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ОХРАНА РЕЗУЛЬТАТОВ ИННОВАЦИОННОЙ ДЕЯТЕЛЬНОСТИ В УСЛОВИЯХ ЭКОНОМИЧЕСКИХ САНКЦИЙ

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Аннотация

В статье рассматриваются проблемы охраны интеллектуальной собственности в условиях введения экономических санкций. Цель исследования – изучить вопросы охраны результатов инновационной деятельности в сложной экономической ситуации, связанной с введением экономических санкций снижение импорта, уходом с внутреннего рынка многих иностранных организаций.

В ходе исследования было установлено, что изменения действующего российского законодательства в сфере охраны интеллектуальной собственности могут привести к неоднозначным последствиям для российской экономики.

Ключевые слова: инновационная деятельность, интеллектуальная собственность, охрана результатов интеллектуальной деятельности.

PROTECTION OF THE RESULTS OF INNOVATION ACTIVITY IN THE CONDITIONS OF ECONOMIC SANCTIONS

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Abstract

The article analyses the problems of intellectual property protection in the context of the introduction of economic sanctions. The main goal of the research is to study the issues of protecting the results of innovative activity in a difficult economic situation caused by the introduction of economic sanctions, a decrease in imports, and the exit of many foreign enterprises from the domestic market.

In the course of the study, it was found that changes in the current Russian legislation in the field of intellectual property protection can lead to ambiguous consequences for the Russian economy.

Keywords: innovation activity, intellectual property, protection of intellectual property results.

Economic sanctions are a kind of reaction to the actions of economic agent or a whole state. The aim of economic sanctions is to cause some economic or financial problems to prevent or to stop some activities of the subject (if these activities are not supported by the others or contradict any kind of norms or principles adopted by the society or community).

Nowadays economic sanctions are quite effective instruments or measures of influence upon the decisions taken by the subject.

At the same time economic sanctions can break the foundations of existing market economy as they ruin economic relations and blockchains, cause isolation of economic agents, interfere into the process of decision making [16]. All these can lead to serious problems in the economy of the country, region or the whole world.

Innovation activities can also suffer from economic sanctions. The protection of intellectual property is based on International legal acts (declarations, conventions, treaties) and on national legislation [5]. The Civil Code of the Russian Federation is the main legal act, which regulates intellectual property relations and protects the results of innovation activities [1].

As a general principle, the results of innovation activities are protected at a national level. So the protection is limited by the territory of the state [4]. If a company wants to protect any invention abroad, it must patent it in other countries [5]. The rule is applied to other kinds of intellectual property: industrial designs, utility models, trade secrets, know-how, trade marks, etc.

Validity period of the patent varies depending on the kind of intellectual property (20 years for inventions, 10 years for utility models, 5 years for industrial designs, 15 years for trade marks).

Patent fees ought to be payed regularly to prevent patent annulation and transfer to the public domain. Moreover, in some cases it is possible to ask for patent extension [13].

But economic sanctions have already influenced upon the system of innovation protection that caused a lot of problems for patent holders.

One of the problems, caused by economic sanctions are difficulties in paying patent fees abroad as bank accounts of many patent holders were frozen. More over some patent holders even cannot cross the borders of the country.

As a result their intellectual property can lose its status and come into public domain [9].

The situation with trademarks is even worse, because if the patent holder doesn't ask for patent extension after patent expiration any other person or economic agent can patent it again [15]. And it is not regarded as violation of laws or any rights. This has already happened with the trade mark "Svaty". A similar situation is with patenting abroad.

Another serious problem is connected with economic sanctions is the decision of come foreign economic agents to leave, to stop or to sell their business in Russia because of difficulties with supply, possible nationalization of enterprises and pressure of the national government of their countries.

According to the Federal Law No. 46-FZ dated 08.03.22 "On Amendments to Certain Legislative Acts of the Russian Federation", the Government of the Russian
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Federation received the right to establish in 2022 a list of goods and their groups, in respect of which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to intellectual property and means of individualization cannot be applied [7].

Innovations of such enterprises protected in the form of inventions or know-how, can lose their legal status because nobody wants to buy them and pay for them.

This paradoxical situation harms innovation activities, breaks cooperation, supply chains and worsens economic climate in the country [2].

Foreign investments into development of business and in innovation development are stopped.

But on the other hand national enterprises are given freedom in innovation activities. Moreover, their innovative work is supported by the government. National economic agents have preferences and privileges, because the state stimulates their innovation activities and development.

Many technical and engineering solutions, which were not patented or applied because of the strong competition with the foreign analogues are protected by the state. Innovation activities are supported by the country.

Because of the problems with some equipment supply the economy of the state is in strong need of import substitution. That is why state creates favorable conditions for inventors and innovators and stimulates development of innovation activities [12].

Parallel import can guarantee supply of goods, import of which was limited by the economic sanctions. This measure can provide the customers the necessary goods. But at the same time it can violate intellectual property rights decrease the quality of imported products and stimulate production of counterfeit. Authorized distributors will not import products and this can cause difficulties with warranty service. Parallel import can violate the rules of transportation and storage of products that can cause problems to the customers. At the same time, parallel import does not contradict TRIPS and international treaties because it is based on the principle of exhaustion of rights.

The principle of exhaustion of rights means that the patent holder of intellectual property and trademarks loses the opportunity to prohibit the sale of products that use his intellectual property after such products are put into commercial circulation by him or with his consent.

Some scientist think that application of exhaustion of rights means that any use of intellectual property that is inconsistent with the patent holder from unfriendly countries will not contradict laws even the production of products under a particular trademark belonging to patent holder (counterfeit) [14].

To provide national security the government of the Russian Federation is given the right to permit using inventions, utility models and industrial designs without consent of patent holder.

But patent holder can claim for compensation. The amount and the rules of compensation are regulated by Decree of the Government of the Russian Federation of October 18, 2021 N 1767 «On approval of the Methodology for Determining the amount of Compensation paid to the Patent Holder when Making a Decision on the Use of an Invention, Utility Model or Industrial Design without His consent, and the Procedure for its payment» [6].

But recent amendments cancel any compensations for patent holders from unfriendly countries (Decree of the Government of the Russian Federation of 06.03.2022 N 299 "On Amendments to paragraph 2 of the Methodology for Determining the Amount of Compensation paid to the Patent Holder when Making a Decision on the Use of an Invention, Utility Model or Industrial Design without His consent, and the Procedure for its payment") [8].

The scientists consider that market of complex innovations (IT, telecommunications) can be saved by implementation of compulsory licensing, provided by the state [10; 11].

At the same time, compulsory licensing normally is applied when patent holder refuses to give licenses without any reasonable excuse in order to prevent production

of complex innovation product. In this case, compulsory licensing is permitted if the user pays compensation.

Some researchers consider that cancellation of compensation and protection of intellectual property rights of patent holders from unfriendly countries can harm national innovation development because no one will invest money in innovation activities if it is allowed to use patented intellectual property legally without any compensation.

That is why it is possible to come to the conclusion that recent changings of intellectual property regulation in Russia , influenced by economic sanctions are aimed to secure national economy but they can lead to contradictive consequences in the development of innovation activities. It is important to create favorable conditions to stimulate Russian inventors and subjects engaged in innovation activities, including in the scientific and educational spheres [3].

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