

**Some issues of legal regulation in the Russian civil law the use of the results of intellectual activity created in the execution of job duties**

In Russia, the main element of the mechanism of legal regulation of the creation and turnover of the results of intellectual activity is Part Four of the Civil Code of Russian Federation (hereinafter - the "CC"), which, although it is a big step forward in the legal regulation in this area, but all the problems of legal regulation, it is not decided yet.<sup>1</sup> Recently, the results of intellectual activity for the most part are not product of individual inventors, it is a result of collaboration whole groups of workers engaged in the creation of these results within the respective job assignments. So commercialization (introduction into civil turnover) of the results of intellectual activity is made, as a rule, not by the authors, but other persons who acquire the exclusive rights to the results from the authors. An employer who employs workers to participate in the creation of intellectual activity, wants to get the maximum possible amount of exclusive rights to the use of these results. Russian law provides such a possibility, but with certain features.

The main feature of the results of intellectual activity - their intangible (ideal) nature. Results of intellectual activities are not involved in the civil turnover, but they and the means of individualization recognized intellectual property rights, which include:

- An exclusive right that is the nature of a property right;
- Moral rights (e.g. the right of authorship) and other rights (the right destination, the right of access, etc.) – in cases stipulated in CC.

Let us consider features of legal regulation of creating some of the results of intellectual activity created (and in the case of breeding achievements - created, bred, or discovered) in connection with employee job duties or specific tasks of the employer:

The Result of intellectual activity	The Right of authorship	The Exclusive right	The Right to obtain a patent	The Remuneration
Employment work of science, literature, or art (art. 1295 CC)	The authorship belongs to the employee (author)	The exclusive rights belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.  If, within a period of three years from the date on which the employment work was held at his disposal, will not use this product, do not transfer	-	If an employer within the prescribed time will use employment work or will transfer an exclusive right to another person, the author have the right to receipt remuneration.  The author shall obtain the right to demand remuneration also in the case when the employer has taken the decision to keep the employment work

<sup>1</sup> "Basic novels of the Part Four of the Civil Code of Russian Federation" (interview with Ival Bliznets, Professor, Doctor of Laws, the rector of the Russian State Institute of Intellectual Property) // "The arbitral justice in Russia," 2008, N1.

		the exclusive right to another person or does not inform the author of keeping the work in secrecy, the exclusive right of employment work belongs to the author.		in secrecy and for this reason has not begun the use of this work within the abovementioned term.  The amount of remuneration, the conditions and procedure for its payment by the employer shall be defined by the contract between him and the employee and, in case of dispute, by a court.
Employee's Invention (art. 1370 CC)	The authorship belongs to the employee (author)	The exclusive rights belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.	The right to obtain a patent belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.  If the employer within four months from the date of notification by employee <sup>2</sup> fails to file an application for the grant of a patent for the respective employee's invention, employee's utility model, or employee's industrial design with the federal executive authority for intellectual property, fails to transfer the right to obtain a patent for an employee's invention, employee's utility model, or employee's industrial design to another person, and fails to inform the employee on keeping the information on the respective result of intellectual activity in secrecy, the right to obtain a patent for such an invention, utility model, or industrial design shall belong to the employee. <sup>3</sup>	If the employer obtains a patent for an employee's invention, employee's utility model, or employee's industrial design, or takes a decision to keep information on such an invention, such a utility model, or such an industrial design in secrecy and informs this to the employee or transfers the right to obtain a patent to another person or fails to obtain a patent on the basis of the application filed by him due to circumstances for which he is responsible, the employee shall have the right to remuneration.  The amount of remuneration, the conditions and procedure for its payment by the employer shall be defined by the contract between him and the employee and, in case of dispute, by a court.
Employee's Utility model (art. 1370 CC)				
Employee's Industrial design (art. 1370 CC)				
Employee's Selection attainment (art. 1430 CC)	The authorship belongs to the employee (author)	The exclusive rights belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.	The right to obtain a patent belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.  If the employer within four	The employee shall have the right to remuneration paid by employer for use of a selection attainment created, derived, or discovered in connection with the performance of his employment

<sup>2</sup> In case of absence in the contract between the employer and employee of the provisions to the contrary the employee shall notify the employer in writing of the creation in connection with the performance of his employment obligations or of a specific task set by the employer of any results with respect to which the legal protection is capable. (section 4 of art. 1370 CC).

<sup>3</sup> In such a case the employer during the validity term of the patent shall have the right to use the employee's invention, employee's utility model, or employee's industrial design in his own business under a simple (non-exclusive) license and pay remuneration to the patent holder, the amount, terms, and method of payment shall be determined by contract between the employee and the employer and in case of dispute settled by a court (section 4 of art. 1370 CC).

			months from the date of notification by employee <sup>4</sup> of creation, derivation, or discovery of a result with respect to which the granting of legal protection as a selection attainment is capable, fails to file a patent application for this selection attainment with the federal executive authority for selection attainments, to transfer the right to obtain a patent for an attainment obtained in the line of duty to another person, and to inform the employee on keeping the information on the respective result in secrecy, the right to obtain a patent for such selection attainment shall belong to the employee. <sup>5</sup>	<p>obligations or of a specific task set by the employer in the amount and on the terms that are determined by an agreement between them, but not less than in an amount constituting two percent of the amount of the annual income from use of the attainment, including the income from the granting of licenses.</p> <p>A dispute on the amount, method, or on terms of remuneration paid by the employer for use of the employee's selection attainment shall be ruled by a court.</p> <p>Remuneration shall be paid to the employee within six months after the end of each year in which the selection attainment is used.</p>
Employee's Topology (art. 1461 CC)	The authorship belongs to the employee (author)	The exclusive rights belongs to the employer unless the employment or other agreement between the employer and the author does not provide otherwise.	-	<p>If the exclusive right to a topology belongs to the employer or has been transferred by him to a third person, the employee shall have the right to receipt the remuneration from the employer.</p> <p>The amount of remuneration, the conditions and procedure for its payment by the employer shall be defined by the contract between him and the employee and, in case of dispute, by a court.</p>
Служебный секрет производства – art. 1470 CC	-	The exclusive rights belongs to the employer.	-	-

As can be seen from the above table the authorship to the employee's results of intellectual property belong to the employee, but the exclusive right to these results, as a general rule, belong to the employer. Thus, the interests of the employer are protected by the law, without the need to include in an employment contract with an employee of the relevant provisions. However, you should not only rely on the rules of law,

<sup>4</sup> In case of absence in the contract between the employer and employee of the provisions to the contrary the employee shall notify the employer in writing on the creation, derivation, or discovery in connection with the performance of his employment obligations or of a specific task set by the employer, of a result with respect to which the granting of legal protection as a selection attainment is capable (section 4 of art. 1430 CC).

<sup>5</sup> In such a case the employer during the validity term of the patent shall have the right to use the selection attainment obtained in the line of duty in his own production on the terms of a simple (nonexclusive) license and pay the remuneration to the patent holder, the amount, terms, and method of payment shall be determined by contract between the employee and the employer and, in case of dispute settled by a court (section 4 of art. 1430 CC).

because so much of the conditions of use employee's results of intellectual property shall be determined by agreement between the employee and the employer.

The Civil Code of Russian Federation specifies as legal basis for the transfer to the employer the exclusive rights on the employee's results of intellectual property employment contract or other agreement (including a civil contract) between the employer and the author. So now there is a broad list of grounds on which may be transferred to the exclusive rights of an employee's work.