are the most important purpose of the legal regulation of relations in the sphere of innovation development of the Russian Federation.

The special aspects of innovative legislation determined by the possibilities of regions and pace of development. The new approaches of practical implementation of the relevant tasks have been formed in such regions. The complex approach of creation an innovative legislation become more and more important. In addition to the federal legislation there is an intensive process of formation of the regional legislation in the Russian Federation.

Before turning to the law on innovative activities, it's important to touch upon the issue of the essence of innovation. Today in the economical, legal literature,

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in the legislation there is no generally accepted terminology of the innovative activity field.

From the economic perspective innovative activities considered in the following aspects: as a purposeful focused on the development, implementation, production and commercialization of innovations; as the innovation creation process; as a final result of creative work that implement in the new or improved products, process using in the economic turnover.

In English the «innovation» is just a novelty. For the legal understanding of innovation's essence, it should be taken into account that the «novelty» is not identical with the intellectual property understanding of «newness». In this sense, the «newness» means the creation of new intellectual property item that will be an internationally recognized. The result of intellectual activity must be expressed in the form of concrete item of intellectual property rights: computer programs, databases, inventions, useful models, industrial designs, selection inventions, etc.

It is necessary to emphasize that the importance of legal regulation of relations in the innovation activity field should not be overdraw. Always the law is secondary relative to the economy. Whatever legal norms are perfect or not, they won't work fully, if there are no relevant economic needs. The fundamental problems of the intellectual property primarily effect on the economic field. Small quantity of the individuals would invest serious money in innovations and their implementation, until the natural resources are the main source of state income, and their winning and processing does not require special intellectual resources, few [2].

There are not enough the legislative measures for the realization the innovation development course. It is necessary to improve the system of state bodies, to optimize and diversify their powers; to ensure the competition and objectivity of tender actions

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and state or municipal contracts concluding; to eliminate an unreasonable prohibitions and restrictions in the economic activity field.

Except of the positive factors, the legislation can hinder the development of relevant economic relations. Such impacts are often associated with a hasty adoption of regulation acts, with the absence of qualified approach during its formation, with the ignoring of the really existing social relations, with the nonobservance of elementary concepts of legal drafting methodology etc.

The practice of russian lawmaking is the specific one. Since the proclamation of market reforms, the adopted laws take precedence of the current economic relations. According to its contents, these laws can be good and can correspond to high international standards. But they are not always suited to the real social-economic reality. The most reasonable situation is if the law adoption stem from by a long practice of economic relations. The law maker shouldn't be blame for the legislation that does not work, especially when such legislation regulate the new types of social relations, for example the complex economic relations or social ties. Particular laws undergo the changes due to objective processes in various fields. At the same time, continuous insertion of amendments, changes and additions to the federal legal is not an ordinary fact. As an example, the Tax code of the Russian Federation, Laws of the Russian Federation on privatization, on joint-stock companies, on insolvency (bankruptcy) and others, there are the Laws that were numerously amendment.

Currently there is a debate on the adoption of a new version of the Civil code of the Russian Federation that have been prepared for several years. The necessity of changes is obvious. After the first reading of abovementioned Code the Duma's Committee on civil, criminal, arbitration and procedural legislation received over 2000 amendments, half of which were reflected in the next edition. The second reading in September, 2012 postponed to a later date.

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Thus, a lot of the regulatory acts on its content become new. We can state that we live in an age of intense dynamic legislation; the trend of constant changes and additions is preserved. But the innovation activities subjects should be sure in clear regulation, in stability guarantees of their rights and interests.

It is known that from the moment of origin of the intellectual property system a global conflict arose between the system of intellectual property and the results of intellectual activity. Essentially, the intellectual property system imposed a certain restrictions on the free use of the results of intellectual activity. The holders of exclusive rights (not authors) have become the dominant factor in the exercising of intellectual property rights. In this regard, the supporters of preservation of the intellectual property system consider it to be the main factor of social progress and development. Opponents of the intellectual property system, first of all the authors, on the contrary consider it to a brake and burden for the economy of any country.

It should be emphasized that despite of the large lifetime of the intellectual property system, its fundamental principles has not formulated till now. There is no doubt that the intellectual property system plays a positive role in the development of innovation economy. However, we cannot ignore that the main factor of state socio-economic development is not the intellectual property itself, but the certain results of intellectual (creative) activity. In fact, intellectual property mediates the relations concerning with creation, using and protection of intellectual activity result.

However, in the real life the intellectual property system emerged and continues to exist more to serve the interests of the right holders, but not the authors and society. In fact, the intellectual property system transformed the results of creative activity into the trade object (means of profitmaking). Incomes from the intellectual activity results accumulated in the right holders hands. The authors' interests downgrades.

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If the balance between the interests of authors, right holders and society will be established, the intellectual property system could contribute to socio-economic development. [3].

In Russian Federation the results of creative activity were accompanied by budgetary financing, but the private investment gradually picking up its pace. In fact, much of the innovative processes implements through financial and / or other support of private individuals. In this case the following question arises, who should be recognized as the patent owner. Particularly, it deals with the case when the developments are: employees performing their official duties; use material means of the employer; and when developments performing their work under the state contracts. Employers recognized as patent holders in the cases when the developments conducting with performing employment duties and when the developments received under the state contract (paragraph 2 article 1270 of the Civil code). The authorship belongs to the developer, in other words, the property rights associated with the getting profit on the result of the intellectual property belong to the employer, and moral rights belong to the author of such a product. Such a rule is generally accepted in the world practice, because it creates the incentives for the employer to financing the developments; in most cases, this rule provides the financial basis of the project implement possibilities. As for the authors' rights, their interests may be ensured by the special procedure of remuneration and by the determination of the special order of the exclusive rights creation.

We believe that the stimulation of innovative processes development, especially at the regional level, is important not only for the finding of financing sources, but for attracting of high intellectual potential for such processes implementation . It seems that the high level of guarantees of the authors' rights in a particular region involves the increasing of such region's attraction in the question of the mobilization of the

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qualified specialists to the innovative field. Those are meant here the future authors / creators of intellectual property.

The Governor of Belgorod oblast E. Savchenko proposed to use the 3 % of profit funds of the large enterprises as one of the financing sources for innovative development at the regional level [4]. Thus, the large enterprises could participate in co-financing of innovative development. They could purchase the right to use the slice of the profits from the results of creative activities. It will be better if these enterprises could introduce these results in their production.

The inclusion of the authors in the noun of the holders of the exclusive rights on the results of creative activity could be the material incentive for the author's participation in the creation of the results of creative activity and bringing them into the production. The experience of developed countries shows that the expansion of the authors' rights of the using the exclusive rights gives a powerful impulse for authors' interest in the final result - introduction into production.

Legal support of innovative activity carries out on the basis of the combination of imperative and dispositive principles that fixed in various sectorial laws.

The basic regulatory act in this sphere is the Civil code of the Russian Federation (I-IV parts) that defines private law norms that regulates implementation and protection of rights in the innovative field. These parts of Civil code is the basic component of the legislation in the innovative development field. To protect the authors' rights and interests from the infringement by third parties provides for the criminal (articles 146, 147 of the Criminal code of the Russian Federation) and administrative liability (article 7.12 of the RF Code of administrative offences). Taxation issues of innovative activity are regulated by the Tax code of the Russian Federation.

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There are a number of Federal laws in the innovative field: the Federal law dated July 6, 2007 № 209-FZ) «On development of small and medium entrepreneurship in the Russian Federation»; the Federal law dated August 23, 1997 № 127-FZ) « On science and state scientific and technical policy», the Federal law dated 7 April, 1999 № 70-FZ) «On the status of the science town of the Russian Federation», the Federal law dated December 17, 2008 «On rights transfer to common technology». The implementation of innovation policy serves number of federal laws and regulations in the investments field .

Analysis of the abovementioned sources allows speaking about the initial stage of formation of the complex conceptual approaches to the regulation of the innovative activity in Russia. The Federal laws do not fully provided the conditions for innovation, technologies commercialization, development of small innovation entrepreneurship; the conditions of the development of venture innovation investment, tax incentives are poorly developed; the legal terminology do not define that resulted in collisions of legal acts and ambiguity of interpretation of the separate provisions.

The majority of the regions of Russia support the accelerated development of the Federal legislation in the field of scientific-technical and industrial policy, the adoption of the Federal law on innovation activities that will define the basic concepts associated with innovative activity, the principles of state support and stimulation. Such a law in the modern conditions is necessary. The need of developing the consolidated position of stakeholders in this important state issue is absolutely clear.

What primary questions are necessary to solve? First of all, it is necessary to ensure the innovative development interests of the state, the subjects of the Russian Federation and municipal formations. It is important to determine the order of

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registration of the intellectual property items that creating in the process of innovative activity. Also the allocation of rights on such items between the state, the subjects of the Russian Federation and the municipal entities should be determine. And it's important to identify the bodies authorized to exercise the powers in the field of innovative development.

It's important to solve the problem of the acquisition of the exclusive rights on intellectual activity results that created under the state contract. Particularly, it is necessary to find the optimal variant of allocation of the interests between state customers, executors of the state order and the developers at the part of the consolidation of the rights on intellectual activity results.

The management system's questions are important now in the innovation development spheres. Such a system must be balanced with the development of the intellectual property management system.

It is necessary to define the system of state measures of innovation awareness of citizens. Workers of law enforcement bodies and judges don't great on innovative development and intellectual property issues. The copyright infringement often comes from the fact that the authors do not know how to protect such rights. And law violators don't know the basic provisions of the current intellectual property legislation.

The courses list concerning with the development of innovation sphere should be broadening with: «intellectual property law», «copyright», «patent law» courses etc. There are a lot of universities of the Russian Federation where the special course «intellectual property rights» is giving. In the new educational standard for the bachelors there is no such a discipline at base discipline's list. It's possible to save it only within the framework of master's programs. The increasing of the educational

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level can be performed in the additional educational program, considering to the increased interest to the intellectual property law.

The serious work on development of the legislative base in the investment sphere carrying out in the Belgorod region. Thus, the Law of Belgorod oblast dated October 1, 2009 № 296 «On innovation activities and innovation policy at the Belgorod region territory» is directed on formation the regional innovation system through the infrastructure development for ensuring the joint activities of the leading scientific and educational institutions, industrial parks, business-incubators, collective using centers, and other items; for providing the conditions for ensuring the innovative projects participants equal access to resources; for stimulation the demand on innovative products and specialists' training in the innovation management field.

The law of Belgorod oblast dated 13 November, 2003 № 96 «On science and scientific and technical policy in the Belgorod region» establishes the legal bases of the science and scientific-technical policy in the Belgorod region, the conditions and procedure for its formation and implementation, as well as the implementation of relevant scientific and technical activity in the Belgorod region.

The tax legislation has the fundamental importance for the stimulation of innovation development. So, the laws of Belgorod region dated November 27, 2003, № 104 «On property tax for organizations» and «On benefits on profits tax for organizations» include the provisions aimed at the reduction of the profits tax for producers of energy efficient and energy-saving products (for example, items LEDs items) that produces heat and electric energy on the basis of biogas technologies and solar and wind energy using. The projects included in the nanotech industry development program of the region for 2010-2014, are also included to the list of beneficiaries for the property tax.

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Preferential tax rate also provided for the universities' innovative enterprises (small innovative enterprises) for the period of project payback (but not more than five years). The projects implemented under the regional program of the production of vegetables in protected soil also will receive the eight years benefits of this type of the tax.

The essential condition of preferential rate receiving is location and registration of the companies on the territory of the Belgorod region.

A large part of the Belgorod region's innovative projects accompanied by investments. These relations are also regulated by a number of regulations.

The Decree of the Government of the Belgorod region dated 28 February, 2011 № 75-RP «On the concept of the Belgorod intellectual and innovation system creation» approved the concept of the Belgorod innovative-intellectual systems (BIIS) creation. Such a concept defines the BIIS as the way of scientific and technical and information revolutions realization, as the way of harmonization he relations between individuals, society and nature through the extended reproduction of public intelligence and managed planetary evolution.

The Decree of the Governor of the Belgorod region dated April 7, 2011 № 212 «On the organization of the realization of the Aurora Park regional project» established the necessity of the creation of the modern complex that combines working, living, recreation spaces, the space for creativity and business and residential infrastructure objects. The young scientists' community implements the innovative projects in such complex. The main contingent of the future «Aurora Park» will be the students of Russian and foreign universities, inventors, scientists, engineers, writers, innovative product's experts and developers and members of their families.

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This project requires the serious resources for the science city infrastructure legal supporting. Actually all levels of science city creation and functioning will need qualified legal services. The registration of housing rights, protection and enforcement of intellectual property rights, regulation of labor relations could be the most difficult questions for the Park establishment. The legal framework of the intracorporate relations in the science city also should be considered.

The development of the region innovative sphere closely connected with the interaction of public and private entities. This is new format of relations for Russian legal system. In the soviet period the economic relations were based on public standards, but at the market transition period these relations based on the private law rules. The correlation of private and public principles in the legal regulation of social relations is a stumbling block for many researches. The adoption of the law on public-private partnership at the federal level will give the opportunity to reach the consensus on this issue. In some regions of Russia (Republics of Altai, Dagestan, Kalmykia, Tomsk region, Altai mountains) such laws are adopted. However, their viability will be ineffective until the main priorities on the delimitation of the private and public principles won't be identifying at the Federal level.

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**ЗАКОНОДАТЕЛЬСТВО В ИНОВАЦИОННОЙ СФЕРЕ
РОССИЙСКОЙ ФЕДЕРАЦИИ**

Тычинин С. В.

В статье рассматриваются особенности и проблемы законодательства в инновационной сфере Российской Федерации. Проанализирована взаимосвязь системы интеллектуальной собственности и интеллектуальной деятельности.

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Ключевые слова: инновация, интеллектуальная деятельность, законодательство в инновационной сфере.

ЗАКОНОДАВСТВО В ІННОВАЦІЙНІЙ СФЕРІ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ

Тичинін С. В.

У статті розглядаються особливості та проблеми законодавства в інноваційній сфері Російської Федерації. Проаналізовано взаємозв'язок системи інтелектуальної власності та інтелектуальної діяльності.

Ключові слова: інновація, інтелектуальна діяльність, законодавство в інноваційній сфері.

**LEGISLATION IN THE SPHERE OF INNOVATIONS OF THE RUSSIAN
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Tychinin S. V.

The article examines the features and issues of legislation in the field of innovation of the Russian Federation. Innovative development from the point of view of scientists in the field of economy is analysed. The definition of term “innovation” is examined. Importance of legal adjusting of innovative relationship is considered. The necessities for improvement of state authorities system, optimization of their power are proposed. Current situation of legislative activity in the field of innovation and intellectual property in the Russian Federation is given. It has been established that creative activity is developed mostly with the help of investment of private person, in spite of the fact that some time ago the main investor was the state. Nevertheless the authors of inventions are the least economic motivated. The example of innovation development in Belgorod region is given. The method of inventor motivation by making him rights holder as well as Employer Company is analysed. Legislation in effect in the field of intellectual property of the Russian Federation is examined (Civil Code of the Russian Federation, the Criminal Code of the Russian Federation, Administrative Violations Code of the Russian Federation, Federal Law “Concerning the Development of Small and Medium-Sized Business in the Russian Federation”, etc.). The relationship of intellectual property and intellectual activity is analysed. The necessity for improvement of education by including disciplines in the field of innovation and intellectual

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property in the program list for Bachelor and Master of Science is observed. The example of legislation activity in the field of investment in Belgorod region (the Belgorod region Law “On innovative activity and innovative policy on the territory of the Belgorod region”, the Belgorod region Law “ On the science and scientific and technical policy in the Belgorod region”, the Belgorod region Law “On Tax on the Assets of Organisations”, etc.) is given. Connection between region and state innovative development by development of legislative activity in the field of intellectual property, innovation, investment is analysed. The necessity for bringing to conformity of existing legislation at the regional and state levels is established.

Keywords: innovation, intellectual activity, legislation in the sphere of innovation