

Intellectual Property: Investment Landscape in Russia

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The issues of modernization and technological development of the Russian economy are currently being actively discussed. The highest-ranking public officials have admitted that the potential of the raw stuff exportation model has been exhausted. The transition to the innovational type of development — transformation of the intellect, of the creativity of people into the main factor of economic growth and national competitiveness — is named in the Strategy of the Long-Term Social and Economic Development of the Russian Federation until 2020 as one of the ways to provide for a long-term steady increase in the well-being of Russian citizens, national security, dynamic economic development and strengthening of Russia's positions in the international community.

The strategy contains a number of basic measures of its implementation, and among those is creation of conditions for an efficient market evaluation of intellectual property, both accumulated and in the process of creation, and its application in order to increase the capitalization of companies, to simplify the circulation of immaterial assets, to include the objects of intellectual property created at the cost of budget funds in the economic activity.

Often in the course of carrying out investment projects in the sphere of innovations, their participants consider the variant of contributing to the charter capital of a newly created joint venture with the exclusive right to an object of intellectual property or (less often) the right to use it. Even though the provisions of the Civil Code of the Russian Federation (the CCRF) do not directly stipulate this way of disposal of intellectual property, it should be noted that the current normative regulations do not prohibit contributing to the charter capital of newly created companies with the rights to objects of intellectual property. This conclusion is confirmed by court rulings, including those of the highest judicial bodies.

As a rule, such protected results of intellectual activity as invention, utility model and know-

how, typically jointly referred to as "industrial property," become objects of investment activity.

The CCRF fixes a unified form of the document of legal protection of industrial property: a patent that certifies the priority of the invention or utility model, authorship and exclusive rights to the respective object of intellectual property.

Even though know-how is a separate type of protected intellectual property, it is essentially an alternative to the patent form of protection, which, in our opinion, remains underestimated. Protection of information about a patentable technical solution in the form of know-how may have strategic objectives in connection with the entry into the market of a new product based on that solution for the following reason. In this case, the situation when the information about the technical solution becomes generally available as a part of the patent's description is avoided. Such a situation may adversely affect the efficiency of the patent protection, because the patent owner cannot control and prove the use of the respective technical solution by competitors.

Also, for the arising of the right to know-how, no state expertise, no official acknowledgement of it by issuance of a protective document (patent) and no other formalities preceding the arising of the right to patent-protected industrial property objects are required. The decision of legal protection of information in the know-how regime is taken by the owner of the respective information, and this decision is fixed in the respective local normative act (instruction, regulation, etc.).

Besides, the involvement of know-how in commercial circulation is simpler, as there is no need to register the transactions of alienation of rights to it and of their pledge. Unlike the patent-protected intellectual property objects, which remain legally protected for a fixed period (as the maximum — 20 years for most inventions and 13 years for all utility models), validity of the exclusive right to know-how is not limited to any period of time. However, if the confidentiality of the information that is considered know-how is compromised, all right holders lose the exclusive right to it. Also, in certain conditions and with the correct approach to the formalization of the relations between the right holders, this circumstance does not limit the possibility to obtain legal protection of the technical solution in the form of a patent afterwards.

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