

# Civil Code of the Russian Federation

(Wording with amendments dated 14.07.2022)

## Part Four

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## Section VII

### Rights to the Results of Intellectual Activities and Means of Individualisation

#### Chapter 69. General Provisions

##### Article 1225. Protected Results of Intellectual Activities and Means of Individualisation

1. The results of intellectual activity and equated means of individualisation of legal entities, goods, works, services and enterprises, which are granted legal protection (intellectual property), are the following:

- 1) scientific, literary and artistic works;
- 2) programs for computers (computer programs);
- 3) databases;
- 4) performances;
- 5) sound recordings;
- 6) broadcasting and cable radio and television programs (the transmissions of broadcasting or cable organisations);
- 7) inventions;
- 8) utility models;
- 9) industrial designs;
- 10) breeding achievements;
- 11) integrated circuit layout-designs (topography);
- 12) know-how;
- 13) company names;
- 14) trademarks and service marks;
- 14.1) geographical indications;
- 15) appellation of the origin of goods;
- 16) commercial designations.

2. Intellectual property is protected by law.

##### Article 1226. Intellectual Rights

The results of intellectual activity and the means of individualisation equated to them (the results of intellectual activity and means of individualisation) are intellectual rights, which include an exclusive right, which is a property right, and in the cases provided for by this Code, also personal non-property rights and other rights (resale right, right access and others).

##### Article 1227. Intellectual Rights and Real Rights

1. Intellectual rights do not depend on property rights or other real rights to a material medium (thing), in which the corresponding result of intellectual activity or means of individualisation is expressed.

2. The transfer of ownership of a thing does not entail the transfer or granting of intellectual rights to the result of intellectual activity or to a means of individualisation expressed in this thing, except for the case provided for by **paragraph two of Item 1 of Article 1291** of this Code.

3. The provisions of **Section II** of this Code shall not apply to intellectual rights, unless otherwise

established by the rules of this Section.

**Article 1228.** The Author of the Result of Intellectual Activity

**1.** The author of the result of intellectual activity is the citizen by whose creative labour such result has been created.

The following shall not be deemed authors of a result of intellectual activity: citizens who have not made a personal creative contribution in the creation of such result, for instance, who have rendered only technical, consultative, organisational or material assistance to the author thereof or who have only assisted in the completion of formalities for such result or for the use thereof, and also citizens who supervised the performance of the relevant works.

**2.** The author of the result of intellectual activity holds the right of attribution, and in the cases envisaged by the present Code, a right to the name and other personal non-property rights.

The right of authorship, the right to the name and other personal non-property rights of the author are unalienable and unassignable. A waiver of these rights shall be deemed null and void.

The right of authorship and the name of the author shall be protected in perpetuity. After the author's death any person concerned may protect his authorship and name, except for the cases set out in **Item 2 of Article 1267** and **Item 2 of Article 1316** of the present Code.

**3.** The exclusive right to the result of intellectual activity created by creative labour is initially vested in the author. This right may be transferred by the author to another person under a contract, and it may also be transferred to other persons on other grounds established by law.

**4.** Rights to the result of intellectual activity created jointly by the creative labour of two or more citizens (co-authorship) are jointly owned by the co-authors.

**Article 1229.** Exclusive Right

**1.** The citizen or legal entity holding the exclusive right to the result of intellectual activity or a means of individualisation (right holder) is entitled to use such result or such means at his own discretion by any means that does not conflict with the law. The right holder may dispose of the exclusive right to the result of the intellectual activity or means of individualisation (**Article 1233**), unless otherwise envisaged by the present Code.

The right holder may at his own discretion permit other persons to use or prohibit them from using, the result of the intellectual activity or means of individualisation. The lack of prohibition shall not be deemed consent (permission).

Other persons shall not use the relevant result of the intellectual activity or means of individualisation without the right holder's consent, except for the cases envisaged by the present Code. If it takes place without the right holder's consent, the use of the result of intellectual activity or means of individualisation (including the use thereof by the methods envisaged by the present Code) is deemed illegal and it shall cause the liability established by the present Code and other laws, except for cases when the use of the result of intellectual activity or means of individualisation by persons other than the right holder without his consent is permitted by the present Code.

**2.** The exclusive right to the result of intellectual activity or means of individualisation (except for the exclusive right to a company name) may be held by one person or jointly by several persons.

**3.** Where the exclusive right to the result of intellectual activity or means of individualisation is jointly held by several persons, each of the right holders may use such result or such means at the own discretion thereof, unless otherwise envisaged by this Code or agreement between the right holders. Relationships between the persons jointly holding the exclusive right shall be defined by an agreement between them.

The right holders shall jointly dispose of the exclusive right to the result of intellectual activities or to the means of individualisation, unless otherwise provided for by this Code or by an agreement between the right holders.

The incomes derived from the joint use of the result of intellectual activity or means of individualisation or from the joint disposal of the exclusive right to such result or such means shall be distributed to all right holders in equal parts, except as otherwise envisaged by an agreement between them.

Each of the right holders is entitled independently to take measures aimed at the protection of the rights thereof to the result of intellectual activity or to the means of individualisation.

**4.** Where it is provided for by **Item 3 of Article 1454, Item 2 of Article 1466 and Item 2 of Article 1518** of this Code, independent exclusive rights to one and the same result of intellectual activity or one and the same means of individualisation may be simultaneously held by different persons.

**5.** Restrictions of exclusive rights to the results of intellectual activities and to individualization means, in particular when the use of the results of intellectual activities is allowable without the right holders' consent but with their right to remuneration preserved, are established by this Code.

In so doing, restrictions of exclusive rights to works of science, literature and art, to objects of allied rights, inventions, industrial models and trademarks shall be established subject to the conditions provided for by **Paragraphs Three, Four and Five** of this item.

Restrictions of exclusive rights to works of science, literature or art, as well as to objects of allied rights shall be established in certain special cases, provided that such restrictions are not at variance with the normal use of the works or objects of allied rights and do not infringe without a good reason upon lawful interests of the right holders.

Restrictions of exclusive rights to inventions and industrial models shall be established in some cases, provided that such restrictions do not contravene without a good reason the normal use of inventions or industrial models and, with account taken of the legitimate interests of third parties, do not infringe without a good reason upon the legitimate interests of the right holders.

Restrictions of exclusive rights to trademarks shall be established in some cases, provided that such restrictions account for legitimate interests of the right holders and third parties.

#### **Article 1230.** The Effective Term of Exclusive Rights

**1.** Exclusive rights to the results of intellectual activities or means of individualisation shall be effective for a certain term, except for the cases envisaged by the present Code.

**2.** The duration of the effective term of an exclusive right to the result of intellectual activity or means of individualisation, the procedure for counting the term, the grounds and procedure for extending the term, and also the grounds and procedure for terminating the exclusive right before the expiry of the term are established by the present Code.

#### **Article 1231.** The Effect of Exclusive and Other Intellectual Rights on the Territory of the Russian Federation

**1.** The exclusive rights to the results of intellectual activities and means of individualisation established by international treaties of the Russian Federation and the present Code are effective on the territory of the Russian Federation.

The personal non-property and other intellectual rights not deemed exclusive are effective on the territory of the Russian Federation in accordance with **Paragraph 4 of Item 1 of Article 2** of the present Code.

**2.** When the exclusive right to the result of intellectual activity or means of individualisation is recognised in accordance with an international treaty of the Russian Federation, the content of the right, its effect, restriction, and the procedure for exercising and protecting the right shall be defined by the present Code, irrespective of the provisions of the legislation of the country where the exclusive right came into being, unless otherwise envisaged by the international treaty or the present Code.

#### **Article 1231.1.** Objects Including Official Symbols, Denominations and Distinctive Marks

**1.** As legally protected in the same way as an industrial design or individualisation means shall not be deemed objects including, reproducing or imitating official symbols, denominations and distinctive marks or recognisable parts thereof:

- 1) state symbols and signs (flags, emblems, orders, currency notes and the like);
- 2) shortened or full denominations of international and non-governmental organisations, their flags, emblems, other symbols and signs;
- 3) official control, guarantee or assay marks, stamps, awards and other distinctive marks.

2. The official symbols, denominations and distinctive marks cited in **Item 1** of this article, their recognisable parts or simulations may be included into an industrial design or individualisation means as a non-protected element where there is consent to it of an appropriate authorised state body, the body of an international or intergovernmental organisation.

**Article 1232.** The State Registration of the Results of Intellectual Activities and of Means of Individualisation

1. In the cases envisaged by the present Code, the exclusive right to the result of intellectual activity or means of individualisation is recognised and protected on the condition that the result or means is registered by the state.

The right holder is bound to notify accordingly the federal executive body in charge of intellectual property and the federal executive body in charge of selection achievements (**Article 1246**) about changes in the data related to the state registration of the result of intellectual activity or individualisation means: denomination or name, location or residence and postal address. The risk of unfavourable effects, if such notification of an appropriate federal executive body has not been made, or unreliable data has been presented, shall be borne by the right holder.

The federal executive body in charge of intellectual property and the federal executive body in charge of selection achievements may change the data related to the state registration of the result of intellectual activity or means of individualisation for correcting evident and technical errors on their own initiative or at the request of any person after having notified the right holder thereof.

2. In cases when the result of intellectual activity or means of individualisation is subject to state registration under the present Code, the alienation of the exclusive right to such result or means under a contract, the pledge of the right and the granting of a right to use the result or means under a contract, and equally the transfer of the exclusive right to the result or means without a contract are also subject to state registration for which the procedure and terms are established by the Government of the Russian Federation.

3. The state registration of alienation of the exclusive right to the result of intellectual activity or individualisation means under a contract, the state registration of the pledge of this right, as well as the state registration of granting the right to use such result or such means under a contract, shall be effected on the basis of an application of the parties to the contract.

An application may be filed by the parties to a contract or by one of the parties to a contract. In the event of filing an application by one of the parties to a contract, the application shall have attached thereto one of the following documents at the applicant's choice:

- a notice on the effected disposal of the exclusive right signed by the parties to the contract;
- an extract from the contract certified by a notary;
- the contract proper.

The following shall be cited in the application of the parties to the contract or in the document attached to an application of one parties to the contract:

- kind of contract;
- data on the parties to the contract;
- the subject matter of the contract, citing the number of the documents certifying the exclusive right to the result of intellectual activity or to an individualisation means.

In the event of state registration of the provision of the right to use the result of intellectual activity or individualisation means, along with the data cited in **paragraphs seven to nine** of this item, the following shall be mentioned in an application of the parties to the contract or in the document attached to an application of one of the parties to the contract:

- the contract's validity term, if such term is fixed by the contract;
- the territory in which the right to use the result of intellectual activity or individualisation means, if the territory is fixed by the contract;
- the ways of using the result of intellectual activity or the goods and services in respect of which the right to use the individualisation means is granted;
- the availability of consent to granting the right to use the result of intellectual activity or individualisation means under a sub-licence contract, if the consent is given (**Item 1 of Article 1238**);

the possibility of unilateral dissolution of the contract.

In the event of state registration of the pledge of the exclusive right, along with the data cited in **paragraphs seven to nine** of this item, the following shall be cited in an application of the parties to the contract or in the document attached to an application of one of the parties to the contract:

the validity term of the contract of pledge;

the limitation of the pledger's right to use the result of intellectual activity or individualisation or to dispose of the exclusive right to such result or to such means.

**4.** In the case envisaged by **Article 1239** of the Code, the grounds for state registration of provision of the right to use the result of intellectual activity is the relevant court decision.

**5.** The grounds for state registration of assignment of the exclusive right to the result of intellectual activity or means of individualisation in the line of succession shall be a certificate of inheritance, except for the case envisaged by **Article 11657** of the present Code.

**6.** In the event of non-observance of the requirement for state registration of transfer of the exclusive right to the result of intellectual activity or individualisation means under a contract of alienation of the exclusive right or without a contract, of the pledge of the exclusive right or granting to another person the right to use such result or such means under a contract, the transfer of the exclusive right, its pledge or granting the right to use it shall be deemed unaccomplished.

**7.** In the cases envisaged by the present Code, state registration of the result of intellectual activity or means of individualisation may be carried out if the right holder so wishes. In these cases, the registered result of intellectual activity or means of individualisation and the rights to such result are subject to the rules set out in **Items 2-6** of the present article, except as otherwise envisaged by the present Code.

#### **Article 1233.** Disposing of an Exclusive Right

**1.** The right holder may dispose of his exclusive right to the result of intellectual activity or means of individualisation in any manner not contradicting the law and the essence of such exclusive right, including its alienation under a contract to another person (a contract of alienation of the exclusive right) or the granting to another person of the right to use the relevant result of the intellectual activity or means of individualisation within the limits set by a contract (licence contract).

The conclusion of the licence contract shall not cause the assignment of the exclusive right to the licensee.

**2.** Contracts for disposing of the exclusive right to the result of intellectual activity or means of individualisation, including contracts for alienation of an exclusive right and licence (sub-licence) contracts, are subject to the general provisions on obligations (**Articles 307-419**) and on contracts (**Article 420-453**) in as far as otherwise is not established by the rules of the present section or ensue from the content or nature of the exclusive right.

**3.** A contract that does not expressly state that the exclusive right to the result of intellectual activity or means of individualisation is assigned in full shall be deemed a licence contract, except for a contract concluded in respect of the right to use the result of intellectual activity or means of individualisation that has been specifically created or is being created for inclusion into a complex object (**Paragraph 2 of Item 1 of Article 1240**).

**4.** The terms of a contract for alienating an exclusive right or of a licence contract limiting a citizen's right to create the results of intellectual activity of a certain kind or in a certain area of intellectual activity or to alienate the exclusive right to such results to other people shall be deemed null and void.

**5.** The right holder may make publicly, that is, by way of notifying an indefinite number of persons, an announcement about providing to any person an opportunity to use free-of-charge the work of science, literature or art or the object of allied rights possessed by him under the terms defined by the right holder and within the time period fixed by him. Within the cited time period any person is entitled to use the given work or the given object of allied rights under the terms defined by the right holder.

The announcement shall be made by posting it on the official Internet site of a federal executive body. The federal executive body responsible for placing the cited announcements, as well as a **procedure for and terms** of their insertion, shall be defined by the Government of the Russian Federation.

The announcement shall contain the data enabling to identify the right holder and the work or object

of allied rights possessed by him.

If the right holder's announcement does not specify the term, the cited term shall be deemed as being equal to five years.

If the right holder's announcement does not specify the territory, it shall be deemed that it is the territory of the Russian Federation.

Within the validity term the announcement may not be withdrawn and the terms of use provided for by it may not be restricted.

The right holder has no right to make the cited actions where there is an effective licence agreement under which the exclusive licence to use a work or object of allied rights is granted within the same limits. If the right holder carries out the cited actions in the presence of an effective licence agreement under which the onerous non-exclusive licence to use a work or object of allied rights is granted within the same limits, the operation of such agreement shall be terminated. The right holder that has made the relevant announcement in the presence of an effective licence agreement shall compensate for the losses caused to the licensee.

The author or any other right holder, if the exclusive right to a work or object of allied rights has been violated by the wrongful placement of the announcement made in compliance with this item is entitled to apply against the violator the measures of protection of the exclusive right in compliance with **Article 1252** of this Code.

The provisions of this item shall not apply to open licences (**Article 1286.1**).

#### **Article 1234. The Contract of Alienation of an Exclusive Right**

**1.** Under a contract of alienation of an exclusive right, one party (right holder) assigns or undertakes to assign its exclusive right to the result of intellectual activity or means of individualisation to another party (acquirer) in full.

**2.** The contract of alienation of the exclusive right shall be made in writing. Non-observance of the written form thereof shall cause the invalidity of the contract.

The transfer of the exclusive right under an agreement is subject to state registration in the instances and in the procedure which are provided for by **Article 1232** of this Code.

**3.** Under the contract of alienation of the exclusive right, the acquirer undertakes to pay the fee envisaged by the contract to the right holder, except as otherwise envisaged by the contract.

If a contract of alienation of an exclusive right concluded on a compensation basis does not contain a clause concerning the amount of fee or procedure for determining it, the contract shall be deemed uncompleted. In this case, the rules envisaged by **Item 3 of Article 424** of the present Code for price-setting shall not be applicable.

The payment of remuneration under a contract of alienation of the exclusive right may be provided in the form of fixed one-time or periodical payments, interest deductions from the income (proceeds) or in some other form.

**3.1.** It is not allowed to alienate gratuitously an exclusive right in the relations between profit-making organisations, unless otherwise provided for by this Code.

**4.** The exclusive right to the result of intellectual activity or individualisation means shall be transferred from the right holder to the acquirer at the time when a contract of alienation of the exclusive right is made, unless otherwise provided for by an agreement of the parties. If the transfer of an exclusive right under a contract of alienation of the exclusive right is subject to state registration (**Item 2 of Article 1232**), the exclusive right to such result or such means shall be transferred from the right holder to the acquirer at the time of the state registration.

**5.** If the acquirer has significantly failed to observe his duty to pay the right holder, the fee for the acquisition of the exclusive right to the result of the intellectual activity or means of individualisation within the term established by the contract of alienation of the exclusive right (**Subitem 1 of Item 2 of Article 450**), the previous right holder shall be entitled to claim in court that the rights of the acquirer of the exclusive right be assigned to the previous right holder and also claim payment of damages, if the exclusive right has been transferred to the acquirer thereof.

If the exclusive right has not been transferred to the acquirer, then, if he has essentially failed to

execute his duty to pay the fee for the acquisition of the exclusive right within the term set by the contract, the right holder may waive the contract unilaterally and claim for payment of damages due to the rescission of the contract. The contract shall be terminated upon the expiry of 30 days from the time of receiving by the acquirer a notice of the contract's renunciation, if within this time period the acquirer did not discharge the duty of paying the remuneration.

#### **Article 1235.** The Licence Contract

1. Under the licence contract, one party being the holder of the exclusive right to the result of intellectual activity or means of individualisation (licensor) undertakes to grant to the other party (licensee) the right to use the result or means within the limits set out in the contract.

The licensee may use the result of the intellectual activity or means of individualisation only within the limits of the rights and in the manner set out in the licence contract. The right to use the result of intellectual activity or means of individualisation not expressly mentioned in the licence contract shall not be deemed granted to the licensee.

2. The licence agreement shall be made in writing, unless otherwise established by this Code. Failure to observe the written form thereof shall entail the licence agreement's invalidity.

Granting of the right to use the result of intellectual activity or individualisation means under a licence agreement is subject to state registration in the instances and in the procedure which are provided for by **Article 1232** of this Code.

3. The licence contract shall make reference to the territory on which the use of the result of the intellectual activity or means of individualisation is permitted. If the contract does not contain a reference to the territory on which use of the result of the intellectual activity or means of individualisation is permitted, the licensee is entitled to use them throughout the territory of the Russian Federation.

4. The term for which the licence contract is concluded shall not exceed the effective term of the right to the result of the intellectual activity or means of individualisation.

If the licence contract does not define its effective term, the contract shall be deemed concluded for a five-year term, except as otherwise envisaged by the present Code.

If the exclusive right is terminated, the licence contract shall be terminated.

5. Under the licence contract the licensee undertakes to pay to the licensor the fee specified in the contract, except as otherwise envisaged by the contract.

If a fee-based licence contract does not comprise a clause on the amount of the fee or on the procedure for setting it, the contract shall be deemed unconcluded. In this case the pricing rules set out in **Item 3 of Article 424** of the present Code are not applicable.

The payment of remuneration under a licence agreement may be provided in the form of fixed one-time or periodical payments, interest deductions from the income (proceeds), or in some other form.

5.1. It is not allowed to grant gratuitously the right to use the result of intellectual activity or individualisation means in relations between profit-making organisations on the territory all over the world and within the whole time period while an exclusive right is effective under the terms of the exclusive licence, unless otherwise established by this Code.

6. The licence contract shall set out the following:

1) the subject matter of the contract, by referring to the result of the intellectual activity or means of individualisation that may be used under the contract, and in relevant cases to the number of a document certifying the exclusive right to the result or means (a patent or certificate);

2) the manner in which the result of the intellectual activity or means of individualisation is going to be used.

7. The transfer of the exclusive right to the result of intellectual activity or means of individualisation to the new right holder shall not be deemed grounds for modifying or rescinding the licence contract concluded by the previous right holder.

#### **Article 1236.** The Types of Licence Contracts

1. A licence contract may serve to:

1) grant a licensee the right to use the result of intellectual activity or means of individualisation, with

the licensor retaining his right to issue licences to other persons (a simple (non-exclusive) licence);

2) grant the licensee the right to use the result of intellectual activity or means of individualisation, with the licensor not retaining the right to issue licences to other persons (an exclusive licence).

**1.1** The licensee is not entitled to use himself the results of intellectual activity or individualisation means within the limits in which the right to use such result or such individualisation means is granted to the licensee in compliance with a contract under the terms of an exclusive licence, unless otherwise provided for by this contract.

**2.** Except as otherwise established by the licence contract, the licence is deemed simple (non-exclusive).

**3.** In respect of various types of use of the result of intellectual activity or means of individualisation one licence contract may comprise the terms set out in **Item 1** of the present article for licence contracts of various types.

#### **Article 1237. Performing the Licence Contract**

**1.** The licensee is bound to submit to the licensor reports on the use of the result of intellectual activity or individualisation means, unless otherwise provided for by a licence agreement or this Code. If in a licence agreement providing for submission of reports on the use of the result of intellectual activity or individualisation means there are no terms concerning the time of and procedure for submitting them, the licensee must submit such reports to the licensor at the request thereof.

**2.** During the effective term of the licence contract, the licensor shall abstain from committing actions capable of impeding the licensee's exercise of his right to use the result of the intellectual activity or means of individualisation within the limits set by the contract.

**3.** Using the result of the intellectual activity or means of individualisation in a manner not envisaged by the licence contract or upon termination of such contract or otherwise beyond the limits of the rights granted to the licensee under the contract, shall cause the accountability for a breach of the exclusive right to the result of the intellectual activity or means of individualisation established by the present Code, other laws or the contract.

**4.** If the licensee fails to execute his duty to pay to the licensor the fee for granting the right to use the result of intellectual activity or individualisation means, the licensor may unilaterally waive the licence contract and claim payment of the losses caused by the rescission of the contract. The contract shall be terminated upon the expiry of 30 days from the time of receiving a notice of the contract's renunciation, if within this time period the licensee did not discharge the duty of paying the remuneration.

#### **Article 1238. The Sub-licence Contract**

**1.** Given the licensor's consent in writing, the licensee may grant the right to use the result of the intellectual activity or means of individualisation to another person under a contract (a sub-licence contract).

**2.** Under the sub-licence contract a sub-licensee may obtain the right to use the result of the intellectual activity or means of individualisation only within the limits of the rights and the terms of use set out in the licence contract for the licensee.

**3.** A sub-licence contract concluded for a term exceeding the effective term of the licence contract shall be deemed concluded for the effective term of the licence contract.

**4.** The licensee shall be liable before the licensor for the actions of a sub-licensee, except as otherwise established by the licence contract.

**5.** A sub-licence contract shall be subject to the rules of the present Code governing the licence contract.

#### **Article 1239. The Enforced Licence**

In the cases envisaged by the present Code, a court may take a decision upon the claim of a concerned person to grant that person the right to use the result of intellectual activity in which the exclusive right is held by another person on the terms specified in the court decision (enforced licence).

#### **Article 1240. Using the Result of Intellectual Activity as Part of a Complex Object**



1. A person that has organised the creation of a complex object incorporating several protected results of intellectual activities (a film, another audio-visual work, theatre performance, multimedia product, database) acquires the right to use these results under contracts of exclusive right alienation or licence contracts concluded by said person with the holders of the exclusive rights to the relevant results of the intellectual activities.

If the person that has organised the creation of a complex object acquires the right to use the result of intellectual activity that has been specifically created or is being specifically created to be included in the complex object, the relevant contract shall be deemed an exclusive right alienation contract, except as otherwise envisaged by agreement of the parties.

A licence contract having a provision for use of the result of intellectual activity within a complex object shall be concluded for the whole term and in respect of the whole territory where the relevant exclusive right is valid, except as otherwise envisaged by the contract.

2. The terms of a licence contract that impose limitations on the use of the result of intellectual activity within a complex object shall be deemed invalid.

3. If the result of intellectual activity is used within a complex object, the author of the result shall retain the right of attribution and other personal non-property rights to the result.

4. While using the result of intellectual activity within a complex object the person that has organised the creation of the object shall be entitled to indicate his/its name or claim that such indication be made.

5. Invalid from January 1, 2022 - **Federal Law No. 456-FZ of December 22, 2020**

**Article 1240.1. Results of Intellectual Activity Created During the Performance of a State or Municipal Contract**

1. The right to obtain a patent and the exclusive right to the result of intellectual activity, created when performing a state or municipal contract for state and municipal needs, shall belong to the person performing the state or municipal contract (executor), except for the cases established by **Items 3 and 4** of this article.

A state or municipal contract may provide that the right to obtain a patent and the exclusive right to a result of intellectual activity belong jointly to the performer and the Russian Federation, the performer and the constituent entity of the Russian Federation, or the performer and the municipality, except for the cases established by the **first paragraph of Item 3 and Item 4** of this article.

2. For the purposes of this article, the protected results of intellectual activity directly related to ensuring defense and security shall include computer programs, databases, inventions, utility models, industrial designs, selection achievements, topology of integrated circuits, production secrets (know-how) obtained within the framework of state programs or in the implementation of a state defense order, the implementation of which is ensured by federal executive bodies authorized in the field of defense, security, foreign intelligence, in the field of state protection, internal affairs, the activities of the National Guard of the Russian Federation, arms circulation, private security activities and non-departmental security, or which are the own developments of the indicated federal executive bodies or state institutions subordinate to them, created at the expense of subsidies or funds from the corresponding budget on the basis of the budget tny estimate.

3. The right to obtain a patent and the exclusive right to results of intellectual activity directly related to ensuring defense and security shall belong to the Russian Federation, unless otherwise provided for by this Code.

In the cases and in accordance with the procedure determined by the President of the Russian Federation, the right to obtain a patent and the exclusive right to results of intellectual activity directly related to ensuring defense and security shall belong to the person executing the state contract (performer).

The exclusive right of the Russian Federation to results of intellectual activity directly related to defense and security may be transferred to the performer or to another Russian legal entity interested in implementation of results of intellectual activity and having the capabilities for its implementation, by decision of the President of the Russian Federation on the basis of a corresponding application of an authorised body (**Item 2** of this article). The content of such application and the procedure for preparation shall be determined by the Government of the Russian Federation. The transfer of the exclusive right shall be formalised by an agreement on the repayable or gratuitous alienation of the exclusive right.

4. The right to obtain a patent and the exclusive right to a result of intellectual activity created during the performance of a state or municipal contract at the expense of the federal budget, the budget of a constituent entity of the Russian Federation or the local budget (except for the cases provided for in paragraph one of **Item 3** of this Article) shall belong to the Russian Federation, a subject of the Russian Federation or municipality, on behalf of which the state or municipal customer acts, respectively, in the following cases:

1) if the result of intellectual activity is necessary for providing state (municipal) services or implementation of state (municipal) functions;

2) if the performer, within twelve months from the date of acceptance of works under a state or municipal contract, has not ensured the performance of all actions depending on him, necessary for recognition of his exclusive right to the result of intellectual activity;

3) if the result of intellectual activity was created while performing work under a government contract which was concluded in order to implement the international obligations of the Russian Federation;

4) in other cases established by law.

5. If the exclusive right to the result of intellectual activity on the basis of a state or municipal contract belongs to the Russian Federation, a constituent entity of the Russian Federation or a municipal formation, the performer shall acquire rights (exclusive right or right to use) or ensure their acquisition by concluding appropriate agreements with his employees and with third parties for transfer, respectively, to the Russian Federation, a subject of the Russian Federation or municipality. However, the contractor has the right to reimbursement of the costs incurred due to acquisition of the corresponding rights from third parties within the price of the state or municipal contract.

6. If a contractor engages third parties to perform work under a state or municipal contract for state or municipal needs, the right to the result of intellectual activity created when performing work under a state or municipal contract may belong to such third parties in accordance with the terms of contracts concluded between the contractor and third parties, if there are no grounds listed in the first paragraph of **Item 3** and **Item 4** of this article on which the right to obtain a patent and the exclusive right to the corresponding result belong to the Russian Federation, a constituent entity of the Russian Federation or a municipal formation.

7. If the exclusive right to the result of intellectual activity created during the performance of work under a state or municipal contract for state or municipal needs does not belong to the Russian Federation, not to the subject of the Russian Federation or to a municipality, the rightholder shall, upon the request of the state or municipal customer, provide the person indicated by him with a simple (non-exclusive) license to use such a result of intellectual activity for state or municipal needs. This obligation extends to the person to whom the right holder has transferred, by agreement or on another statutory basis, the right to obtain a patent or the exclusive right to the result of intellectual activity created when performing work under a state or municipal contract for state or municipal needs.

8. If the exclusive right to the result of intellectual activity created during the performance of work under a state or municipal contract for state or municipal needs belongs, in accordance with **paragraph two of Item 1** of this article, jointly to the performer and the Russian Federation, the performer and the subject of the Russian Federation, or the performer and the municipal formation, a state or municipal customer has the right to provide a third party with a free simple (non-exclusive) license to use such a result for the purpose of performing work or delivering products for state or municipal needs, notifying the contractor of this.

9. If the right to obtain a patent and the exclusive right to a result of intellectual activity directly related to ensuring defense and security belong in accordance with **Item 3** of this article of the Russian Federation, the rightholder, at the request of the performer, may grant him the right to use this result of intellectual activity on terms of downtime gratuitous (non-exclusive) licence.

10. If the right to obtain a patent and the exclusive right to a result of intellectual activity, created when performing work under a state or municipal contract for state or municipal needs, belong to a constituent entity of the Russian Federation or a municipal formation in accordance with **Item 4** of this Article of the Russian Federation, the contractor has the right to use the result intellectual activity on the terms of a simple gratuitous (non-exclusive) licence.

11. A person who owns the exclusive right to an invention, utility model, industrial design, selection achievement or secret of production (know-how) created when performing work under a state or municipal

contract for state or municipal needs (with the exception of the results of intellectual activity directly related to ensuring defense and security), is obliged, within two years from the date of the emergence of the corresponding exclusive right, to start using such results in practice or to transfer the corresponding exclusive right to other interested parties.

The conditions and procedure for fulfilling the obligation to use the result of intellectual activity obtained during the performance of work under a state or municipal contract, the consequences of its failure and the conditions for its termination shall be determined by the Government of the Russian Federation.

**12.** The Government of the Russian Federation shall determine the following:

1) the procedure for managing the rights to results of intellectual activity belonging to the Russian Federation, including the rights to results of intellectual activity, directly related to ensuring defense and security;

2) the procedure for formation and keeping the unified register of results of research, development and technological work of military, special or dual purpose, including with respect to information on the results of intellectual activity directly related to ensuring defense and security;

3) a federal executive authority responsible for maintaining such register;

4) standard licence agreements on the gratuitous right to use results of intellectual activity for state or municipal needs and the procedure for concluding such agreements;

5) the procedure for actions of the state or municipal customer when registering the exclusive right to the results of intellectual activity in the case established by **subitem 2 of Item 4** of this article.

**13.** The state or municipal contract shall contain an indication - on the basis of which of the circumstance listed in **Item 3** and **subitems 1, 3 or 4 of Item 4** of this article, the right to obtain a patent and the exclusive right to results of intellectual activity belongs to the Russian Federation, a constituent entity of the Russian Federation or a municipal formation.

**Article 1241.** The Transfer of an Exclusive Right to Other Persons without a Contract

The transfer of the exclusive right to the result of intellectual activity or means of individualisation to another person without the conclusion of a contract with the right holder is admissible in the cases and on the grounds established by law, for instance, in the line of universal succession (inheritance, the reorganisation of a legal entity) and in the event of the levy of execution on the right holder's property.

**Article 1242.** Organisations Collectively Managing Copyright and Allied Rights

**1.** The authors, performers and manufacturers of sound recordings and other owners of copyright and allied rights, when it is difficult for them to exercise their rights individually or when the present Code permits the use of objects of copyright and allied rights without the consent of the owners of the relevant rights but with a fee being paid to them, may form membership-based non-commercial organisations that have the powers granted thereto by right holders and the duty to manage the relevant rights on a collective basis (organisations managing rights on a collective basis).

The formation of such organisations shall not impede the representation of the owners of copyright and allied rights by other legal entities and citizens.

**2.** Organisations managing rights on a collective basis may be formed to manage the rights classified as one or several types of objects of copyright and allied rights, manage one or several types of such rights in respect of certain ways in which the relevant objects may be used or to manage any copyright and/or allied rights.

**3.** The grounds underlying the powers of an organisation managing rights on a collective basis shall be a contract of assignment of right management powers concluded by the organisation with a right holder in writing, except for the case envisaged by **Paragraph 1 of Item 3 of Article 1244** of the present Code.

The said contract may be concluded with the right holders being members of the organisation and with the right holders not being members thereof. In this case, the organisation managing rights on a collective basis shall undertake to manage these rights if the management of this category of rights falls within the charter activities of the organisation. Also serving as grounds underlying the powers of an organisation managing rights on a collective basis may be a contract with another organisation, including a foreign organisation managing rights on a collective basis.

The contracts mentioned in **Paragraphs 1 and 2** of the present item are subject to the general provisions on obligations (**Articles 307-419**) and on contracts (**Articles 420-453**), unless otherwise ensues from the content or nature of the right put in management. The rules of the present section on contracts of alienation of exclusive rights and on licence contract are not applicable to the said contracts.

**4.** Organisation managing rights on a collective basis are not entitled to use the objects of copyright and allied rights for which exclusive rights have been transferred thereto for management.

**5.** Organisation managing rights on a collective basis are entitled to present claims in court either on behalf of right holders or on their own behalf, and also to commit other legal actions required for protecting the rights that have been transferred thereto for management on a collective basis.

An accredited organisation (**Article 1244**) is also entitled to present claims in court on behalf of an indefinite group of right holders as may be required for protecting the rights managed by this organisation.

**6.** The legal status of organisations managing rights on a collective basis, the functions of such organisations, the rights and duties of their members are defined by the present Code, laws on non-commercial organisations and the charters of the relevant organisations.

### **Article 1243.** The Performance of Contracts with Right Holders by an Organisation Managing Rights on a Collective Basis

**1.** An organisation managing rights on a collective basis shall conclude licence contracts with users for the provision to them of the rights transferred by right holders to the organisation for management concerning the relevant manner of using the objects of copyright and allied rights on the terms of an ordinary (non-exclusive) licence and collect fees from the users for the use of these objects. In cases when objects of copyright and allied rights according to this Code may be used without the right holder's consent but with a fee paid thereto, the organisation managing rights on a collective basis shall conclude contracts with users or with other persons, which are charged under this Code with the duty of paying assets for payment of fees, on payment of a fee and collect funds for the purpose.

An organisation for the management of rights on a collective basis has no right to refuse the user or other persons on whom the present Code imposes the liability for the payment of means for the remuneration in signing a contract without sufficient grounds.

**2.** If a licence contract with a user is concluded directly by a right holder, the organisation managing rights on a collective basis may collect fees for the use of objects of copyright and allied rights only if there is an expressly stated provision to this effect in said contract.

**3.** At the request of the organisation managing rights on a collective basis, users shall present their reports thereto on the use of objects of copyright and allied rights, as well as other information and documents required for the purpose of fee collection and distribution, with the list thereof and term for the provision thereof defined in the contract.

**4.** The organisation managing rights on a collective basis shall distribute the fee for the use of objects of copyright and allied rights among right holders, and also pay out the said fee thereto.

The organisation managing rights on a collective basis is entitled to withhold from the fee amounts of money to cover the necessary expenses relating to the collection, distribution and disbursement of the fee as well as the amounts of money posted to the special funds set up by this organisation with the consent and in the interests of the right holders it represents, in the amounts and procedure set out in the charter of the organisation. The ultimate (maximum) size of the sums withheld by an accredited organisation (**Article 1244**) for coverage of the necessary outlays on the collection, distribution and payment out of the remuneration as well as of the sums sent to the special funds, is established by the Government of the Russian Federation.

Fee distribution and disbursement shall take place on a regular basis on the dates set by the charter of the organisation managing rights on a collective basis pro rata to the actual use of relevant objects of copyright and allied rights determined on the basis of the information and documents received from users, and also other information on the use of the objects of copyright and allied rights, including statistical data.

Simultaneously with fee disbursement, the organisation managing rights on a collective basis shall present a report to the right holder on the use of his rights, including the amount of fee collected and on the sums withheld from it.

For the purposes of supply to the rights-holder through the Internet of information mentioned in the **fourth paragraph** of this item, the accredited organisation (**Article 1244**) shall provide for the functioning of the information system - "the rights-holder's personal office" and shall ensure the rights-holder has authorised access to it.

**5.** The organisation managing rights on a collective basis shall maintain registers with information on right holders, the rights transferred to the organisation for management, and also objects of copyright and allied rights. The information found in the registers shall be provided to all persons concerned in the procedure established by the organisation, except for the information that according to law cannot be disclosed without the consent of the right holder.

The organisation managing rights on a collective basis shall place information in a public information system on the rights transferred to the organisation for management, including the title of the object of copyright and allied rights and the name of the author or other right holder.

**6.** Failure of the organisation managing rights on a collective basis to pay a fee collected for the right holder as a result of violation by it of the procedure for the rights management established by this Code shall entail taking in respect of this organisation the measures of protection of an exclusive right in compliance with **Article 1252** of this Code.

#### **Article 1244.** The State Accreditation of Organisations Managing Rights on a Collective Basis

**1.** An organisation managing rights on a collective basis may obtain state accreditation for the pursuance of activities in the below areas of collective management:

1) managing the exclusive rights to published musical works (with or without a text) and segments of dramatic-musical works in respect of the public performance thereof, broadcast or cable transmission, including re-transmission (**Subitems from 6 to 8.1 of Item 2 of Article 1270**);

2) exercising the rights of the authors of the musical works (with or without a text) used in an audio-visual work to receive a fee for the public performance or broadcast or cable transmission, including re-transmission, of such audio-visual work (**Item 3 of Article 1263**);

3) managing the artist's resale right in respect of artistic works, and also the author's manuscripts (autographs) of literary and musical works (**Article 1293**);

4) exercising the rights of the authors, performers and manufacturers of sound recordings and audio-visual works to receive a fee for the reproduction/playback of the sound recordings and audio-visual works for personal purposes (**Article 1245**);

5) exercising the rights of performers to receive a fee for a public performance, and also for a broadcast or cable transmission of sound recordings that are published for commercial purposes (**Article 1326**);

6) exercising the rights of manufacturers of sound recordings to receive a fee for a public performance and also for a broadcast or cable transmission of sound recordings published for commercial purposes (**Article 1326**).

The state accreditation shall be carried out on the basis of a transparent procedure and with account being taken of the opinion of persons concerned, including right holders, in the procedure defined by the Government of the Russian Federation.

**2.** State accreditation for the pursuance of an activity in each of the collective management areas specified in **Item 1** of the present article may be obtained by only one organisation managing rights on a collective basis.

An organisation managing rights on a collective basis may obtain state accreditation for the pursuance of activities in one, two or more collective management areas specified in **Item 1** of the present article.

The activities of an accredited organisation are not subject to the restrictions envisaged by antimonopoly legislation.

**3.** An organisation managing rights on a collective basis that has obtained state accreditation (an accredited organisation) is entitled, apart from managing the rights of the right holders with which it has concluded contracts in the procedure set out in **Item 3 of Article 1242** of the present Code, to manage rights and collect fees for the right holders with which it has not concluded such contracts.

The existence of an accredited organisation shall not impede the formation of other organisations to manage rights on a collective basis, including those in the collective management areas specified in **Item 1** of the present article. Such organisations are entitled to conclude contracts with users only in the interests of the right holders that have conferred right management powers thereon in the procedure envisaged by **Item 3 of Article 1242** of the present Code.

4. A right holder that has not concluded a contract with an accredited organisation for the transfer of right management powers (**Item 3** of the present article) is entitled at any time to waive in full or in part the management of his/her rights by that organisation. The right holder shall notify the accredited organisation of his/her decision in writing. If the right holder intends to waive the management by the accredited organisation of only part of copyright or allied rights and/or objects of these rights, he/she shall present a list of such removed rights and/or objects thereto.

Upon the expiry of three months after the receipt of the relevant notice from the right holder, the accredited organisation shall remove the rights and/or objects specified by him from contracts with all users and post information about it in a public information system. The accredited organisation shall pay the right holder the fees he is entitled to that have been received from users under the contracts concluded earlier and present a report in compliance with **Paragraph 4 of Item 4 of Article 1243** of the present Code.

5. The accredited organisation shall take reasonable and sufficient measures to identify the right holders entitled to receive fees under the licence contracts and contracts for disbursement of fees concluded by this organisation. Except as otherwise established by law, the accredited organisation is not entitled to refuse to admit as its member a right holder entitled to receive a fee in accordance with the licence contracts and contracts for disbursement of fees concluded by this organisation.

6. The accredited organisations shall perform their activity under the control of the authorised federal executive body fulfilling the functions of control and supervision in the area of copyright and adjacent rights (the authorised federal executive body).

The annual accountancy (financial) reports of the accredited organisation and the annual accountancy (financial) reports of the special funds created by it as legal entities are subject to obligatory audit and shall be disclosed by way of placement together with the auditor's conclusion on it on the official Internet site of the accredited organisation not later than in 10 working days after the date of receiving the auditor's conclusion but not later than on December 31 of the year following the accounting year. Information on such placement, pointing out the date of the placement, shall be presented by the accredited organisation to the authorised federal executive body within three working days after the day of the placement.

The annual accountancy (financial) reports and the auditor's conclusion on them shall be available on the official Internet site of the accredited organisation in the course of five years from the date of placement.

The accredited organisations are obliged to annually present reports to the authorised federal executive body on their activity compiled in accordance with the form approved by the authorised federal executive body.

The accredited organisations shall reveal information on the activity performed by them, including on the applied method for the collection and distribution of the collected remuneration as well as on the activity of the special funds they have created as legal entities. The standard for the accredited organisations disclosing information which envisages its composition and the procedure and the time terms for disclosing it shall be approved by the Government of the Russian Federation.

7. The model charter of an accredited organisation shall be approved in the procedure defined by the Government of the Russian Federation.

8. The remuneration which is not demanded by the right holder within three years, beginning with January 1 of the year following that year in which such remuneration was distributed by the accredited organisation, shall be included by the accredited organisation into the sums subject to the regular distribution on the condition that it takes measures stipulated in **Item 5** of this Article.

#### **Article 1244.1. Supervisory Council of the Accredited Organisation**

1. A supervisory council shall be set up in the accredited organisation, which shall be the collegiate management body of the accredited organisation exerting control over the activity of its executive bodies

and resolving other questions assigned by the model rules of the accredited organisation to its exclusive competence while taking into account the provisions of **Item 3** of this Article and **Article 65.3** of this Code.

**2.** The supervisory council of the accredited organisation is formed of the rights-holders, cultural organisations, creative unions, users, representatives of the federal executive body undertaking normative-legal regulation in the area of copyright and adjacent rights, the federal executive bodies authorised to exert control (supervision) over the observation by the accredited organisation of the demands of the legislation of the Russian Federation, as well as of the persons wielding the powers of members of the collegiate executive bodies of the accredited organisation. The person wielding the powers of the one-man executive body of the accredited organisation cannot be a member of the supervisory council of the accredited organisation but shall take part in the supervisory council's sessions with the right of a consultative vote.

The quantitative composition of the supervisory council shall not be less than 11 members. The procedure for the formation of the supervisory council shall be approved by the authorised federal executive body.

**3.** The exclusive competence of the accredited organisation's supervisory council shall include:

- control over the activity of the organisation's executive bodies;
- control over the organisation's financial and economic activity;
- control over the expenditure of monetary means by the special funds;
- other questions placed in the accredited organisation's model rules within its exclusive competence.

The questions put within the exclusive competence of the supervisory council cannot be handed over for resolving to other bodies of the accredited organisation.

**4.** The supervisory council of the accredited organisation performs its activity on voluntary principles.

#### **Article 1245. The Fee for Free Reproduction/Playback of Sound Recordings and Audio-Visual Works for Personal Purposes**

**1.** The authors, performers and manufacturers of sound recordings and audio-visual works are entitled to receive a fee for free reproduction/playback of the sound recordings and audio-visual works exclusively for personal purposes. Such fee is of a compensatory nature, and is payable to right holders from the funds payable by the manufacturers and importers of the equipment and material media used for the reproduction/playback.

A list of the equipment and material media, and also the amount of, and procedure for collecting, the funds shall be approved by the Government of the Russian Federation.

**2.** The collection of the funds intended for disbursing fees for the free reproduction/playback of sound recordings and audio-visual works for personal purposes is the responsibility of the accredited organisation (**Article 1244**).

**3.** A fee for free reproduction/playback of sound recordings and audio-visual works for personal purposes shall be distributed among the right holders in the following proportion: 40 per cent to the authors, 30 per cent to the performers, 30 per cent to the manufacturers of the sound recordings or audio-visual works. The distribution of the fee among specific authors, performers, manufacturers of sound recordings or audio-visual works shall be made pro rata to the actual use of the relevant sound recordings or audio-visual works. The procedure for distributing the fee and for paying it out shall be established by the Government of the Russian Federation.

**4.** No amounts of money for the purpose of paying out the fee for the free reproduction/playback of sound recordings and audio-visual works for personal purposes shall be collected from the manufacturers of the equipment and the material media deemed for exportation, or from the manufacturers and importers of professional equipment not intended for home use.

#### **Article 1246. The State Regulation of Relationships in the Area of Intellectual Property**

**1.** Where it is envisaged by this Code, the enactment of normative legal acts for the purpose of regulating relationships in the area of intellectual property which relate to objects of copyright and allied rights shall be the responsibility of the authorised federal executive body charged with normative legal

regulation in the area of copyright and allied rights.

2. For the purpose of regulation of the relationships in the area of intellectual activity which are connected with inventions, utility models, industrial designs, computer programs, databases, integrated circuit layout designs, trademarks and service marks, geographical indications and the appellation of the origin of goods, the authorised federal executive body charged with normative legal regulation in the area of intellectual property shall endorse the forms of the documents (requests, applications, rejoinders, petitions and so on) serving as a basis for carrying out the actions relevant in law which are cited in **Item 3** of this article, shall establish the **rules** for drawing up and filing the cited documents, the rules and procedure for their consideration, including the criteria for adoption of decisions on the basis of the results of consideration of the cited documents, and shall issue other regulatory legal acts where such is provided for by this Code.

3. The legally-significant actions of the state registration of inventions, utility models, industrial designs, computer programs, databases, integrated circuit layout designs, trademarks and service marks, geographical indications and the appellation of origin of goods, including the acceptance and expert examination of relevant applications, of the issuance of patents and certificates proving the exclusive right of their right holders to the said results of intellectual activity and means of individualisation, and in the cases envisaged by a law, also other actions relating to the legal protection of the results of intellectual activity and means of individualisation, shall be committed by the federal executive body on intellectual property directly or through its subordinate institution. Where it is envisaged by **Articles 1401 to 1405** of this Code, the actions mentioned in this Paragraph may also be committed by the federal executive bodies authorised by the Government of the Russian Federation.

The federal executive body on intellectual property shall accredit a Russian scientific or educational organisation as an organisation that can conduct a preliminary information retrieval in relation to the claimed inventions or utility models and a preliminary assessment of their patentability (**Articles 1384, 1386 and 1390**) (hereinafter referred to as the "scientific or educational organisation").

The procedure for accreditation of a scientific or educational organisation and the requirements for it, as well as the grounds and the procedure for terminating its accreditation shall be established by the Government of the Russian Federation.

4. In respect of breeding achievements the functions specified in **Items 2 and 3** of this article shall be carried out by the authorised federal executive body charged with normative legal regulation in the area of agriculture, and the federal executive body charged with breeding achievements respectively.

5. The Government of the Russian Federation is entitled to establish the rates of, and a procedure and term for paying out, an emolument for work-for-hire inventions, work-for-hire useful models and work-for-hire industrial designs. The cited rates, procedure for and term shall apply if the employer and the employee have not made the agreement fixing the rate, terms of and a procedure for paying a fee for a work-for-hire invention, work-for-hire useful model and work-for-hire industrial design.

6. The Government of the Russian Federation is entitled to establish minimum rates, a procedure for collecting, distributing and paying out a fee for specific types of using works, performances and phonograms, if under law such results of intellectual activities are used with the consent of their right holders and with the payment of a fee.

The Government of the Russian Federation is entitled to establish the rates of remuneration, a procedure for collection, distribution and payment of fees for the use of works, performances and phonograms, if under law such results of intellectual activities are used without the consent of their right holders but with payment of a fee thereto.

#### **Article 1247. Patent Attorneys**

1. Dealings with the federal executive body charged with intellectual property matters may be carried out by an applicant, right holder, or another person itself or through a patent attorney registered with the said federal body or through another representative.

2. Citizens who permanently reside outside the territory of the Russian Federation and foreign legal entities shall carry out their dealings with the federal executive body charged with intellectual property matters through patent attorneys registered with the said federal body, unless otherwise envisaged by an international treaty of the Russian Federation.



If an applicant, right holder or another person carries out dealings with the federal executive body charged with intellectual property matters on his/its own or through a representative not being a patent attorney registered with the said federal body, they shall provide an address on the territory of the Russian Federation for correspondence purposes at the request of the said federal body.

The powers of a patent attorney or another representative shall be certified by a power of attorney.

3. A patent attorney may be a registered citizen of the Russian Federation who permanently resides on the territory thereof. Other requirements applicable to a patent attorney, the procedure for attestation and registration thereof, and also his powers in respect of dealing with cases relating to the legal protection of the results of intellectual activity and means of individualisation shall be established by law.

#### **Article 1248. Disputes Relating to Protection of Intellectual Rights**

1. Disputes relating to the protection of violated or disputed intellectual rights shall be examined and resolved by a court (**Item 1 of Article 11**).

2. In the cases envisaged by the present code the protection of intellectual rights in relationships that have to do with filing and examining patent applications for inventions, utility models, industrial designs, breeding achievements, trademarks and service marks, geographical indications and the appellation of origin of goods with the state registration of these results of intellectual activities and means of individualisation, the issuance of the relevant right-establishing documents, the disputing of granting legal protection to, or termination of the legal protection of, these results and means shall be carried out by administrative means (**Item 2 of Article 11**) by the federal executive body charged with intellectual property matters and the federal executive body charged with breeding achievements, respectively, and in the cases envisaged by **Articles 1401-1405** of the present Code, by the federal executive body authorised by the Government of the Russian Federation (**Item 2 of Article 1401**). Decisions of these bodies shall take effect starting from the date when they are taken. They may be challenged in court in the procedure established by law.

3. Rules for the examination and resolution of disputes in the procedure set out in **Item 2** of the present article by the federal executive body charged with intellectual property matters, and also the federal executive body charged with breeding achievements, shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property and the federal executive body charged with normative legal regulation in the area of agriculture respectively. The rules for the examination in the procedure set out in **Item 2** of the present article of disputes relating to secret inventions shall be established by the authorised body (**Item 2 of Article 1401**).

#### **Article 1249. Patent Fee and Other Fees**

1. Relevant patent and other fees shall be **charged** for carrying out legally-significant actions relating to a patent to an invention, utility model, industrial design or breeding achievement, the state registration of a computer program, database, integrated circuit layout-design, trademark and service mark, the state registration and granting of the exclusive right to a geographical indication or the appellation of origin of goods, and also the state registration of transfer of exclusive rights to other persons, the state registration of the pledge of these rights and granting the right to use the results of intellectual activity and individualisation means under a contract.

2. A list of the legally-significant actions which are related to a computer program, database and integrated circuit layout-design, and for which state fees are levied, the rate, procedure and term of payment, and grounds for being relieved of the duty to pay, the state fees, rebate, payment deferment or refund shall be established by the **legislation** of the Russian Federation on taxes and fees.

A list of other legally-significant actions, apart from those specified in the **first paragraph of this Item** of the present article, for the commission of which patent and other fees are charged, the rates thereof, procedure and term for payment, and also grounds for being relieved of the duty to pay fees, rebate, deferment of payment or refund shall be established by the Government of the Russian Federation.

#### **Article 1250. The Protection of Intellectual Rights**

1. Intellectual rights shall be protected by the remedies envisaged by this Code, with account taken of the essence of the right violated and of the consequences of the infringement of the right.

2. The remedies set out in this Code for intellectual rights shall be applicable at the request of right holders, organisations managing rights on a collective basis, and also other persons where it is established by law.

3. The measures of responsibility for breaching intellectual rights provided for by this Code are subject to application where there is the infringer's fault, unless otherwise established by this Code.

The absence of guilt shall be proved by the person that has infringed upon intellectual rights.

Unless otherwise established by this Code, the measures of responsibility for infringement upon intellectual rights by the infringer in the exercise of business activities by him, which are provided for by **Subitem 3 of Item 1 and Item 3 of Article 1252** of this Code, are subject to application irrespective of the infringer's fault, if such person does not prove that the infringement of intellectual rights is the result of an act of God, that is, of extraordinary circumstances that could not be prevented under the given conditions.

4. The person against which the measures of protection of intellectual rights provided for by **Subitems 3 and 4 of Item 1 and Item 3 of Article 1252** of this Code have been taken in the absence of guilt thereof is entitled to make a claim of exoneration for compensation of the suffered losses, including the amounts paid to third parties.

5. The absence of the infringer's guilt shall not relieve him of the duty to terminate infringement upon intellectual rights, and shall not exclude taking in respect of the infringer such measures as publication of the court decision on the infringement made (**Subitem 5 of Item 1 of Article 1252**), suppression of the actions breaking the exclusive rights to the result of intellectual activity or individualisation means or posing the threat of such right's infringement (**Subitem 2 of Item 1 of Article 1252**), confiscation and destruction of counterfeit material media (**Subitem 4 of Item 1 of Article 1252**). The cited actions shall be made at the infringer's expense.

#### **Article 1251. Protecting Personal Non-Property Rights**

1. If the personal non-property rights of an author are violated, they shall be protected in particular by means of recognising the right, restoring the status quo as it was before the infringement of the rights, stopping the actions infringing the right or creating the threat of infringement thereof, compensating for moral harm and publishing the court's decision on the infringement committed.

2. The provisions of **Item 1** of the present article are also applicable to protection of the rights mentioned in **Item 4 of Article 1240, Item 7 of Article 1260, Item 4 of Article 1263, Item 4 of Article 1295, Item 1 of Article 1323, Item 2 of Article 1333 and Subitem 2 of Item 1 of Article 1338** of the present Code.

3. The author's honour, dignity and business reputation shall be protected in accordance with the rules set out in **Article 152** of the present Code.

#### **Article 1252. Protecting Exclusive Rights**

1. The intellectual rights to the results of intellectual activities and individualisation means shall be protected, in particular, by making in the procedure provided by this Code claims for the following:

1) recognition of the right: against a person that denies or otherwise does not recognise the right and by doing so violates the interests of the right holder;

2) suppressing actions that infringe the right or create a threat of infringement thereupon: against the person committing such actions or making necessary preparations for such actions, as well as against other persons that can suppress such actions;

3) payment of damages: against the person that has illegally used the result of intellectual activity or means of individualisation without concluding an agreement with the right holder (use without a contract) or otherwise has violated the right holder's exclusive right and inflicted damage thereon, in particular has violated the right thereof to a fee provided for by **Article 1245, Item 3 of Article 1263 and Article 1326** of this Code;

4) seizure of a material medium in accordance with **Item 4** of this article: against its manufacturer, importer, keeper, carrier, seller, another distributor or non-bona fide acquirer;

5) publication of a court decision on the infringement committed with reference to the actual right holder: against the violator of the exclusive right.

2. By way of securing a claim in a case of infringement on an exclusive right, the security measures adequate to the extent and nature of an offence established by the procedural legislation may be taken, including the imposition of arrest upon the material media, equipment and materials, prohibition to carry out the appropriate actions in information and telecommunication networks, if in respect of such material media, equipment and materials or in respect of such actions the assumption has been made about a violation of the exclusive right to the result of intellectual activity or individualisation means.

3. In the cases envisaged in the present Code for certain types of results of intellectual activity or means of individualisation, when an exclusive right is infringed, the right holder is entitled to claim compensation from the infringer for the infringement of the said right. The compensation shall be collected if the fact of infringement is proven. In this case, the right holder that has applied for a remedy shall be relieved of the duty to prove the amount of damage inflicted thereon.

The amount of compensation shall be determined by the court within the limits set by the present Code, depending on the nature of the infringement and other circumstances of the case with due regard to the requirements of reasonability and justice.

Where a single action has violated the rights to several results of intellectual activity or individualisation means, the rate of compensation shall be determined by court for each wrongfully used result of intellectual activities or individualisation means. With this, if the rights to the appropriate results or individualisation means are held by the same right holder, the total amount of compensation for violation of the rights to them subject to the nature and effects of the violation may be reduced by court below the limit fixed by this Code but may not be less than 50 per cent of the amount of the minimum rates of all compensations for the violations made.

4. If the manufacture, distribution or other use, and also the importation, carriage or storage of the material media in which the result of intellectual activity or means of individualisation is expressed cause an infringement of the exclusive right to the result or means, such material media shall be deemed counterfeit and subject under a court decision to withdrawal from circulation and destruction without any compensation whatsoever, except as other circumstances are envisaged by the present Code.

5. Tools, equipment, and other means primarily used or intended for infringing the exclusive rights to the result of intellectual activity and means of individualisation shall be subject under a court decision to withdrawal from circulation and destruction at the infringer's expense, except when being subject to be converted into revenue of the Russian Federation.

5.1. In the event when the right holder and the violator of the exclusive right are legal entities and/or individual businessmen and the dispute shall be considered by an arbitration court, prior to filing a lawsuit for damages or compensation, the right holder must make a complaint.

The lawsuit for damages or compensation can be filed in the event of full or partial refusal to satisfy the complaint or if no reply thereto is received within 30 days from the date the complaint was filed unless a different deadline is provided for by the agreement.

The right holder is not required to make a claim before he presents a request envisaged in **Subitems 1, 2, 4 and 5 of Item 1 and Item 5** of this Article.

6. If various means of individualisation (a firm name, trademark, service mark or commercial name) turn out to be identical or similar to the point of confusion, and as a result of this identity or similarity consumers and/or parties under a contract may be misled, then preference shall be given to the means of individualisation in respect of which the exclusive right came into being earlier, or, in the event of establishing the convention or exhibition priority, the individualisation means with the earlier priority.

If an individualisation means or industrial design turn out to be identical or similar to the point of confusion, and as a result of this identity or similarity consumers and/or parties under a contract may be misled, then preference shall be given to the means of individualisation or industrial design in respect of which the exclusive right came into being earlier, or, in the event of establishing the convention, exhibition or other priority, the individualisation means or industrial design with the earlier priority.

The holder of such exclusive right in the procedure established by this **Code** may claim for declaring invalid the provision of legal protection to a trademark or service mark, for declaring invalid the patent on the industrial design or the full or partial ban on the use of the firm's name or commercial designation.

For the purposes of this item the partial ban shall mean the following:

in respect of a firm's name - a ban on its use in particular kinds of activities;  
in respect of a commercial designation - a ban on its use within the limits of a particular territory and/or in certain types of activities.

**6.1.** Where the same violation of the exclusive right to the result of intellectual activity or individualisation means is made by the joint actions of several persons, such persons shall be held jointly liable with respect to the right holder.

**7.** When an infringement of the exclusive right to the result of intellectual activity or means of individualisation has been recognised in the established procedure to be unfair competition, the protection of the exclusive right infringed may be ensured both in the manner envisaged by the present Code and in accordance with the antimonopoly legislation.

#### **Article 1253. Liquidation of a Legal Entity and Termination of the Activities of an Individual Businessman in Connection with Violation of Exclusive Rights**

If a legal entity several times or grossly infringes the exclusive rights to the results of intellectual activity and means of individualisation, a court may take a decision in accordance with **Item 3 of Article 61** of this Code on liquidating the legal entity at the demand of a prosecutor. If such infringements are committed by a citizen in the exercise by him/her of the activities as an individual businessman, the activities thereof as an individual entrepreneur may be terminated by a court decision or judgment in the procedure established by law, if he/she is guilty of violating the exclusive rights.

##### **Article 1253.1. The Details of Liability of an Information Mediator**

**1.** The person that delivers material on an information and telecommunication network, for instance the Internet, the person that makes it possible to obtain the material or the information required for obtaining it through the use of an information and telecommunication network or the person that makes it possible to access the material in that network, i.e., an information mediator, is liable for a breach of intellectual rights in the information and telecommunication network on the general grounds envisaged by the present Code, if guilty with account being taken of the details established by **Items 2 and 3** of the present article.

**2.** An information mediator delivering material on an information and telecommunication network is not liable for a breach of intellectual rights that has occurred as a result of such delivery, if the following conditions are simultaneously observed:

- 1) he is not the initiator of that delivery and does not designate the recipient of said material;
- 2) he does not alter said material in the provision of communication services, save the alterations effectuated for the purpose of ensuring the technological process of material transmission;
- 3) he did not know and could not have known that the use of the relevant result of intellectual activity or means of individualisation by a person that initiated the delivery of the material containing the relevant result of intellectual activity or means of individualisation was wrongful.

**3.** An information mediator allowing an opportunity for placing material in an information and telecommunication network is not liable for a breach of intellectual rights that has occurred as a result of placement of the material in the information and telecommunication network by a third party or on the instructions thereof, given the simultaneous observance of the following conditions by the information mediator:

1) he did not know and could not have known that the use of the relevant result of intellectual activity or the means of individualisation contained in such material was wrongful;

2) having received an application in writing from the right-holder about a breach of intellectual rights with reference to the website page and/or to the web address on the Internet where such material has been placed he took timely measures, which were necessary and sufficient, to terminate the breach of the intellectual rights. A list of the measures deemed necessary and sufficient, and the procedure for implementing them may be established by law.

**4.** An information mediator which, according to the present article is not liable for a breach of intellectual rights, may be subjected to demands for protection of intellectual rights (**Item 1 of Article 1250, Item 1 of Article 1251, Item 1 of Article 1252** of the present Code) which do not imply the taking of civil-law liability measures, for instance deleting the information that infringes exclusive rights or demands for restriction of access to the information.

5. The rules of the present article are applicable to the persons that provide an opportunity for obtaining access to material or the information required for obtaining it through the use of an information and telecommunication network.

**Article 1254.** The Details of Protection of a Licensee's Rights

If an infringement by third parties of the exclusive right to the result of intellectual activity or means of individualisation, the use of which is covered by an exclusive licence, affects the licensee's rights obtained by the licensee under a licence contract, then the licensee, apart from other remedies, may protect his/its rights by the methods envisaged by **Articles 1250** and **1252** of the present Code.

## **Chapter 70. Copyright Law**

**Article 1255.** Copyrights

1. The intellectual rights subsisting in scientific, literary and artistic works are copyrights.

2. The author of a work has the following rights:

- 1) an exclusive right to the work;
- 2) the right of attribution;
- 3) the right to one's own name;
- 4) a right to integrity of the work;
- 5) a right to publish the work.

3. Apart from the rights mentioned in **Item 27** of the present article, in the cases envisaged by the present Code the author of the work has other rights, including the right to a fee for service work, the right of withdrawal, the resale royalty right, and the right of access to an artistic work.

**Article 1256.** The Effect of the Exclusive Right to Scientific, Literary and Artistic Works on the Territory of the Russian Federation

1. The exclusive right to scientific, literary and artistic works extends to:

1) works promulgated on the territory of the Russian Federation, or not promulgated but located in any objective form on the territory of the Russian Federation, and recognised to be held by their authors (their successors) irrespective of the citizenship thereof;

2) works promulgated outside the territory of the Russian Federation or not promulgated but located in any objective form outside the territory of the Russian Federation, and recognised to be held by authors being citizens of the Russian Federation (their successors);

3) the works promulgated outside the territory of the Russian Federation or non-promulgated but located in any objective form outside the territory of the Russian Federation, and it is recognised on the territory of the Russian Federation to be held by authors (their successors) being citizens of other states or stateless persons in accordance with international treaties of the Russian Federation.

2. A work is also deemed promulgated for the first time by publication in the Russian Federation if within 30 days after the date of the first publication outside the territory of the Russian Federation it is published on the territory of the Russian Federation.

3. When, in accordance with international treaties of the Russian Federation, protection is provided to a work on the territory of the Russian Federation, the author of the work or another initial right holder shall be determined by the law of the state on whose territory the legal fact serving as grounds for the acquisition of copyright took place.

4. On the territory of the Russian Federation, protection shall be granted to works in accordance with international treaties of the Russian Federation in respect of the works which have not passed into the public domain in the country of origin of the work due to the expiry of the exclusive right's duration established in that country for these works, and which have not passed into the public domain in the Russian Federation due to the expiry of the effective term of exclusive right thereto envisaged by the present Code.

When protection is granted to works under international treaties of the Russian Federation the effective term of the right to these works on the territory of the Russian Federation shall not exceed the effective term of the exclusive right established in the country of origin of the works.

#### **Article 1257. The Author of a Work**

The author of a scientific, literary or artistic work is the citizen by whose creative work it has been created. The person cited as an author on the original or a copy of a work or in some other way in compliance with **Item 1 of Article 1300** shall be deemed its author, unless otherwise proven.

#### **Article 1258. Co-Authorship**

1. Citizens who have created a work by their joint creative work shall be deemed co-authors irrespective of this work's being an integral entity or being composed of parts each having an independent significance.

2. A work created through co-authorship shall be used by the co-authors jointly, except as otherwise envisaged by agreement between them. If the work is an integral entity, neither of the co-authors is entitled to ban the use of the work without a sufficiently good reason.

A work's part that can be used independently of other parts, i.e., a part having independent significance, may be used by its author at his own discretion, except as otherwise envisaged by agreement among the co-authors.

3. The co-authors' relationships relating to the distribution of incomes from the use of the work and to the disposition of the exclusive right to the work are subject to the rules of **Item 3 of Article 1229** of the present Code respectively.

4. Each of the co-authors is entitled to take measures on his own to protect his rights, in particular, when the work created by the co-authors makes up an integral entity.

#### **Article 1259. The Objects of Copyrights**

1. The objects of copyright are scientific, literary and artistic works, irrespective of the merit and significance of the work or the method whereby it is expressed:

literary works;

dramatic and dramatic-musical works, script works;

choreographic works and mime shows;

musical works with or without a text;

audio-visual works;

painting, sculpture, graphic, design, graphic stories, comics and other works of art;

artistic craftsmanship and scenographic works;

works of architecture, city planning and landscaping, including designs, drawings, images and models;

photographic works and works produced by methods similar to photography;

geographic maps and other maps, layouts, sketches and plastic works that have to do with geography and other sciences;

other works.

Also computer programs protected as literary works are deemed objects of copyright.

2. The following shall be deemed objects of copyright:

1) derivative works, i.e., works being a remake of other works;

2) composite works, i.e., works being the result of a creative work in terms of selection or arrangement of materials.

3. Copyright extends both to promulgated and non-promulgated works expressed in any objective form, including written or oral forms (in the form of a public pronouncement, public performance and in another similar form), in the form of an image, in the form of a sound or video recording or in a three-dimensional spatial form.

4. The occurrence, exercising and protection of copyright require neither registration of the work nor observation of any formalities.

In respect of computer programs and databases, registration is possible that takes place if the right holder so wishes, in accordance with the rules of **Article 1262** of the present Code.

5. Copyrights do not extend to ideas, concepts, principles, methods, processes, systems, manners or

the resolution of technical, organisational or other problems, inventions, facts, programming languages and to geological information on subsoil.

**6.** The following are not objects of copyright:

1) the official documents of state bodies and local government bodies of municipal formations, including laws, other normative acts, court decisions, other materials of a legislative, administrative and judicial nature, the official documents of international organisations, and also the official translations thereof;

2) state symbols and signs (flags, coats-of-arms, orders, banknotes and coins, etc.) and also the symbols and signs of municipal formations;

3) popular creative works (folklore) having no specific authors;

4) announcements about events and facts that have an exclusively informative nature (news-of-the-day announcements, television program timetables, transport timetables, etc.).

**7.** Copyright extends to a part of a work, to the name of a work, a character in a work if by the nature thereof they may be deemed an independent result of the author's creative work and meet the requirements set out in **Item 3** of the present article.

#### **Article 1260.** Translations and Other Translated Works. Composite Works

**1.** The translator and also the author of another derivative work (remake, screen version, arrangement, dramatisation or another similar work) own copyrights to the translation and another processing of another (original) work, respectively.

**2.** The compiler of a collection and the author of another composite work (anthology, encyclopaedia, database, website, atlas or another similar work) shall own copyrights in the selection or arrangement of materials (compilation).

A database is an aggregate, presented in an objective form, of independent materials (articles, calculations, normative acts, court decisions and other similar materials), which are systematised so that these materials can be found and processed by means of a computer.

**3.** The translator, compiler or other author of a derivative or composite work shall exercise his copyrights on the condition that the rights of authors of the works used to create the derivative or composite work are observed.

**4.** The copyrights of the translator, compiler or other author of a derivative or composite work are protected as rights to independent objects of copyright, irrespective of the protection of the rights of the authors of the works on which the derivative or composite work is based.

**5.** The author of a work placed in a collection or another composite work is entitled to use his work independently of the composite work, except as otherwise envisaged by a contract with the creator of the composite work.

**6.** Copyrights to a translation, collection, another derivative or composite work shall neither bar other persons from translating or processing the same original work, nor create their own composite works by means of another selection or arrangement of the same materials.

**7.** The publisher of encyclopaedias, encyclopaedic dictionaries, periodical and serial collections of scientific works, newspapers, magazines/journals and other periodical publications have the right to use these publications. Every time the publication is used the publisher is entitled to have his name mentioned or to demand that it be mentioned.

The authors or other owners of exclusive rights to the works included in such publications shall preserve their rights, irrespective of the publisher's or other person's right to use such publications as a whole, except for cases when these exclusive rights have been assigned to the publisher or other persons or have been transferred to the publisher or other persons on other grounds envisaged by law.

#### **Article 1261.** Computer Programs

Copyrights in any and all types of computer programs (including operating systems and software complexes) which may be expressed in any language and in any form, including the initial text and compiled code, are protected in the same way as copyrights to literary works. A computer program is an aggregate of data and commands presented in an objective form and intended for the operation of a computer and other

computer apparatus for the purpose of obtaining a certain result, including the preparatory materials produced in the course of elaboration of the computer program, and the audio-visual representations generated by it.

**Article 1262.** The State Registration of Computer Programs and Databases

1. Within the effective term of the exclusive right to a computer program or database, the right holder, if he so wishes, may register the program or database with the federal executive body charged with intellectual property matters.

Computer programs and databases containing information classified as **state secrets** are not subject to state registration. A person that files a state registration application (applicant) shall be accountable for disclosing information on the computer programs and databases containing information classified as a state secret under the **legislation** of the Russian Federation.

2. An application for state registration of a computer program or database (a registration application) shall cover one computer program or one database.

The registration application shall comprise the following:

an application for state registration of the computer program or database, including reference to the right holder and the author, unless he has refused to be mentioned in this capacity, and the place of residence or whereabouts of each of them;

the deposited materials identifying the computer program or database, including a synopsis;  
paragraph five has **lost force** from October 1, 2014.

The **rules** for drawing up a registration application shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

3. On the basis of the registration application, the federal executive body charged with intellectual property matters shall verify the availability of the necessary documents and materials and their compliance with the requirements set out in **Item 2** of this article. If the results of the verification are positive, the said federal body shall enter the computer program or database into the Register of Computer Programs or the Register of Databases, respectively, issue to the applicant a certificate of state registration in the form of an electronic document and, upon the request of the applicant, on paper, and publish information on the computer program or database registered in a published edition of that body.

At the request of the said federal body or on his own initiative, the author or other right holder is entitled to do the following until the time of the state registration of a computer program or database: make additions and amendments into the documents and materials mentioned in the registration application.

4. The procedure for state registration of computer programs and databases, the forms of certificates of state registration, a list of the details to be indicated therein, and a list of the details to be published in the publication of the federal executive body charged with intellectual property matters shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

5. The transfer of the exclusive right to a computer program or database to another person on a contractual basis or without a contract is subject to state registration with the federal executive body charged with intellectual property matters.

5.1. On the basis of the right holder's application, the federal executive body charged with intellectual property matters shall make the amendments related to the data on the right holder and/or the author of a computer program or database, in particular to the right holder's denomination or name, the location or residence thereof, the author's name or postal address, as well as the amendments connected with correction of evident technical mistakes in the Register of Computer Programs or the Register of Databases and in the state registration certificate.

The federal executive body charged with intellectual property matters may make amendments connected with correction of evident technical mistakes in the Register of Computer Programs or the Register of Databases on its own initiative or at the request of any person having preliminarily notified the right holder thereof.

The federal executive body charged with intellectual property matters shall publish in the official bulletin data on the amendments made in the Register of Computer Programs or the Register of Databases.

6. The details entered in the Register of Computer Programs or the Register of Databases shall be



deemed reliable unless otherwise proven. Responsibility for the reliability of the information provided for state registration purposes shall be borne by the applicant.

### **Article 1263. Audio-visual Work**

1. An audio-visual work is a work made up of a fixed series of interrelated images (accompanied or not accompanied by sound) and intended for visual and audio (if accompanied by sound) perception using the relevant technical apparatus. Audio-visual works include cinematographic works, and also all works expressed by means similar to cinematographic ones (television and video films and other similar works), irrespective of the method whereby they are initially or subsequently fixed.

2. The following are the authors of an audio-visual work:

- 1) the director;
- 2) the author of the script;
- 3) the composer being the author of a musical work (with or without a text) specifically created for the audio-visual work;
- 4) the art director of an animated film (cartoon).

3. In the event of a public performance or broadcasting or cable transmission, including re-transmission, of an audio-visual work, the authors of a musical work (with or without a text) used in the audio-visual work shall retain a right to a fee for the said types of use of their musical work.

4. The rights of the manufacturer of an audio-visual work, i.e., of the person that has organised the creation of the work (producer), shall be defined in accordance with **Article 1240** of this Code.

The manufacturer shall hold the exclusive right to an audio-visual work on the whole, unless otherwise results from the contracts made by him/her with the authors of the audio-visual work which are cited in **Item 2** of this article.

The manufacturer in case of any kind of use of an audio-visual work is entitled to cite the name or denomination thereof or to demand such citing. Unless otherwise proven, as the manufacturer of an audio-visual work shall be deemed the person whose name or denomination is cited on this work in a traditional way.

5. Each author of a work that is incorporated in an audio-visual work, either existing before (the author of the work that underlies the script, and others) or created in the course of working on it (photography director, art director and others) shall retain an exclusive right to his work, except for cases when this exclusive right has been assigned to the manufacture or other persons or has been transferred to the manufacture or other persons on other grounds set out by law.

### **Article 1264. Draft Official Documents, Draft Designs of Symbols and Signs**

1. The right of attribution to a draft official document, including a draft official translation of such document, and also a draft design of an official symbol or sign shall be owned by the person that created the draft (designer/author).

The designer/author of a draft official document or a draft design of a symbol or sign is entitled to promulgate the draft, unless it is prohibited by the state body or the local government body of a municipal formation or the international organisation on whose order the draft has been elaborated. When the draft is promulgated the designer/author is entitled to indicate his/her name.

2. A draft official document or a draft design of a symbol or sign may be used by the state body or local government body or international organisation for the preparation of a relevant official document, elaboration of the symbol or sign without the designer's/author's consent if the draft has been promulgated by the designer/author for use by the body or organisation or has been sent by the designer/author to the relevant body or organisation.

When an official document or an official symbol or sign is being elaborated on the basis of the relevant draft, amendments may be made thereto at the discretion of the state body or local government body or international organisation that prepares the official document or elaborates the official symbol or sign.

After the draft has been formally accepted for consideration by the state body or local government body or international organisation, the draft may be used without mentioning the name of the designer/author.

**Article 1265.** The Right of Attribution and the Right to One's Own Name

1. The right of attribution, i.e., the right of being recognised as the author of a work, and the right to one's own name, i.e., the right to use or permitting the use of a work under the author's name, a pseudonym or without an indication of a name, i.e., anonymously, are unalienable and unassignable, for instance, when the exclusive right to the work is assigned to another person or transferred to another person, and when the right to use the work is granted to another person. The waiver of these rights is deemed null and void.

2. When a work is published anonymously or pseudonymously (except for cases when the author's pseudonym leaves no doubt as to his identity) the publisher (**Item 1 of Article 1287**) whose name is indicated on the work shall be deemed the author's representative, unless otherwise proven, and in this capacity is entitled to protect the author's rights and ensure the exercising of such rights. This provision shall remain effective until the author of the work discloses his identity or announces his authorship.

**Article 1266.** The Right to the Integrity of a Work and the Protection of a Work against Distortions

1. Without the author's consent it is prohibited to make modifications, cuts and addenda to the work, to attach illustrations, a preface, afterword, comments or any explanations (the right of integrity of the work).

When a work is used after the author's death, the person owning the exclusive right to the work is entitled to permit modifications, cuts or addenda to the work, provided that the author's idea is not distorted and the integrity of perception remains intact, and it does not conflict with the author's will expressly stated in a will, letters, diaries or other written form.

2. A perversion, distortion or another modification of a work that denigrates the honour, dignity or business reputation of the author, and equally an attempt at committing such actions authorises the author to claim protection of his honour, dignity or business reputation in accordance with the rules of **Article 152** of the present Code. In these cases, the protection of the honour and dignity of an author is for instance admissible after his death if the persons concerned so claim.

3. Where it is provided for by **Item 5 of Article 1233** and **Item 2 of Article 1286.1** of this Code, the author may give its consent to making in future changes, abbreviations and additions in the work thereof, if it is caused by a need for it (correction of mistakes, specification or supplementation of factual data and such) on the condition that it does not distort the author's tendency and does not break the integrity of the work's perception.

**Article 1267.** Protecting Authorship, Author's Name and Integrity of a Work after an Author's Death

1. The authorship, the name of the author and the integrity of a work shall be protected indefinitely.

2. In the procedure set out for designating the executor of a will (**Article 1134**) the author may indicate the person in which he vests the duty to protect authorship, the name of the author, and the integrity of a work (**Paragraph 2 of Item 1 of Article 1266**) upon the author's death. The person shall execute his duties for life.

If there is no such indication or if the person designated by the author has refused to execute these powers, and also after the death of the person, the protection of authorship, the name of the author and the integrity of the work shall be carried out by the author's heirs, their successors and other persons concerned.

**Article 1268.** The Right to Promulgate a Work

1. The author is entitled to promulgate his work, i.e., has a right to commit an action or to consent to the commission of an action which opens the work to the public for the first time by means of publication, public show, public performance, broadcast or cable or in any other manner.

In this case, the publication (issuing) is the release for circulation of copies of the work which are copies of the work in any material form in a quantity sufficient for meeting the public's reasonable needs depending on the nature of the work.

2. An author who has transferred a work to another person for use shall be deemed to have agreed to the promulgation of the work.

3. A work that has not been promulgated in the author's lifetime may be promulgated on his death by the person having the exclusive right to the work, unless promulgation is contrary to the author's will expressly stated by the author in writing (in a will, letters, diaries, etc.).

### **Article 1269. Right of Withdrawal**

1. The author is entitled to waive the decision on promulgation of a work taken earlier (the right of withdrawal) before its actual promulgation, on condition that compensation is provided to the person to which the exclusive right to the work has been alienated or to which the right to use the work has been granted for the damage caused by the decision.

2. The rules of this article are not applicable to computer programs, service works and works incorporated into a complex object (**Article 1240**).

### **Article 1270. The Exclusive Right to a Work**

1. The author of a work or another right holder owns an exclusive right to use the work in accordance with **Article 1229** of the present Code in any form and in any manner not conflicting with the law (the exclusive right to the work), including the methods specified in **Item 2** of the present article. The right holder may dispose of the exclusive right to the work.

2. Irrespective of relevant actions being or not being committed for the purpose of making a profit or without such purpose, the use of a work means the following:

1) the reproduction of the work, i.e., the manufacture of one or more copies of the work or a part thereof in any material form, including in the form of an audio or video recording, the manufacture of one or more three-dimensional copies of a two-dimensional work, and of one or more two-dimensional copies of a three-dimensional work. In this case, a recording of the work on an electronic medium, including saving in a computer's memory, shall also be deemed reproduction. As reproduction shall not be deemed a short-term recording of a work which is of temporary or accidental nature and is an integral and significant part of a technological process solely intended for the legal use of a work, or is the transfer of a work on an information telecommunication network between third parties by an information broker, provided that such record has no independent economic importance;

2) the distribution of the work by sale or another alienation of its original or copies;

3) the public show of the work, i.e., any showing of the original or a copy of the work directly either on a screen by means of a film, transparency, television still or other technical facilities, and also the showing of separate stills of an audio-visual work without the observance of sequence thereof directly by technical facilities in a place open to the public or in a place where a significant number of persons are present who do not belong to an ordinary family group, irrespective of the work's being perceived in the place where it is shown or in another place simultaneously with the showing of the work;

4) the import of the original or copies of the work for the purpose of distribution;

5) the hiring out of the original or a copy of the work;

6) the public performance of the work, i.e., the presentation of the work through live performance or technical facilities (radio, television and other technical facilities), and also the showing of an audio-visual work (with or without sound) in a place open to the public or in a place where a significant number of persons are present who do not belong to an ordinary family group, irrespective of the work's being perceived in the place where it is performed or shown or in another place simultaneously with the performance or show of the work;

7) the radio or television broadcasting, i.e., making the work known to the public, except for cable communications. In this case, communications means any actions whereby the work becomes open for audio and/or visual perception, irrespective of its being actually perceived by the public. When a work is broadcast via satellite broadcasting means the reception of signals from a ground station by a satellite and transmission of signals from the satellite, such signals being capable of making the work known to the public, irrespective of the signals being actually received by the public. An encoded signal transmission is deemed broadcast if decoders are provided to an unlimited group of persons by a broadcasting organisation or with the consent thereof;

8) cable communication, i.e., the transmission of the work for the public's notice, by radio or television via cable, wire, optical fibre or similar facilities. An encoded signal transmission shall be deemed cable communication if decoders are provided to an unlimited group of persons by a cable services organisation or with the consent thereof;

8.1) rebroadcasting, that is, the reception and simultaneous transmission (in particular through a satellite) or via cabling of a full and unchanged radio or television broadcast or an essential part thereof which is aired or transmitted via cabling by an organisation engaged in on-air or cable broadcasting;

9) the translation or other processing of the work. In this case, the processing of a work means the creation of a derivative work (remake, screen version, arrangement, dramatisation, etc.). The processing (modification) of a computer program or database means any change therein, including the translation of the program or database from one language into another, except for adaptation, i.e., amendment made exclusively for the purposes of running the computer program or database on specific hardware of a user or under the control of specific programs of a user;

10) the practical implementation of an architectural, design, town planning or landscaping project;

11) bringing the work to the notice of the public so that any person can obtain access to the work from any place and at any time as the person chooses (bringing it to the notice of the general public).

**3.** The practical implementation of the provisions making up the content of a work, including the provisions being a technical, economic, organisational or other solution, shall not be deemed a use of the work as much as the rules of the present chapter are concerned, except for the use envisaged by **Subitem 10 of Item 2** of the present article.

**4.** The rules of **Subitem 5 of Item 2** of the present article are not applicable to a computer program, except for cases when such program is the main object of hiring-out.

#### **Article 1271.** Copyright Mark

For the purpose of warning of his exclusive right to a work, the right holder is entitled to use a copyright mark that is placed on each copy of the work and is composed of the following components:

the Latin letter "C" in a circle;

the name of the right holder;

the year of the first publication of the work.

#### **Article 1272.** Distributing the Original or Copies of a Published Work

If the original or copies of a work have been legally introduced into civil-law transactions on the territory of the Russian Federation as they were sold or otherwise alienated, the further distribution of the original or copies of the work may take place without the consent of the right holder and without a fee being paid to the right holder, except for the case envisaged by **Article 1293** of the present Code.

#### **Article 1273.** Free Reproduction for Personal Purposes

**1.** A citizen may reproduce, if necessary and exclusively for personal purposes, a legally promulgated work without the author's or other right holder's consent and without paying a fee, except for the following:

1) the reproduction of works of architecture in the form of buildings and similar structures;

2) the reproduction of databases or significant parts thereof, except as provided for by **Article 1280** of this Code;

3) the reproduction of computer programs, except for the cases envisaged by **Article 1280** of the present Code;

4) the reproduction of books (in full) and musical notation texts (**Article 1275**), that is the facsimile reproduction with the help of technical facilities for purposes other than publication;

5) the video recording of an audio-visual work when it is publicly performed in a place open to the public or in a place attended by a significant number of persons who do not belong to the ordinary family group;

6) the reproduction of an audio-visual work using professional equipment not intended for home use.

**2.** When phonograms and audio-visual works of art are reproduced exclusively for personal purposes, authors, performers and manufacturers of the phonograms and audio-visual works of art have the right to the remuneration provided for by **Article 1245** of this Code.

#### **Article 1274.** The Free Use of a Work for Information, Scientific, Educational or Cultural Purposes

1. The following is admissible without the consent of the author or other right holder and without paying a fee but with a compulsory reference to the name of the author whose work is used and of the source as well:

1) quoting in the original and in a translation for scientific, discussion, critical, information and educational purposes, for the purpose of disclosing the author's creative design of legally promulgated works within the scope justified by the purpose of the quotation, including the reproduction of excerpts from newspaper and magazine articles in the form of press reviews;

2) using legally promulgated works and excerpts from them as illustrations in educational publications, radio and television programs, sound and video recordings within the scope justified by the purpose set;

3) reproducing in a periodical print and subsequent distribution copies of this publication, on-air or cable reports, bringing to public knowledge of the articles legally published in periodical prints on current economic, political, social and religious issues or broadcast works of the same nature, or works of the same nature broadcast on air or via cabling or brought to public knowledge, unless such reproduction, reporting or bringing to knowledge has been specifically prohibited by the author or other right holder;

4) reproducing in a periodical print and subsequent distribution of copies of this publication, on-air or cable reporting, publicly pronounced political speeches, addresses, reports and other similar works within a scope justified for information purposes. In this case, the authors of such works shall retain the right to publish them in collections;

5) reproducing, or disseminating, or broadcasting on air or via cabling, bringing to public in current events reviews (in particular by means of photography, cinematography, television or radio) works which are seen or heard in the course of these events, as justified for information purposes;

6) public performance of lawfully promulgated works by way of their live reproducing without profit-making at educational organisations, medical organisations, social servicing organisations and institutions of the penal system by the staff (employees) of the given organisations and institutions and by the persons serviced by these organisations or kept at these institutions;

7) recording on an electronic medium, including recording to the computer memory and bringing to public knowledge of dissertation papers' auto-abstracts.

2. Creation of copies of lawfully published works in formats intended exclusively for use by the blind, visually impaired or by persons with other print disabilities (in embossed font and in other special ways accessible to the blind, visually impaired or persons with other print disabilities) (special formats), as well as reproduction, distribution and import of such copies without the purpose of making a profit, are allowed without the consent of the author or another owner of the exclusive copyright and without paying him or her a fee, but with the obligatory indication of the name of the author whose work is used, and the source of borrowing.

Libraries may provide the blind, visually impaired, and persons with other print disabilities with copies of works created in special formats for temporary free use at home.

Libraries and other organisations, the list of which is determined by the Government of the Russian Federation, may, without the consent of the author or another owner of the exclusive right and without paying him remuneration, provide the persons specified in paragraph one of this Item with access through information and telecommunication networks to copies of works created in special formats, and carry out a cross-border exchange of such copies in accordance with the Marrakesh Treaty to Facilitate Access for the Blind, Visually Impaired or Otherwise Print Disabled to Published Works, including through information and telecommunication networks. A list of special formats, a list of indications, provided the presence of which persons with disabilities to perceive printed information may use copies of works created in special formats, a list of libraries and other organisations that provide access through information and telecommunication networks to copies of works created in special formats, and having the right to carry out a cross-border exchange of copies of works created in special formats, in accordance with the Marrakesh Treaty to Facilitate Access for the Blind and Persons with Visual Impairments or Other Print Disabilities to Published Works, including through information and telecommunication networks, the procedure for providing such access and cross-border exchange of these copies shall be determined by the Government of the Russian Federation.

Any further reproduction or communication to the public of a copy of the work, intended solely for the use of the blind, visually impaired and persons otherwise pring disabled, in other formats is not allowed.

Provisions of this Item shall not apply to works created for the purpose of use in special formats, as well as to phonograms consisting mainly of musical works.

**3.** It is allowed without the consent of the author or another right holder and without paying a fee to carry out an audio description or to accompany a work with a sign language translation for the purpose of simplifying the work's perception by persons with limited physical abilities.

**4.** The creation of a work in the style of a literary, musical or other parody or in the style of a caricature on the basis of another (original) work that has been lawfully promulgated and the use of these parodies or caricature is allowed without the consent of the author or other holder of the exclusive right to the original work and without paying a fee thereto.

#### **Article 1275.** Free Use of Works by Libraries, Archives and Educational Organisations

**1.** Public libraries, as well as archives where access to archival documents is not restricted, provided that there is no aim to derive profits, are entitled without the consent of the author or other right holder and without paying a fee to provide for the temporary free (in particular by way of mutual use of library stocks) use of the originals or copies of the works that have been lawfully put into civil circulation.

In so doing, copies of works in electronic form may be solely provided for temporary gratuitous use at the premises of a library or archive, provided that it is impossible to create any more copies of the work in electronic form.

**2.** Public libraries, as well as archives where access to archival documents is not restricted, provided that there is no aim to derive profits, are entitled without the consent of the author or other right holder and without paying a fee but with mandatory citing of the name of the author whose work is used and the source of borrowing to make single copies, in particular in electronic form, of copies of the works held by them and lawfully put into civil circulation:

1) for the purpose of ensuring safekeeping and availability for users:  
of dilapidated, worn-out, spoiled and defective copies of works;  
of singular and/or rare copies of works and manuscripts whose issuance to users may lead to their loss, spoilage or destruction;

of copies of works recorded on machine-readable media for whose use there are no required facilities;

of copies of works which are of exceptional scientific and educational importance, provided that they have not been within over 10 years from the date of publication of their last publications in the territory of the Russian Federation;

2) for the purpose of restoration, replacement of lost or spoiled copies of works, as well as for providing with copies of works other libraries and archives where access to archival documents is not restricted that have lost them for some reason.

**3.** Copies of the works made in electronic form in compliance with **Item 2** of this article may be provided to users subject to the conditions provided for by **Item 1** of this article.

**4.** Libraries receiving copies of dissertation papers in compliance with the law on the obligatory copy of a document, where there is no aim to derive profits, are entitled without the consent of the author or other right holder and without paying a fee but with the mandatory citing of the name of the author whose work is used and of the source of borrowing to make single copies of such dissertation papers, in particular in electronic form, for the purposes provided for by **Item 2** of this article.

Copies of dissertation papers made in electronic form shall be provided to users subject to the conditions provided for by **Item 1** of this article.

**5.** Public libraries, as well as archives where access to archival documents is not restricted, provided that there is no aim to derive profits, are entitled without the consent of the author or other right holder and without paying a fee but with the mandatory citing of the name of the author whose work is used and of the source of borrowing to make a single copy and provide copies, in particular in electronic form, of individual articles and small-size works lawfully published in collections, newspapers and other periodical prints, short extracts from other lawfully published written works (with illustrations and without such) at the requests of

citizens for scientific and educational purposes.

6. Educational organisations, provided that there is no aim to derive profit, are entitled without the consent of the author or other right holder and without paying a fee but with mandatory citing of the name of the author whose work is used and of the source of borrowing to make copies, in particular in electronic form, of individual articles and small-size works lawfully published in collections, newspapers and other periodical prints, of short extracts from other lawfully published written works (with illustrations and without such) and to provide these copies to trainees and pedagogical workers for conducting examinations, classes and self-training in the number which is required for this purpose.

7. The state archives are entitled within the scope of authority thereof to make singular copies of the works placed on the Internet for keeping in an archive with the subsequent reproduction and bringing to public knowledge to be excluded.

**Article 1276. Free Use of a Work Which Is Permanently Located in a Public Place**

1. It is allowed without the consent of the author or other right holder and without paying a fee to reproduce and distribute produced copies, to transmit on air or through a cable, to bring to public knowledge works of fine arts or photographic works which are permanently located in a public place, except if the image of the work is the main object of use or the image of a work is used for the purpose of deriving profit.

2. It is allowed to freely use by way of reproduction and distribution of produced copies, transmission on air or through a cable, bringing to public knowledge in the form of images the works of architecture, town-planning and landscape arts located in a public place or visible from that place.

**Article 1277. The Free Public Performance of a Lawfully Promulgated Musical Work**

A musical work which is lawfully promulgated may be performed without the author's or other right holder's consent and without paying a fee during an official or religious ceremony or funeral within the scope justified by the nature of the ceremony.

**Article 1278. The Free Reproduction of a Work for Law-Enforcement Purposes**

A work may be reproduced without the author's or other right holder's consent and without paying a fee for the purpose of implementing proceedings in a case of administrative offence, of inquiring, preliminary investigation or legal proceedings within the scope justified by the purpose.

**Article 1279. The Free Recording of a Work by a Broadcasting Organisation for the Purpose of Short-Term Use**

A broadcasting organisation is entitled to make a record, without the author's or other right holder's consent and without paying a fee, for the purpose of short-term use of the work in respect of which the organisation has obtained a right to broadcast communication, provided a record is made by the broadcasting organisation by means of its own equipment and for its own broadcasts. In this case, the organisation shall destroy the record within six months after it was made, unless a longer term has been agreed upon with the right holder or established by law. Such record may be preserved without the consent of the right holder in state or municipal archives if it has an exclusively documentary nature.

**Article 1280. The Right of the User of a Computer Program and Database**

1. The person that legally possesses a copy of a computer program or database (user) is entitled to do the following without the author's or other right holder's consent and without paying out a fee:

1) carry out actions required for the functioning of a computer program or database (in particular in compliance with their use for their purpose), including recording and storing in the computer memory (of a single computer or single network), making amendments in a computer program or database solely for their functioning at the user's facilities, and to correct obvious errors, unless otherwise provided for by the contract made with the right holder;

2) make a copy of the computer program or database, provided this copy is intended only for archiving purposes or for replacing the legally acquired copy if the copy is lost, destroyed or inoperable. In this case, the copy of the computer program or database shall not be used for purposes other than those

mentioned in **Subitem 1** of the present item, and it shall be destroyed if the possession of the copy of the computer program or database is no longer legal.

2. The person legally possessing a copy of a computer program is entitled to do the following without the right holder's consent and without paying a fee: to study, research or test the operation of the program for the purpose of assessing the ideas and principles underlying any component of the computer program by means of carrying out the actions envisaged by **Subitem 1 of Item 1** of the present article.

3. The person legally possessing a copy of a computer program is entitled to do the following without the right holder's consent and without paying a fee: to reproduce and convert the compiled code into the initial text (to decompile the computer program) or to instruct other persons to carry out such actions if they are needed to enable a program independently developed by this person for a computer to interact with other programs which can interact with the program decompiled, provided the following conditions are observed:

1) the information required for enabling the interaction was not available to this person from other sources;

2) the said actions are committed only in respect of those portions of the decompiled computer program which are needed for enabling the interaction;

3) the information obtained as a result of the decompilation may only be used to enable the interaction of the independently developed computer program with other programs; it shall not be transferred to other persons, except for cases when it is required for enabling the interaction of the independently developed computer program with other programs, or be used for developing a computer program of a kind significantly similar to the computer program decompiled or for committing another action infringing the exclusive right to the computer program.

4. The application of the provisions of the present article shall neither conflict with the normal use of a computer program or database nor infringe without grounds the lawful interests of the author or another right holder.

#### **Article 1281.** The Duration of the Exclusive Right to a Work

1. The exclusive right to a work shall be effective for the whole lifetime of the author, and 70 years from January 1 of the year following the year of the author's death.

The exclusive right in a work created by co-authors shall be effective for the whole lifetime of the author who survives other co-authors and 70 years from January 1 of the year following the year of his death.

2. For a work promulgated anonymously or pseudonymously, the effective term of the exclusive right shall expire after 70 years from January 1 of the year following the year of its legal promulgation. If within the said term the author of the work promulgated anonymously or pseudonymously discloses his identity or if his identity is no longer in doubt, the right shall be effective for the term established by **Item 1** of the present article.

3. The exclusive right to a work promulgated after the author's death shall be effective for 70 years after the promulgation thereof from January 1 of the year following the year of the promulgation, provided the work is promulgated within 70 years of the death of the author.

4. If the author of a work has been subjected to repression and posthumously rehabilitated, the effective term of the exclusive right shall be deemed extended, and 70 years shall be counted from January 1 of the year following the year of rehabilitation of the author of the work.

5. If an author worked during the Great Patriotic War or took part in it, the effective term of the exclusive right established in the present article is extended by four years.

#### **Article 1282.** The Passing of a Work into the Public Domain

1. Upon the expiry of the exclusive right, a scientific, literary or artistic work, be it promulgated or not, shall pass into the public domain.

2. A work that has passed into the public domain may be freely used by any person without anybody's consent or permission and without paying a royalty. In this case, the attribution, name of the author and integrity of the work are preserved.

3. A non-promulgated work that has passed into the public domain may be promulgated by any person, unless the promulgation thereof is contrary to the author's will expressly stated by the author in writing (in a will, letters, diaries, etc.).



The rights of the citizen who has legally promulgated such work are determined in accordance with **Chapter 71** of the present Code.

**Article 1283.** The Transfer of the Exclusive Right to a Work in Line of Succession

1. The exclusive right to a work is inheritable.

2. In the cases envisaged by **Article 1151** of the present Code, the exclusive right to a work included in a will shall be terminated, and the work shall pass into the public domain. With this, in the event of the death of one of the co-authors, the exclusive right shall be terminated in the part thereof held by him/her, if a work consists of several parts, each of which is of independent importance or, where a work is inseparable, the share of the late co-author in the exclusive right shall pass over in equal portions to all the co-authors who are alive.

**Article 1284.** Levy of Execution on the Exclusive Right to a Work and the Right to Use a Work under a Licence

1. Levy of execution is prohibited on the exclusive right to a work owned by the author, except when execution is levied under the contract of pledge made by the author and whose subject is the exclusive right to a specific work cited in the contract and held by the author. The author's claims in respect of other persons under contracts of alienation of the exclusive right to the work and under licence contracts, and also the incomes received from the use of the work are subject to levy of execution.

The exclusive right owned by a person other than the author and the right to use the work owned by a licensee are subject to levy of execution.

The rules of **Paragraph 1** of the present item extend to the heirs of the author, their heirs and so on within the effective term of the exclusive right.

2. If the right to use a work owned by a licensee is sold at a public sale for the purpose of levying execution on the right, the author shall have a priority right to acquire it.

**Article 1285.** A Contract of Alienation of the Exclusive Right to a Work

Under a contract of alienation of the exclusive right to a work, the author or other right holder shall assign or undertake to assign his exclusive right to the work in full to the acquirer of the right.

**Article 1286.** A Licence Contract Granting the Right to Use a Work

1. Under a licence contract one party, the author or other right holder (licensor), grants or undertakes to grant to another person (licensee) a right to use the work within the limits set by the contract.

2. The licence contract shall be made in writing. A contract granting a right to use a work in a periodical printed publication may be concluded in oral form.

3. An onerous licence agreement shall specify the rate of a fee for the use of a work or a procedure for estimation of such fee.

4. The user of a computer program or database, along with the rights held by him by virtue of **Article 1280** of this Code, may be granted the right under the licence agreement to use the computer program or database within the limits established by the contract.

5. The licence agreement made with the user on granting thereto an ordinary (non-exclusive) licence to use a computer program or database may be concluded in a simplified procedure.

The licence agreement made in a simplified procedure shall be an agreement of adhesion whose terms may be stated, in particular, on the copy of the computer program or database to be acquired or on the packing of such copy, as well as in electronic form (**Item 2 of Article 434**). As the start of using a computer program or database by the user, as it is defined by the cited terms, shall be deemed the consent thereof to make the agreement. On such occasion, the written form of the agreement shall be regarded as observed.

A licence agreement made in a simplified procedure shall be onerous, unless otherwise provided by the agreement.

**Article 1286.1.** The Open Licence for Using a Work of Science, Literature or Arts

1. The licence agreement under which the author or other right holder (licensor) grants to the licensee

an ordinary (non-exclusive) licence for using a work of science, literature or arts may be made in a simplified procedure (open licence).

An open licence shall be an agreement of adhesion. All its terms shall be accessible to an indefinite group of persons and shall be inserted so that the licensee can get familiar with them before starting to use the corresponding work. An open licence may contain an indication of the actions whose making shall be deemed to be the acceptance of its terms (**Article 438**). On such occasion, the written form of the agreement shall be deemed observed.

2. Seen as the subject of an open licence shall be the use of a work of science, literature or arts within the limits provided for by an agreement.

The licensor may grant to the licensee the right to use the work owned by him for creation of a new result of intellectual activities. On such occasion, unless otherwise provided for by an open licence, it shall be deemed that the licensor has made the offer to make the agreement (**Item 2 of Article 437**) on the use of the work owned by him by any person wishing to use the new result of intellectual activities created by the licensee on the basis of this work within the limits and under the terms which are provided for by the open licence. The acceptance of such offer shall be also deemed the acceptance of the licensor's offer to make a licence agreement in respect of this work .

3. An open licence shall be free, unless otherwise provided for by it.

If the duration of an open licence is not fixed, in respect of a computer program or database the agreement shall be deemed made for the whole time period while an exclusive right is in effect and in respect of other kinds of works the agreement shall be deemed made for five years.

If an open licence does not cite the territory in which it is allowed to use the relevant work, such use shall be allowed worldwide.

4. The licensor that has granted an open licence is entitled to renounce the agreement unilaterally in full or in part (**Item 2 of Article 450.1**), if the licensee grants to third parties the right to use the work held by the licensor or the right to the use of a new result of intellectual activities created by the licensee on the basis of this work beyond the scope of the rights and/or under the terms, other than those which are provided for by the open licence.

5. The author or other right holder, if the exclusive rights to a work are violated by wrongful actions as to the provision or use of an open licence, are entitled to demand taking against the violator measures of protection of the exclusive right in compliance with **Article 1252** of this Code.

#### **Article 1287.** The Special Terms of a Publisher's Licence Contract

1. Under a contract of granting a right to use a work concluded by the author or other right holder with a publisher, i.e., the person which under the contract undertakes to publish the work (publisher's licence contract), the licensee shall commence the use of the work within the term set in the contract. If this duty is not observed the licensor is entitled to waive the contract without compensation to the licensee for the losses due to such waiver.

If the contract does not contain a specific term for commencing the use of the work, it shall be commenced within the term which is usual for this type of work and the method of use. Such contract may be rescinded by the licensor on the grounds and in the procedure set out in **Article 450** of the present Code.

2. Where a publisher's licence contract is rescinded on the basis of the provisions set out in **Item 1** of the present article, the licensor is entitled to claim that the fee envisaged by the contract be paid out thereto in full.

#### **Article 1288.** An Author's Order Contract

1. Under an author's order contract one party (author) undertakes to create on the order of the other party (customer) the scientific, literary or artistic work stipulated by the contract on a material medium or in another form.

The material medium of the work shall be transferred to the customer for ownership, unless it is being transferred to the customer for temporary use as required by agreement of the parties.

An author's order contract is defrayable, unless otherwise envisaged by agreement of the parties.

2. The author's order contract may include a clause whereby the exclusive right to the work that has

to be created by the author is going to be alienated to the customer or that the customer is going to obtain a right to use the work within the limits set by the contract.

3. Where an author's order contract requires the alienation of the exclusive right to the work that has to be created by the author to the customer, such contract is subject accordingly to the rules of the present Code on exclusive right alienation, except as otherwise ensues from the essence of the contract.

4. If an author's order contract is concluded on the condition that the customer acquires the right to use the work within the limits set by the contract such contract shall be subject accordingly to the provisions of **Articles 1286 and 1287** of the present Code.

#### **Article 1289.** The Term for Discharging the Author's Order Contract

1. The work that has to be created under the author's order contract shall be transferred to the customer within the term established by the contract.

A contract that neither specifies a term for the discharge thereof nor allows one to determine the due date of the discharge thereof shall be deemed uncompleted.

2. Upon the onset of the due date of discharge of an author's order contract, the author -- if necessary and if there is good reason for completing the work -- shall be given an additional grace period of one quarter of the term set for the discharge of the contract, unless a longer grace period is envisaged by agreement of the parties. In the cases envisaged by **Item 1 of Article 1240** of the present Code this rule shall apply, unless otherwise envisaged by the contract.

3. Upon the expiry of the grace period granted to the author under **Item 2** of the present article the customer shall be entitled to unilaterally waive the author's order contract.

Also, the customer is entitled to waive the author's order contract immediately upon the expiry of the term set by the contract for the discharge thereof, unless the contract has been discharged by that time, if it ensues from the terms of the contract that the customer loses his interest in the contract if the term for discharge of the contract is broken.

#### **Article 1290.** Liabilities under the Contracts Concluded by the Author of a Work

1. The liability of an author under a contract of alienation of the exclusive right to a work and under a licence contract shall be limited to the sum of the actual damage caused to the other party, unless a smaller sum of author's liability is envisaged by the contract.

2. In the event of default on, or the improper performance of, an author's order contract for which the author is responsible, the author shall refund to the customer the advance payment and also pay a forfeit money amount if envisaged by the contract. In this case, the sum total of these disbursements shall be limited to the sum of the actual damage sustained by the customer.

#### **Article 1291.** Alienating an Original Work and the Exclusive Right to a Work

1. When alienation is effected by the author of an original work (manuscript, original work of painting, sculpture, etc.), for instance when an original work is alienated under an author's order contract, the exclusive right to the work shall be retained by the author, unless otherwise envisaged by the contract.

When the original work is alienated by the owner thereof holding the exclusive right to the work but not being the work's author, the exclusive right to the work shall pass over to the acquirer of the original work, unless otherwise provided for by an agreement.

The rules of this item related to the author of a work shall also extend to the author's heirs, to their heirs and so on within the limits of the effective period of the exclusive right to the work.

2. If the exclusive right to the work has not been transferred to the acquirer of the original thereof, the acquirer is entitled without the author's consent and without paying out a fee to the author to show the original work acquired and reproduce it in catalogues of exhibitions and in publications dedicated to his collection, and also to hand over the original work to be exhibited at exhibitions organised by other persons.

The acquirer of an original work of fine arts or photographic work who is pictured in this work is entitled without the author's consent or that of another right holder and without paying a fee thereto to use this work as an illustration when publishing works of literature thereof, as well as to reproduce, demonstrate in public and distribute without the aim of deriving profit copies of the work, unless otherwise provided for

by the agreement made with the author or other right holder.

The acquirer of a photographic work which is pictured in this work is also entitled to freely use it in connection with publication of the works dedicated to the acquirer's biography, unless otherwise provided for by the agreement made with the author or other holder of the rights to the photographic work.

#### **Article 1292.** The Right of Access

1. The author of a work of fine arts is entitled to claim from the owner of an original work that an opportunity be given to him to exercise his right to reproduce his work (right of access). In this case, the owner of the original work shall not be asked to deliver the work to the author.

2. The author of a work of architecture is entitled to claim from the owner of the original work that an opportunity be given to him to make photographic pictures and video the work, unless otherwise envisaged by the contract.

#### **Article 1293.** Artists' Resale Right

1. If alienation is effected by the author of an original work of fine arts, every time the relevant original work is publicly re-sold with the participation of a legal entity or individual businessman as a mediator, a buyer or seller (in particular, an auction company, art gallery, art show or art shop), the author is entitled to receive a fee from the seller in the form of interest on the re-sale price (artist's resale right). The rate of the interest and also the terms and procedure for paying out the interest shall be defined by the Government of the Russian Federation. The legal person or individual entrepreneur specified in this Item, is required to provide the information necessary to ensure payment of the remuneration, the author or the organisation for the management of rights on a collective basis representing its interests, including on the basis of the relevant request of the author or collective management organisation, in the order established by the Government of the Russian Federation.

The list of information provided for in this Item, as well as the **amount** of interest deductions, conditions and **procedure** for their payment are determined by the Government of the Russian Federation.

2. Authors shall exercise the artists' resale right in the procedure established by **Item 1** of the present article, and also in respect of the authors' manuscripts (autographs) of literary and musical works.

3. The artists' resale right is unalienable but it shall pass to the heirs of the author for the effective term of the exclusive right to the work.

#### **Article 1294.** The Rights of the Author of a Work of Architecture, Town Planning or Landscaping

1. The author of a work of architecture, town planning or landscaping has an exclusive right to use his work in accordance with **Items 2 and 3 of Article 1270** of the present code, including by means of elaborating construction documentation and by means of implementing an architectural, town-planning or landscaping project design, unless otherwise stipulated in the **contract**.

The use of an architectural, town-planning or landscaping project design is only admissible as a one-off event, except as otherwise established by the contract under which the project is created. The project and the construction documentation prepared on the basis thereof may be used again only with the consent of the author of the project design, unless otherwise stipulated in the **contract**.

2. The author a work of architecture, town planning or landscaping is entitled to carry out author's control in respect of construction documentation elaboration and the author's supervision over the construction of a building or structure or another implementation of the project design. The procedure for exercising author's control and author's supervision shall be established by the federal executive body charged with architecture and town planning matters.

3. The author of a work of architecture, town planning or landscaping is entitled to demand from the customer of an architectural, town-planning or landscaping project that he be given the right to take part in implementing his project design, unless otherwise established by a contract.

#### **Article 1295.** Service Work

1. Copyrights to a scientific, literary or artistic work created within the job description limits established for an employee (author) (a service work) are owned by the author.

2. The employer has an exclusive right to a service work, unless otherwise envisaged by the labour contract or civil law contract between the employer and the author.

If within three years of the date when a service work was put at his disposal the employer did not start to use the work or did not assign the exclusive right to it to another person or did not inform the author that the work is kept in secret, the exclusive right to the service work shall be returned to the author.

If within the term mentioned in **Paragraph 2** of the present item the employer starts to use the service work or assigns the exclusive right to another person, the author shall be entitled to a fee. Also, the author shall acquire said right to a fee if the employer has decided to keep the service work secret, and accordingly did not start to use the work within the said term. The rate of the fee, the terms and procedure for the employer to pay it shall be defined by a contract between the employer and the employee, or by a court in the case of a dispute.

The right to a fee for service work shall be unalienable and shall not be inherited but the author's rights under the agreement made by him/her with the employer and the income which is not received by the author shall pass over to heirs thereof.

3. If according to **Item 2** of this article the exclusive right to service work is owned by the author, the employer is entitled to use the corresponding service work under the terms of an ordinary (non-exclusive) licensee with a fee to the right holder to be paid. The limits of a service work's use, the amount, terms of a procedure for paying a fee shall be determined by the agreement made by the employer and author or, if there is a dispute, by court.

4. An employer may promulgate a service work if the agreement made by him and the author does not stipulate otherwise, as well as to cite when using the service work the name or denomination thereof or to demand it to be cited.

#### **Article 1296.** Computer Programs and Databases Created by Order

1. The exclusive right to a computer program, database or other work created under a contract having the creation thereof as its subject matter (by order), shall be held by the client, unless otherwise envisaged by the contract between the contractor (performer) and the client.

2. If according to **Item 1** of this article the exclusive right to a work is owned by the client, the contractor (performer) is entitled, insofar as not otherwise envisaged by a contract, to use such work for his own needs under the terms of a gratuitous ordinary (non-exclusive) licence within the whole effective term of the exclusive right.

3. If according to a contract concluded between a contractor (performer) and a client the exclusive right to a work is owned by the contractor (performer), the client is entitled to use such work for the own needs thereof on the terms of a gratuitous ordinary (non-exclusive) licence within the whole effective term of the exclusive right.

4. The author of a work made by order who does not own an exclusive right to the work is entitled to a fee in accordance with **Paragraph 3 of Item 2 of Article 1295** of this Code.

5. The rules of this article shall not extend to contracts under which the contractor (performer) is the author proper (**Article 1288**).

#### **Article 1297.** Pieces of Work Created When Carrying Out Works under a Contract

1. The exclusive right to a computer program, database or other piece of work created when a contractor's contract or a contract for the performance of research and development works or technological works was performed, such contracts not expressly requiring the creation thereof, shall be held by the contractor (performer), except as otherwise envisaged by a contract between him and the client.

Unless otherwise envisaged by a contract, in this case the client is entitled to use the work so created for the purposes for which the relevant contract has been concluded, on the terms of an ordinary (non-exclusive) licence within the whole effective term of the exclusive right without paying out an additional fee for such work's use. If the exclusive right to a work has been assigned by the contractor (performer) to another person, the client shall retain the right to use the work.

2. If according to a contract between the contractor (performer) and the client the exclusive right to work has been assigned to the client or to a third party indicated by the client, then the contractor (performer)

is entitled to use the work he has created for his own needs under the terms of a gratuitous ordinary (non-exclusive) licence within the whole effective term of the exclusive right, except as otherwise envisaged by a contract.

3. The author of the work mentioned in **Item 1** of this article who does not own an exclusive right to the work is entitled to a fee in accordance with **Paragraph 3 of Item 2 of Article 1295** of this Code.

#### **Article 1298.** Scientific, Literary and Artistic Works Created under a State or Municipal Contract

1. The exclusive right to scientific, literary or artistic works created under a state or municipal contract for state or municipal needs, shall belong to the performer being author or another person performing the state or municipal contract, except for the cases established by **paragraph 1 of Item 3** and **Item 4 of Article 1240.1** of this Code.

A state or municipal contract may provide that the exclusive right to a work of science, literature or art created under a state or municipal contract for state or municipal needs shall belong jointly to the performer and the Russian Federation, the performer and the subject of the Russian Federation, or the performer and the municipality, except for cases established by **paragraph 1 of Item 3** and **Item 4 of Article 1240.1** of this Code.

2. An employee (author) whose exclusive right has been transferred to the performer has the right to obtain remuneration in accordance with paragraph three of **Item 2 of Article 1295** of this Code.

3. The rules of this article also apply to computer programs and databases, creation of which was not provided for by a state or municipal contract for state or municipal needs, but which were created in the performance of such a contract.

#### **Article 1299.** Technical Facilities Intended for Copyright Protection

1. Technical facilities intended for copyright protection are any technologies, technical apparatus or components thereof controlling access to a work, preventing or limiting the carrying out of actions not permitted by the author or other right holder in respect of a work.

2. The following is prohibited in respect of a work:

1) the commission of actions without the permission of the author or other right holder aimed at eliminating the limits imposed on the uses of the work by means of using the technical facilities intended for copyright protection;

2) manufacturing, distributing, hiring out, granting for temporary free-of-charge use, importing and advertising any technology, any technical apparatus or components thereof, using such technical facilities for profit-making or providing relevant services if such actions make it impossible to use the technical facilities intended for copyright protection or to disable them in terms of ensuring the appropriate protection of the copyright.

3. In the event of a breach of the provisions of **Item 2** of the present article the author or other right holder is entitled at his discretion to claim a payment of damages or compensation according to **Article 1301** of the present Code from the infringer.

4. If **Items 1 to 3 of Article 1274** and **Article 1278** of this Code permit to use a work without the consent of the author of it or another right holder and such use is impossible by virtue of the presence of technical means of copyright's protection, the person rightfully claiming to such use may demand of the author or another right holder to remove the restrictions as to the use of the work imposed by way of applying technical means of copyright's protection or to provide an opportunity of such use at the right holder's choice on condition that it is technologically possible and does not require major outlays.

#### **Article 1300.** Information on Copyright Law

1. Information on copyright law is any information that identifies a work, an author or another right holder or the information on the terms of using a work available on the original work or a copy of the work, is attached thereto or appears in connection with a broadcast or cable program or in connection with the bringing of the work to the notice of the general public, and also any figures and codes containing such information.

2. The following is prohibited in respect of a work:

1) deleting or modifying information on copyright law without the author's or other right holder's consent;

2) the playback/reproduction, distribution, importation for the purpose of distribution, public performance, broadcasting or cable transmission, bringing to the notice of the general public of a work in respect of which information on copyright law has been deleted or modified without the author's or other right holder's consent.

**3.** In the event of a breach of the provisions of **Item 2** of the present article the author or other right holder is entitled at his discretion to claim from the infringer the payment of damages or compensation in accordance with **Article 1301** of the present Code.

#### **Article 1301.** Liability for a Breach of the Exclusive Right to a Work

In the event of a breach of the exclusive right to a work, the author or other right holder may claim), in accordance with **Item 3 of Article 1252** of this Code, the following compensation from the infringer instead of payment of damages, along with the use of other applicable remedies and measures of liability established by this Code (**Articles 1250, 1252 and 1253**):

1) in the amount from 10,000 to 5,000,000 roubles as determined at the discretion of the court on the basis of the nature of violation;

2) in the twofold cost of counterfeit copies of the work;

3) in the twofold cost of the right to use the work determined on the basis of the price normally charged in comparable circumstances for the legal use of the work in the way that the infringer has used.

#### **Article 1302.** Security for a Claim in a Copyright Violation Case

**1.** A court may forbid the defendant or the person believed on sufficient grounds to be an infringer of copyright carrying out certain actions (manufacture, reproduction, sale, hiring out, import or other use envisaged by this Code, and also the transportation, storage or possession) of copies of a work for the purpose of using them in civil law transactions, if the copies are understood to be counterfeit.

A court may also take security measures which are adequate to the extent and nature of an offence aimed at suppressing the wrongful use of works in information and telecommunication networks, in particular at restricting access to materials containing illegally used works. A procedure for restricting access to such materials shall be established by the legislation of the Russian Federation on information.

**2.** The court may order the seizure of all copies of a work that are assumed to be counterfeit, and also of materials and equipment used or intended for the manufacture or reproduction/playback thereof.

If sufficient information is on hand concerning an infringement of copyright, the inquiry or investigation bodies shall take measures for searching and seizing the copies of the work assumed to be counterfeit, and also material and equipment used or intended for the reproduction/playback of the said copies of the work, including, where necessary, measures for seizing them and putting in custody.

**3. Abrogated** from October 1, 2014.

### **Chapter 71. The Rights Allied to Copyright**

#### **§ 1. General Provisions**

#### **Article 1303.** Basic Provisions

**1.** Intellectual rights to the results of a performance activity (performance), sound recordings, broadcast or cable-transmitted radio and television programs (the services of broadcasting and cable services organisations), to the contents of databases, and also to the scientific, literary and artistic works promulgated for the first time after they have passed into the public domain are deemed rights allied to copyright (allied rights).

**2.** Allied rights include the exclusive right, and also personal non-property rights in the cases envisaged by the present Code.

**3.** Allied rights shall be exercised with the observance of copyright with respect to works of science, literature and arts that were used in creating the object of the allied rights. Allied rights shall be recognised and shall be effective, regardless of whether the copyright in respect of such works is available and effective

or not.

#### **Article 1304.** The Objects of Allied Rights

**1.** The objects of allied rights are as follows:

1) the results of performance activities (performances), these comprising performances by performers and conductors, if these performances are expressed in a form allowing their reproduction and distribution by technical facilities, the productions of performances by directors, if these productions are expressed in a form allowing their repeated public staging with the recognisability of a specific production by spectators being preserved, as well as in a form allowing their reproduction and distribution by technical facilities;

2) sound recordings, i.e., any exclusively sound records of performances or of other sounds or of their representations, except for a sound recording included in an audio-visual work;

3) the transmission of programs of broadcasting or cable-services organisations, including programs created by the broadcasting or cable services organisation proper or on its order with its funds by another organisation;

4) databases as far as concerns their protection against unauthorised retrieval and repeated use of the materials available in the contents thereof;

5) scientific, literary and artistic works promulgated after they have passed into the public domain, in as much as it concerns the rights of publishers of such works.

**2.** For the purposes of the occurrence, exercising and protecting of allied rights, they neither need registration nor do any other formalities need be completed.

**3.** The granting of protection on the territory of the Russian Federation to allied rights in accordance with international treaties of the Russian Federation shall take place in respect of the performances, sound recordings, transmissions of programs of broadcasting or cable-services organisations that have not passed into the public domain in their countries of origin due to the expiry of the effective term of exclusive rights to such object established in those countries, and which have not passed into the public domain in the Russian Federation due to the expiry of the effective term of exclusive right envisaged by the present Code.

#### **Article 1305.** The Mark of Legal Protection of Allied Rights

The manufacturer of a sound recording and performer, and also another owner of the exclusive right to a sound recording or performance is entitled to use for the purpose of warning about the exclusive right held by them, a mark of protection of allied rights to be placed on each original or copy of the sound recording and/or on each case containing it, or in any other way in accordance with **Article 1310** of this Code, the mark being composed of the following three elements: the Latin letter "P" in a circle, the name or company name of the owner of the exclusive right, and the year of initial publication of the sound recording. With this, a copy of the sound recording means its copy on any material medium manufactured directly or indirectly from the sound recording and including all the sounds or part of the sounds or a representation of the sounds fixed in the sound recording. The representation of sounds means their being represented in a digital form that requires the relevant technical facilities to convert it into an audible form.

#### **Article 1306.** Using Objects of Allied Rights without the Consent of the Right Holder and without Paying a Fee

The use of objects of allied rights without the consent of the right holder and without paying a fee is admissible in cases of the free use of works (**Articles 1273, 1274, 1277, 1278 and 1279**), and also in other cases envisaged by the present chapter.

#### **Article 1307.** The Contract of Alienation of the Exclusive Right to an Object of Allied Rights

Under a contract of alienation of the exclusive right to an object of allied rights one party being a performer, the manufacturer of a sound, recording, a broadcasting or cable-services organisation, the manufacturer of a database, the publisher of a scientific, literary or artistic work or another right holder assigns or undertakes to assign his/its exclusive right to the relevant object of allied rights in full to the other party being an acquirer of the exclusive right.



**Article 1308.** The Licence Contract for Granting the Right to Use an Object of Allied Rights

1. Under a licence contract one party, a contractor, the manufacturer of a sound recording, a broadcasting or cable-services organisation, the manufacturer of a database, the publisher of a scientific, literary or artistic work or another right holder (licensor) grants or undertakes to grant to the other party (licensee) the right to use the relevant object of allied rights within the limits established by the contract.

2. The licence agreement under which an ordinary (non-exclusive) licence for the use of an object of allied rights is granted may be concluded in a simplified procedure (open licence). The provisions on granting an open licence for the use of works of science, literature or arts (**Article 1286.1**) shall apply to such agreement.

**Article 1308.1.** The Transfer of Exclusive Rights to Objects of Allied Rights by Way of Inheritance

The provisions on the transfer of the exclusive right to a work by way of inheritance (**Article 1283**) shall accordingly apply to the exclusive rights to the performance, phonograms, on-air or cable broadcast of radio and TV programs, to the content of databases, as well as to works of science, literature and arts promulgated after their becoming the public domain.

**Article 1309.** Technical Facilities Intended for Protecting Allied Rights

Any technologies, technical apparatus or components thereof controlling access to an object of allied rights, preventing or restricting the commission of actions not permitted by the right holder in respect of the object (technical facilities intended for protecting allied rights) respectively are subject to the provisions of **Articles 1299** and **1311** of the present Code.

**Article 1310.** Information on an Allied Right

In respect of any information that identifies an object of allied rights or a right holder or information on the terms for using the object and that is available on the relevant material medium, is attached thereto or appears in connection with the broadcast or cable transmission of the object to the notice of the general public, and also any figures and codes comprising such information (information on an allied right) respectively is subject to the provisions of **Articles 1300** and **1311** of the present Code.

**Article 1311.** Liability for Infringement of the Exclusive Right to an Object of Allied Rights

In the event of a breach of an exclusive right to an object of allied rights, the owner of the exclusive right is entitled, apart from the use of other applicable remedies and measures of liability established by this Code (**Articles 1250, 1252** and **1253**), to claim in accordance with **Item 3 of Article 1252** of this Code from the infringer at the owner's discretion the following compensation instead of payment of damages:

1) in an amount of 10,000 to 5,000,000 roubles as determined at the court's discretion on the basis of the nature of the offence;

2) in the amount of double the cost of counterfeit copies of a phonogram;

3) in the amount of double the cost of the right to use the object of allied rights to be estimated on the basis of the price which under comparable circumstances is normally taken for the rightful use of the object in the way that has been used by the infringer.

**Article 1312.** A Security for a Claim in a Case of Infringement of Allied Rights

For the purpose of provision of a security for a claim in a case of infringement of allied rights, a defendant or a person believed on a sufficient ground to be an infringer of allied rights, and also the objects of allied rights believed to be counterfeit are respectively subject to the measures set out in **Article 1302** of the present Code.

## § 2. Performance Rights

**Article 1313.** The Performer

The performer (the author of a performance) is a citizen by whose creative labour a performance has been created, i.e., a performing actor (actor, singer, musician, dancer or another person playing a role, reading, reciting, singing, playing a musical instrument or otherwise taking part in the performance of a literary, artistic or folklore work, including a variety, circus or puppet show), and also the conductor, director of a play (the person who has staged a theatrical, circus, puppet, variety or another theatrical performance).

#### **Article 1314.** Allied Rights to a Joint Performance

1. Allied rights to a joint performance are owned jointly by the members of the performing team who have taken part in the creation thereof (the actors engaged in a play, members of the orchestra and other members of the performing team), irrespective of this performance being an integral entity or being composed of elements each having independent significance.

2. An allied right to a joint performance shall be exercised by the head of the performing team, or if there is no such head, jointly by the members of the performing team, unless otherwise envisaged by agreement among them. If a joint performance is an integral entity, none of the members of the performing team is entitled without good reason to ban the use thereof.

An element of a joint performance that can be used independently of other elements, i.e., an element having independent significance, may be used by the performer who has created it at his own discretion, unless otherwise envisaged by an agreement among the members of the performing team.

3. The relationships of the members of a performing team which have to do with distributing earnings from a joint performance are subject to the rules of **Item 3 of Article 1229** of the present Code.

4. Each member of a performing team is entitled to take measures on his own to protect his allied rights to a joint performance, including in cases when such performance is an integral entity.

#### **Article 1315.** Performer's Rights

1. The performer owns the following rights:

1) the exclusive right to the performance;  
2) the right of attribution, i.e., the right to be recognised as the author of the performance;  
3) a right to the name, i.e., the right to have his name or pseudonym indicated on copies of a sound recording and in other cases when the performance is used, and in the case described in **Item 1 of Article 1314** of the present Code, a right to have the name of the performing team indicated, except for cases when the nature of the use of a performance makes it impossible to indicate the name of the performer or the name of the performing team;

4) the right to the integrity of a performance, in particular of a production, i.e., the right to have the performance protected against any distortion, that is, against modifying it so that its sense is distorted or that the integrity of perception of the performance is broken, in its recording, broadcast or cable transmission, when bringing the performance to public notice, as well as when the production of a play is publicly performed.

2. Performers shall exercise their rights in the observance of the rights of the authors of the works performed.

3. The rights of a performer shall be recognised and shall have their effect irrespective of the existence or effect of copyrights in the work performed.

#### **Article 1316.** The Protection of Attribution, Performer's Name and Integrity of a Performance upon the Death of a Performer

1. The attribution, the name of the performer, and the integrity of a performance are protected indefinitely.

2. A performer is entitled, in the procedure envisaged for designating the executor of a will (**Article 1134**), to designate the person in whom he vests responsibility for protecting authorship, the name of the performer, and the integrity of the performance upon the death of the performer. That person shall execute his powers for life.

If no such indications have been made or if the person designated by the performer has refused to execute these powers, and also on the death of that person the protection of the name of the performer and the

integrity of the performance shall be ensured by his heirs, their successors or other persons concerned.

**Article 1317. The Exclusive Right to a Performance**

1. The performer owns an exclusive right to use the performance in accordance with **Article 1229** of the present Code in any manner that does not conflict with a law (the exclusive right to a performance), including the methods specified in **Item 2** of the present article. The performer may dispose of the exclusive right to the performance.

2. The following shall be deemed the use of a performance:

1) the broadcasting, i.e., communicating of the performance for the notice of the general public, by means of its being broadcast by radio or television (including re-transmission), except for cable broadcasting. In this case, communication means any action whereby the performance is made available for audio and/or visual perception, irrespective of its actual perception by the public. When the performance is broadcast via satellite, broadcasting means the reception of the signals from a ground station by the satellite and the transmission of the signals from the satellite, such signals serving to bring the performance to the notice of the general public, irrespective of its actual reception by the public. The transmission of encoded signals shall be deemed on-air broadcasting, if the decoding facilities are provided to an unlimited group of persons by an on-air broadcasting organisation or with its consent;

2) cable communication, i.e., the communication of the performance for the notice of the general public by means of transmitting it by radio or television by means of a cable, wire, optical fibre or similar facilities (including re-transmission);

3) bringing the performance to public notice so that any person may provide access thereto from any place and at any time at the own choice thereof (bringing to public notice);

4) the recording of the performance, i.e., the fixation of sounds and/or an image or of representations thereof by means of technical facilities in any material form enabling their multiple perception, reproduction/playback or communication;

5) the reproduction of a recording of the performance, i.e., making one or more copies of a performance or of a part thereof in any material form. In this case, a recording of the performance on an electronic medium, including a record made in the memory of a computer, shall be also deemed reproduction. As reproduction shall not be deemed a recording of a temporary or accidental nature and one which is an integral and significant part of a technological process solely aimed at legally using the record, or transmission of the performance on an information and telecommunication network by an information broker to third parties, provided that such recording is of no independent economic importance;

6) the distribution of a recording of the performance by means of selling or another alienation of its original or of copies being copies of the recording on any material medium;

7) an action taken in respect of a recording of the performance and envisaged by **Subitems 1-3** of this item;

8) public playback of a recording of the performance, i.e., any communication of the recording by means of technical facilities in a place open to the public or in a place where a significant number of people are present who do not belong to the ordinary family group, irrespective of whether the recording is perceived in the place where it is communicated or in another place simultaneously with the communication thereof;

9) hiring out of an original recording of the performance or of copies thereof.

10) the public performance of a play, that is, live performance or that with the help of technical facilities at a public place or at a place where are present a considerable number persons who do not belong to the ordinary family circle, regardless of whether the performance of the play is perceived at the place of its performance or at some other place concurrently with the play's performance.

3. The exclusive right to a performance does not extend to the reproduction, broadcasting or cable transmission, and public playback of a recording of the performance in cases when such recording has been made with the consent of the performer, and its reproduction, broadcasting or cable transmission or public playback takes place for the same purposes for which the performer's consent was obtained when the performance was recorded.

4. If a contract is concluded with a performer for the creation of an audio-visual work, the performer's consent to the use of the performance within the audio-visual work is assumed. The performer's consent to

separate use of the sound or image fixed in the audio-visual work shall be expressly stated in the contract.

5. When a performance is used by a person other than the performer thereof, the rules of **Item 2 of Article 1315** of the present Code are applicable respectively.

**Article 1318.** The Effective Term of the Exclusive Right to a Performance, the Inheritance of the Right and the Passing of the Performance into the Public Domain

1. The exclusive right to a performance shall be in effect for the whole life of the performer, but for at least 50 years from January 1 of the year following the year in which the performance was made by the performer or conductor, or a record of the performance was taken or the communication of the performance by means of a broadcast or cable service took place, or the performance was brought to public notice.

The exclusive right of the director of a play to its staging shall be in effect for the whole life of the director but at least 50 years from January 1 of the year following the year in which the first public performance of the director's production of the play took place.

2. If a performer has been subjected to repression and posthumously rehabilitated, the effective term of the exclusive right shall be deemed extended, and 50 years shall be counted from January 1 of the year following the year in which the performer was rehabilitated.

3. If a performer worked during the Great Patriotic War (World War II) or took part in it, the effective term of the exclusive right established by **Item 1** of the present article shall be extended by four years.

4. The exclusive right to a performance shall be transferred to the performer's heirs within the limits of the remaining part of the time period cited in **Items 1-3** of this article.

5. Upon the expiry of the effective term of the exclusive right to a performance, the right thereto shall pass into the public domain. A performance that has passed into the public domain is subject to the rules of **Item 2 of Article 1282** of this Code.

**Article 1319.** Levy of Execution on the Exclusive Right to a Performance and on the Right to Use a Performance under a Licence

1. It is not allowed to levy execution against the exclusive right held by the performer, except when execution is levied under the contract of pledge which is made by the performer and whose subject is the exclusive right to a specific performance cited in the contract and held by the performer. Execution may be levied against the right of claim of the performer against other persons under contracts of alienation of the exclusive right to a performance and under licence agreements, as well as against the income derived from the use of a performance.

An exclusive right owned by a person other than the performer proper and the right to use a performance owned by a licensee are subject to levy of execution.

The rules of **Paragraph 1** of the present item extend to the heirs of the performer, their heirs and so on within the limits of the effective term of the exclusive right.

2. In the event of a public sale of a right to use a performance owned by a licensee for the purposes of levy of execution on the right the performer enjoys a priority right to acquire it.

**Article 1320.** A Performance Created in the Line of Duty

The rights to a performance that has been created within the limits of the labour duties established for an employee (performer), including the rights to a joint performance created in this line are subject to the rules of **Article 1295** of the present Code.

**Article 1321.** The Effect of the Exclusive Right to a Performance on the Territory of the Russian Federation

The exclusive right to a performance is effective on the territory of the Russian Federation if:  
the performer is a citizen of the Russian Federation;  
the first performance took place on the territory of the Russian Federation;  
the performance is fixed as a sound recording protected in accordance with the provisions of **Article 1328** of the present Code;

a performance that has not been fixed as a sound recording is included in a broadcast or cable

transmission protected under the provisions of **Article 1332** of the present Code;  
in other cases envisaged by international treaties of the Russian Federation.

### **§ 3. The Right to a Sound Recording**

#### **Article 1322. The Manufacturer of a Sound Recording**

The manufacturer of a sound recording is the person who has initiated, and is responsible for, the first recording of the sounds of a performance or other sounds or representations of these sounds. Unless otherwise proven, the manufacturer of a sound recording is the person whose name is indicated in the ordinary manner on a copy of the sound recording and/or on the packaging thereof, or in some other way in compliance with **Article 1310** of this Code.

#### **Article 1323. The Rights of the Manufacturer of a Sound Recording**

**1.** The manufacturer of a sound recording owns:

- 1) an exclusive right to the sound recording;
- 2) a right to indicate his/its name on copies of the sound recording and/or on the packaging thereof;
- 3) a right to have the sound recording protected against distortions as it is being used;
- 4) a right to have the sound recording promulgated, i.e., to commit an action that makes the sound recording available for the first time to the general public by means of its publication, public show, public performance, broadcast, or cable transmission or otherwise. In this case, the publication (issuance) is the release for circulation of copies of the sound recording with the consent of the manufacturer in a quantity sufficient for meeting the public's reasonable needs.

**2.** The manufacturer of a sound recording shall exercise his/its rights in the observance of the rights of the authors of works and of the rights of performers.

**3.** The rights of the manufacturer of a sound recording are recognised and are effective, irrespective of the existence and effect of copyrights and performers' rights.

**4.** A right to indicate one's name on the copies of a sound recording and/or on the packaging thereof and a right to have a sound recording protected against distortions are effective and protected for the whole life of the citizen or until the termination of the legal entity being the manufacturer of the sound recording.

#### **Article 1324. The Exclusive Right to a Sound Recording**

**1.** The manufacture of a sound recording owns the exclusive right to use the sound recording according to **Article 1229** of the present Code in any manner that does not conflict with the law (exclusive right to a sound recording), including the methods specified in **Item 2** of the present article. The manufacturer of a sound recording may dispose of the exclusive right to the sound recording.

**2.** The uses of a sound recording are as follows:

- 1) a public performance, i.e., any communication of the sound recording by technical facilities in a place open to the public or in a place where a significant number of people are present who do not belong to the ordinary family group, irrespective of the sound recording's being perceived in the place where it is communicated or in another place simultaneously with the communication thereof;

- 2) a broadcast, i.e., the communication of the sound recording for the notice of the general public by means of its being broadcast by radio or television (including re-transmission), except for cable communication. In this case, the communication means any action whereby the sound recording is made available for audio perception, irrespective of its actually being perceived by the public. The transmission of encoded signals shall be deemed on-air broadcasting, if the decoding facilities are provided to an unlimited group of persons by an on-air broadcasting organisation or with its consent. When the sound recording is broadcast via satellite the broadcasting means the reception of the signals from a ground station by the satellite and the transmission of the signals from the satellite, such signals making it possible for the sound recording to be brought to the general public's notice, irrespective of its actually being received by the public;

- 3) a cable communication, i.e., the communication of the sound recording for the notice of the general public by radio or television cable, wire, optical fibre or similar facilities (including retransmission);

4) the bringing of the sound recording to the notice of the general public so that any person may have access to the sound recording from any place and at any time at the person's own discretion (bringing to the notice of the general public);

5) reproduction, i.e., the manufacturing of one or more copies of a phonogram or of a part thereof in any material form. In this case, the recording of the phonogram or a part thereof on an electronic medium, including saving in the memory of a computer, shall also be deemed reproduction. As reproduction shall not be deemed short-term recording of a phonogram, which is of a temporary or accidental nature or is an integral and significant part of a technological process solely aimed at legally using the phonogram or its transmission to an information and telecommunication network by an information broker to third parties, provided that such recording does not have independent economic importance;

6) the distribution of the sound recording by means of a sale or other alienation of the original or copies which are copies of the sound recording on any material medium;

7) the importation of the original or copies of the sound recording for the purpose of distribution, including the copies manufactured with the permission of the right holder;

8) the hiring out of the original and copies of the sound recording;

9) the processing of the sound recording.

3. A person who has legally processed a sound recording acquires an allied right to the processed sound recording.

4. When a sound recording is used by a person other than the manufacturer thereof, the rules of **Item 2 of Article 1323** of the present Code are applicable.

#### **Article 1325. Distributing the Original or Copies of a Published Sound Recording**

If the original or copies of a sound recording have been legally published through the release thereof for civil-law transactions on the territory of the Russian Federation by means of a sale or other alienation, the further distribution of the original or copies is admissible without the consent of the owner of the exclusive right to the sound recording and without a fee being paid thereto.

#### **Article 1326. Using a Sound Recording Published for Commercial Purposes**

1. The public performance of a sound recording published for commercial purposes, and also the broadcasting or cable transmission thereof is admissible without the permission of the owner of the exclusive right to the sound recording and of the owner of the exclusive right to the performance fixed in the sound recording, but with a fee being paid thereto.

2. The collection of the fee described in **Item 1** of the present article from users and the distribution of the fee shall be carried out by organisations managing rights on a collective basis and holding state accreditation for the pursuance of the relevant types of activity (**Article 1244**).

3. The fee described in **Item 1** of this article shall be distributed to the right holders according to the following proportion: 50 per cent to performers, 50 per cent to the manufacturers of phonograms. The fee distribution to specific performers and manufacturers of phonograms shall be carried out pro rata to the actual use of the relevant sound recordings. The Government of the Russian Federation is entitled to fix the fee rates, as well as a procedure for collection, distribution and payment of fees.

4. The users of sound recordings shall file reports with the organisation managing rights on a collective basis on the uses of sound recordings, and also provide other information and documents required for fee collection and distribution.

#### **Article 1327. The Effective Term of the Exclusive Right to a Sound Recording, the Transfer of the Right to Successors and the Passing of a Sound Recording into the Public Domain**

1. The exclusive right to a sound recording is in effect for 50 years from January 1 of the year following the year in which the recording took place. In the event of promulgation of a sound recording, the exclusive right is in effect for 50 years from January 1 of the year following the year in which it was promulgated, provided the sound recording is promulgated within 50 years of the recording taking place.

2. The exclusive right to the sound recording is transferred to the heirs and other successors of the manufacturer of a sound recording within the limits of the remaining portions of the terms specified in **Item**

1 of the present article.

3. Upon the expiry of the effective term of the exclusive right to a phonogram it shall pass into the public domain, that is, it may be freely used by any person without anybody's consent or permit and without paying a fee.

**Article 1328.** The Effect of the Exclusive Right to a Sound Recording on the Territory of the Russian Federation

The exclusive right to a sound recording is effective on the territory of the Russian Federation if: the manufacturer of the sound recording is a citizen of the Russian Federation or a Russian legal entity;

the sound recording has been promulgated or its copies have been publicly distributed for the first time on the territory of the Russian Federation;

other cases contemplated by international treaties of the Russian Federation.

#### § 4. The Rights of Broadcasting and Cable-Services Organisations

**Article 1329.** Broadcasting or Cable-Services Organisation

As a broadcasting or cable-services organisation shall be deemed a legal entity independently determining the content of radio and TV programs (the totality of sounds and/or images or of their presentations) and communicating them over the air or by cable by their own assets or with the help of third parties.

**Article 1330.** The Exclusive Right to the Communication of Radio or Television Programs

1. A broadcasting or cable-services organisation owns an exclusive right to legally communicate broadcast or cable programs in accordance with **Article 1229** of the present Code in a manner that does not conflict with the law (the exclusive right to the communication of a radio or television program), including by methods specified in **Item 2** of the present article. A broadcasting or cable-services organisation may dispose of the exclusive right to the communication of a radio or television program.

2. The following is deemed to be the communication of a radio or television program (broadcasting/transmitting):

1) the recording of the communication of a radio or television program, i.e., the fixation of sounds and/or image or of representations thereof by technical facilities in any material form that makes it possible for it to be perceived, reproduced or communicated several times;

2) reproduction of a record of a radio or TV broadcast, i.e., the manufacturing of one or more copies of the record of a radio or TV broadcast or of a part thereof in any material form. In this case, a record of a radio or TV broadcast or a part thereof on an electronic medium, including saving in the memory of a computer, shall be also deemed reproduction. As reproduction shall not be deemed a short-term record which is of a temporary or accidental nature, or is an integral and significant part of a technological process solely aimed at legally using a record of a radio or TV broadcast phonogram or its transmission to an information and telecommunication network by an information broker for third parties, provided that such record does not have independent economic importance;

3) the distribution of the communication of a radio or television program by selling or another alienation of the original or copies of a record of the communication of the radio or television program;

4) the re-transmission, i.e., reception and simultaneous broadcasting (for instance, via satellite) or by cable of a radio or television program or of a significant part thereof aired or cabled by an organisation engaged in on-air or cable broadcasting;

5) the bringing of the communication of a radio or television program to the notice of the general public so that each person can have access to the communication of the radio or television program from any place and at any time at the person's own discretion (bringing to the notice of the general public);

6) the public performance, i.e., any communication of a radio or television program by technical facilities in places where an entry fee is charged, irrespective of its being perceived in the place where communicated or in another place simultaneously with the communication.

7) hiring of the original or copies of a record of a radio or TV broadcast.

**3. Abrogated** from October 1, 2014.

4. The right to use the communication of a radio or television program is subject, respectively, to the rules of **Item 3 of Article 1317** of the present Code.

5. Broadcasting and cable-services organisations exercise their rights in observance of the rights of authors of works, the rights of performers, and, in the relevant cases, of owners of the rights to a sound recording and the rights of other broadcasting and cable-services organisations to the communication of radio and television programs.

6. The rights of a broadcasting and cable-services organisation are recognised and are effective independently of the existence and effect of copyrights, performers' rights, and also the rights to a sound recording.

**Article 1331.** The Effective Term of the Exclusive Right to the Communication of a Radio or Television Program, the Transfer of This Right to Successors and the Passing of the Communication of a Radio or Television Program into the Public Domain

1. The exclusive right to the communication of a radio or television program is effective for 50 years from January 1 of the year following the year in which the communication of the radio or television program by broadcasting or by cable took place.

2. The exclusive right to the communication of a radio or television program is transferred to the successors of the broadcasting and cable-services organisation within the limits of the remaining portion of the term specified in **Item 1** of the present article.

3. Upon termination of the exclusive right to the communication of a radio or television program it shall pass into the public domain, that is, it may be freely used by any person without anybody's consent or permit and without paying a fee.

**Article 1332.** The Effect of the Exclusive Right to the Communication of a Radio or Television Program on the Territory of the Russian Federation

The exclusive right to the communication of a radio or television program is effective on the territory of the Russian Federation if the broadcasting and cable-services organisation is located on the territory of the Russian Federation and carries out communication by means of transmitters located on the territory of the Russian Federation, and also in other cases envisaged by international treaties of the Russian Federation.

## **§ 5. The Right of the Manufacturer of a Database**

**Article 1333.** The Manufacturer of a Database

1. The manufacturer of a database is the person that has organised the creation of the database and the work of gathering, processing and arranging the materials making up the database. Unless otherwise proven, the manufacturer of a database is the citizen or legal entity whose name is indicated in an ordinary manner on a copy of the database and/or on the packaging thereof.

2. The manufacturer of a database owns the following:

the exclusive right of the manufacturer of the database;

a right to indicate his/its name on copies of the database and/or on the packaging thereof.

a right to promulgate a database, that is, to make the action for the first time making the database accessible for the general public by way of its publication, bringing to public notice, broadcasting over air or by cable, or in some other way. With this, as publication (release) shall be deemed release for circulation of the databases' copies by the producer's approbation in the number which is sufficient for meeting reasonable public demand.

The right to cite on the databases' copies and/or on their packing his/its name or denomination shall be in effect and protected within the whole effective term of the exclusive right of the database's manufacturer.

**Article 1334.** The Exclusive Right of the Manufacturer of a Database



1. The manufacturer of a database whose creation (including the processing or presentation of the relevant materials) requires significant financial, material, organisational or other costs, owns an exclusive right to retrieve materials from the database and subsequently use them in any form and in any manner (the exclusive right of the manufacturer of the database). The manufacturer of the database may dispose of the said exclusive right. Unless otherwise proven, a database whose creation requires significant cost is a database comprising at least 10,000 independent information elements (materials) making up the content of the database (**Paragraph 2 of Item 2 of Article 1260**).

Nobody is entitled to retrieve materials from a database and subsequently use them without the permission of the right holder, except for the cases described in the present Code. In this case, the retrieval of materials means the transfer of the whole content of the database or of a significant portion of the materials making it up to another information medium through the use of any technical facilities and in any form.

2. The exclusive right of the manufacturer of a database is recognised and is effective independently of the existence and effect of the copyrights and other exclusive rights of the manufacturer of the database and of other persons to the materials making up the database, and also to the database as a whole as a composite work.

3. Within the effective term of the exclusive right to a database, the right holder may at the will thereof register the database with the federal executive body in charge of intellectual property matters, The rules of **Article 1262** of this Code shall apply to such registration.

#### **Article 1335.** The Effective Term of the Exclusive Right of the Manufacturer of a Database

1. The exclusive right of the manufacturer of a database comes into being as of the time of completion of creation thereof and it shall be in effect for 15 years, from January 1 of the year following the year in which it was created. The exclusive right of the manufacturer of a database promulgated within the said period is effective for 15 years, counted from January 1 of the year following the year in which it was promulgated.

2. The terms set out in **Item 1** of the present article shall be resumed every time the database is updated.

#### **Article 1335.1.** Actions Which Are Not Deemed to Be a Violation of the Exclusive Right of the Database's Manufacturer

1. The person rightfully using a promulgated database is entitled without the consent of the exclusive right's holder being the database's producer and insofar as such actions do not violate the copyright of the database's producer and of other persons to retrieve materials from the database and subsequently use them: with the aim for which the database is provided thereto to any extent, unless otherwise provided for by a contract;

for personal, scientific and educational purposes to the extent justified by the cited purposes;  
for other purposes to the extent making up an insignificant part of the database.

The use of the materials retrieved from a database in a way envisaging the provision of access thereto of an unlimited group of persons shall be accompanied by citing the database these materials have been retrieved from.

2. Making the actions encompassed by an exclusive right of the database's producer by another person shall not be deemed a violation of such right, if such person can prove that he/it could not establish the identity of the database's producer and that he/it under the circumstances reasonably believed that the effective term of the exclusive right to the database has expired.

3. Multiple retrieval or use of the materials making up an insignificant part of the database is not allowed, if such actions go counter to the normal use of the database and unreasonably infringe the legitimate interests of the database's producer.

4. The database producer may not prohibit using individual materials which, though being contained in the database, have been rightfully received by the person using them from sources other than this database.

#### **Article 1336.** The Effect of the Exclusive Right of the Manufacturer of a Database on the Territory

of the Russian Federation

1. The exclusive right of the manufacturer of a database is effective on the territory of the Russian Federation if:

the manufacturer of the database is a citizen of the Russian Federation or a Russian legal entity;

the manufacturer of the database is a foreign citizen or a foreign legal entity, provided that the legislation of the relevant foreign state grants protection on the territory thereof to the exclusive right of a manufacturer of the database if manufactured by a citizen of the Russian Federation or a Russian legal entity;

in other cases set out in international treaties of the Russian Federation.

2. If the manufacturer of a database is a stateless person, depending on whether his place of residence is on the territory of the Russian Federation or a foreign state, said manufacturer is respectively subject to the rules of **Item 1** of the present articles concerning citizens of the Russian Federation or foreign citizens.

## § 6. The Right of a Publisher to a Scientific, Literary or Artistic Work

### **Article 1337.** The Publisher

1. The publisher is a citizen who has legally promulgated or organised the promulgation of a scientific, literary or artistic work that has not been promulgated earlier and that has not passed into the public domain (**Article 1282**) or that is in the public domain due to its not having been protected by copyright.

2. The rights of a publisher extend to works that, irrespective of the time of creation thereof, could be deemed objects of copyright in accordance with the rules of **Article 1259** of the present Code.

3. The provisions of the present paragraph do not extend to works kept in state and municipal archives.

### **Article 1338.** The Rights of the Publisher

1. The publisher owns the following:

1) the exclusive right of the publisher to a work he has promulgated (**Item 1 of Article 1339**);

2) a right to have his name indicated on copies of a work he has promulgated and in other cases when it is used, including cases when it is translated or otherwise processed.

2. When a work is being promulgated the publisher shall observe the terms set out in **Item 3 of Article 1268** of the present Code.

3. Within the effective term of the exclusive right of the publisher to a work, the publisher has the authority set out in **Paragraph 2 of Item 1 of Article 1266** of the present Code. The same rights are owned by the person to which the exclusive right of a publisher to a work has been transferred.

### **Article 1339.** The Exclusive Right of the Publisher to a Work

1. The publisher of a work owns the exclusive right to use the work in accordance with **Article 1229** of the present Code (the exclusive right of the publisher to the work) in the manner described in **Subitems 1-8.1 and 11 of Item 2 of Article 1270** of the present Code. The publisher of the work may dispose of the said exclusive right.

2. The exclusive right of the publisher to a work is also recognised if the work has been promulgated by the publisher in a translation or in another processed form. The exclusive right of the publisher to a work is recognised and is effective independently of the existence and effect of the copyright of the publisher or of other persons to a translation or another processed form of the work.

### **Article 1340.** The Effective Term of the Exclusive Right of the Publisher to a Work

1. The exclusive right of the publisher to a work comes into being from the time when the work is promulgated, and it shall be in effect for 25 years from January 1 of the year following the year in which it was promulgated.

2. After termination of the publisher's exclusive right, a work may be freely used by any person without anybody's consent or permit and without paying a fee.

**Article 1341.** The Effect of the Exclusive Right of the Publisher to a Work on the Territory of the Russian Federation

1. The exclusive right of the publisher extends to a work:

- 1) promulgated on the territory of the Russian Federation, irrespective of the publisher's citizenship;
- 2) promulgated outside the territory of the Russian Federation by a citizen of the Russian Federation;
- 3) promulgated outside the territory of the Russian Federation by a foreign citizen or stateless person, provided that the legislation of the foreign state where the work was promulgated grants protection on the territory thereof to the exclusive right of a publisher who is a citizen of the Russian Federation;
- 4) in other cases envisaged by international treaties of the Russian Federation.

2. In the case specified in **Subitem 3 of Item 1** of the present article the effective term of the publisher's exclusive right to a work on the territory of the Russian Federation shall not exceed the effective term of the publisher's right to a work established in the state on whose territory the legal fact serving as grounds for the acquisition of the exclusive right took place.

**Article 1342.** Early Termination of the Exclusive Right of the Publisher to a Work

The exclusive right of the publisher to a work may be terminated before due time in a judicial procedure upon a complaint of a person concerned if in the use of the work the right holder violates the requirements set out in the present Code concerning the protection of attribution, name of the author, or integrity of the work.

**Article 1343.** Alienation of the Original of a Work and the Exclusive Right of the Publisher to the Work

1. When the original of a work (manuscript, original work of painting, sculpture or another similar work) is alienated by its owner holding the exclusive right of publisher to the work alienated, this exclusive right is transferred to the acquirer of the original work, except as otherwise envisaged by a contract.

2. If the exclusive right of the publisher to a work has not been transferred to the acquirer of the original of a work, the acquirer is entitled without the consent of the holder of the exclusive right of the publisher to use the original work in the manner specified in **Item 2 of Article 1291** of the present Code.

**Article 1344.** Distributing the Original or Copies of a Work Protected by the Exclusive Right of the Publisher

If the original or copies of a work promulgated in accordance with the present paragraph have been legally subjected to civil-law transactions by means of being sold or otherwise alienated the further distribution of the original or copies is admissible without the consent of the publisher and without a fee being paid to the publisher.

## **Chapter 72. The Patent Law**

### **§ 1. Basic Provisions**

**Article 1345.** Patent Rights

1. Intellectual rights to inventions, utility models and industrial designs are patent rights.

2. The author of an invention, utility model or industrial design owns the following rights:

- 1) an exclusive right;
- 2) the right of attribution.

3. In the cases envisaged by the present Code the author of an invention, utility model or industrial design also owns other rights, including the right to obtain a patent, the right to a fee for a service invention, utility model or industrial design.

**Article 1346.** The Effect of Exclusive Rights to Inventions, Utility Models and Industrial Designs on the Territory of the Russian Federation

The following is recognised on the territory of the Russian Federation: the exclusive rights to inventions, utility models and industrial designs certified by patents issued by the federal executive body charged with intellectual property matters or by patents effective on the territory of the Russian Federation in accordance with international treaties of the Russian Federation.

**Article 1347. The Author of an Invention, Utility Model or Industrial Design**

The author of an invention, utility model or industrial design is the citizen by whose creative labour the relevant result of intellectual activity has been created. Unless otherwise proven, the person mentioned as the author in a patent application filed for an invention, utility model or industrial design shall be deemed the author of the invention, utility model or industrial design.

**Article 1348. The Co-Authors of an Invention, Utility Model or Industrial Design**

1. The citizens who have created an invention, utility model or industrial design shall be deemed co-authors.

2. Each of the co-authors shall be entitled to use the invention, utility model and industrial design at his own discretion, except as otherwise envisaged by agreement between them.

3. The relationships of the co-authors that have to do with the distribution of incomes from the use of the invention, utility model and industrial design and with disposing of the exclusive right to the invention, utility model and industrial design are subject respectively to the rules of **Item 3 of Article 1229** of the present Code.

The co-authors shall jointly dispose of a right to obtain a patent to the invention, utility model and industrial design.

4. Each of the co-authors shall be entitled to take measures on his own to protect his rights to the invention, utility model and industrial design.

**Article 1349. The Objects of Patent Rights**

1. The objects of patent rights are the results of intellectual activities in the area of science and technology that meet the requirements established by the present Code as applicable to inventions and utility models, and the results of intellectual activities in the area of design that meet the requirements established by the present Code as applicable to industrial designs.

2. Inventions comprising information constituting a state secret (secret inventions) are covered by the provisions of the present Code, except as otherwise envisaged by the special rules of **Articles 1401-1405** of the present Code and other legal acts enacted in accordance with them.

3. Utility models and industrial designs comprising information constituting a **state secret** shall not have legal protection in accordance with the present Code.

4. The following shall not be objects of patent rights:

1) human cloning techniques and a clone thereof;

2) the techniques for modifying the genetic integrity of human embryo cells;

3) the uses of human embryos for industrial and commercial purposes;

4) the results of intellectual activities cited in **Item 1** of this article, if they run counter to the public interest and humane and moral principles.

**Article 1350. The Conditions for Patentability of an Invention**

1. A technical solution in any area is protected as an invention if it relates to a product (including a device, substance, strain of microorganisms, plant, or animal cell culture) or a method (the process of carrying out actions in respect of a material object by material means), in particular, to the application of a product or method for a particular purpose.

An invention is provided with legal protection if it is novel, has an inventive step, and is industrially exploitable.

2. An invention is novel if it is not known from the state of the art.

An invention has an inventive step if for a specialist it does not obviously ensue from the state of the art.

The state of the art with respect to invention includes any information that has become available to the public in the world before the priority date of the invention.

When the novelty of an invention is being assessed, the state of the art shall also include all patent applications filed for inventions, utility models and industrial designs by other persons in the Russian Federation if they have earlier priority dates and if any person is entitled to read the documents related thereto in accordance with **Items 2 and 4 of Article 1385** or **Item 2 of Article 1394** of the present Code, and the inventions, utility models and industrial designs patented in the Russian Federation.

**3.** The disclosure of information concerning an invention by the author of the invention, by an applicant or any person that has received this information from them directly or indirectly (in particular, as a result of showing an invention at an exhibition) which made the essence of the invention available to the general public shall not be deemed a circumstance precluding recognition of the invention's patentability, provided a patent application has been filed with the federal executive body charged with intellectual property matters within six months after the date of the information disclosure. The burden of proving the existence of the circumstance due to which the information disclosure does not preclude recognition of the invention's patentability shall be borne by the applicant.

**4.** An invention is deemed industrially exploitable if it can be used in industry, agriculture, public health and other branches of the economy or in the social sphere.

**5.** The following shall not be deemed inventions, in particular:

- 1) discoveries;
- 2) scientific theories and mathematical methods;
- 3) solutions concerning only the appearance of articles and aimed at meeting aesthetical needs;
- 4) the rules and methods of games and of intellectual or economic activities;
- 5) computer programs;
- 6) solutions consisting in the presentation of information only.

In accordance with the present item these objects cannot be deemed inventions only when a patent application for an invention concerns these objects per se.

**6.** No legal protection shall be provided to the following as inventions:

- 1) varieties of plants, breeds of animals and the biological methods for producing them, that is, the methods consisting in full of cross-breeding and selection, except for microbiological methods and products made by such methods;
- 2) integrated circuit layout-designs.

#### **Article 1351.** The Conditions for the Patentability of a Utility Model

**1.** A technical solution relating to an apparatus is protected as a utility model.

A utility model is given legal protection if it is novel and industrially exploitable.

**2.** A utility model is deemed novel if the aggregate of its significant features is not known from the state of the art.

The state of the art in respect of a utility model includes all data that have become generally available worldwide before the priority date of the useful model. The state of the art also includes (upon condition of an earlier priority) all the patent applications filed for an invention, utility model or industrial design by other persons in the Russian Federation if any person is entitled to read the documents related thereto in accordance with **Items 2 and 4 of Article 1385** or **Item 2 of Article 1394** of this Code, and the inventions and utility models patented in the Russian Federation.

**3.** The disclosure of information concerning a utility model by the author thereof, applicant or any other person that has directly or indirectly obtained this information from them (in particular, as a result of showing the utility model at an exhibition) making information on the essence of the utility model available to the general public shall not be deemed a circumstance precluding the recognition of patentability of the utility model, provided that a patent application for the utility model was filed with the federal executive body charged with intellectual property matters within six months after the information disclosure. The burden of proving the existence of the circumstances due to which information disclosure does not preclude the recognition of patentability of the utility model shall be borne by the applicant.

**4.** A utility model is industrially exploitable if it can be used in industry, agriculture, public health

and other branches of the economy or in the social sphere.

**5.** As utility models shall not be deemed, in particular, the objects cited in **Item 5 of Article 1350** of this Code.

In compliance with this item, the possibility of classifying the cited objects as utility models shall only be excluded in instances when a patent application for a utility model concerns the cited objects as such.

**6.** Legal protection as to a utility model shall not be provided to the objects cited in **Item 6 of Article 1350** of this Code.

#### **Article 1352.** The Conditions for the Patentability of an Industrial Design

**1.** As an industrial design shall be protected the appearance solution of a factory-made or home-made article.

An industrial design shall enjoy legal protection if it is novel and original in terms of its significant features.

Seen as the significant features of an industrial design shall be the features determining the aesthetic details of the appearance of an article, including the form, configuration, decoration, colour and line pattern, the outline of an article, the texture or finish of the material an article is made of.

The features determined solely by the technical function of an article shall not be deemed the protected features of an industrial design.

**2.** An industrial design shall be deemed novel if the aggregate of its significant features reflected on images of the article's appearance is not known from the information that was made available to the public worldwide before the priority date of the industrial design.

**3.** An industrial design shall be deemed original, if its significant features are stipulated by the creative nature of the article's features, in particular if it is not known from the data that have become generally available worldwide before the priority date of an industrial design that is the solution of the appearance of an article of similar purpose making upon an informed consumer the same general impression as the industrial design shown on images of the article's appearance.

**4.** When the novelty and originality of an industrial design is being established, account shall also be taken (upon condition of an earlier priority) of all the applications for inventions, utility models and industrial designs and applications for state registration of trademarks and service marks filed in the Russian Federation by other persons and with whose documents any person is entitled to be familiarised in compliance with **Items 2 and 4 of Article 1385**, **Item 2 of Article 1394** and **Item 1 of Article 1493** of this Code.

The disclosure of information about an industrial design by the author thereof, an applicant or any person that has directly or indirectly received this information from them (in particular as a result of showing an industrial design at an exhibition) which made information on the essence of the industrial design available to the general public shall not be deemed a circumstance precluding recognition of patentability of the industrial design, provided that a patent application for the industrial design was filed with the federal executive body charged with intellectual property matters within 12 months after the information disclosure. The burden of proving the existence of the circumstances due to which the disclosure of information does not preclude the recognition of patentability of the industrial design shall be borne by the applicant.

**5.** No legal protection shall be granted to the following as to industrial designs:

- 1) solutions all of whose features are exclusively due to the technical function of an article;
- 2) solutions that can mislead the article's consumer, in particular in respect of the article's manufacturer or the place of manufacture of the article or of the goods for which the article serves as the tare, packing or label, in particular the solutions which are identical to the objects cited in **Items 4 to 9 of Article 1483** of this Code, or those making the same general impression or comprising the cited objects, if the rights to the cited objects had originated before the priority of an industrial design, except if the legal protection of an industrial design is requested by the person enjoying the exclusive right to such object.

The provision of legal protection to the industrial designs which are identical to the objects cited in **Item 4**, **Subitems 1 and 2 of Item 9 of Article 1483** of this Code or make the same general impression or comprise the cited objects shall be allowed by approbation of the owners or of the persons authorised by owners or of the holders of rights to the cited objects.

**Article 1353.** The State Registration of Inventions, Utility Models and Industrial Designs

The exclusive right to an invention, utility model or industrial design is recognised and protected on the condition of the state registration of the relevant invention, utility model or industrial design, such registration serving as grounds for the federal executive body charged with intellectual property matters to issue a patent for the invention, utility model or industrial design.

**Article 1354.** The Patent for an Invention, Utility Model or Industrial Design

1. A patent for an invention, utility model or industrial design certifies the priority of the invention, utility model or industrial design, the authorship of, and the exclusive right to the invention, utility model or industrial design.

2. Protection of intellectual rights to an invention or utility model is granted under a patent within the scope defined by the invention or utility model claim respectively contained in the patent. A description and drawings, as well as 3D pattern of the invention and utility model in electronic form (**Item 2 of Article 1375** and **Item 2 of Article 1376**) may be used for the purpose of construing the invention claim and the utility model claim.

3. Protection of intellectual rights to an industrial design shall be granted under a patent within the scope defined by the aggregate of significant features of the industrial design which are reflected in images of the article's appearance contained in the industrial design's patent.

**Article 1355.** Provision of State Incentives for Creating and Using Inventions, Utility Models and Industrial Designs

The state shall provide incentives for the creation and use of inventions, utility models or industrial designs, and grant privileges in accordance with the legislation of the Russian Federation to their authors and also to the patent holders and licensees that use the relevant inventions, utility models or industrial designs.

## § 2. Patent Rights

**Article 1356.** The Right of Attribution in Respect of an Invention, Utility Model or Industrial Design

The right of attribution, i.e., the right of being recognised as the author of an invention, utility model or industrial design is unalienable and unassignable, for instance, when this right or the exclusive right to the invention, utility model or industrial design is transferred to another person and when the right to use it is granted to another person. The waiver of this right is null and void.

**Article 1357.** The Right to Obtain a Patent for an Invention, Utility Model or Industrial Design

1. The right to obtain a patent for an invention, utility model or industrial design is initially owned by the author of the invention, utility model or industrial design.

2. The right to obtain a patent for an invention, utility model or industrial design may pass to another person (successor) or may be assigned thereto in the cases and on the grounds established by law, including in line of universal succession or under a contract including a labour contract.

3. A contract of alienation of a right to obtain a patent to an invention, utility model or industrial design shall be concluded in writing. Non-observance of the written form shall cause invalidity of the contract.

4. Except as otherwise envisaged by agreement of the parties to a contract of alienation of a right to obtain a patent for an invention, utility model or industrial design, the risk of non-patentability shall be borne by the acquirer of the right.

**Article 1358.** The Exclusive Right to an Invention, Utility Model or Industrial Design

1. The patent holder shall own the exclusive right to use the invention, utility model or industrial design in accordance with **Article 1229** of this Code in any manner that does not conflict with the law (the exclusive right to an invention, utility model or industrial design), for instance, by the methods described in

**Item 2** of this article. The patent holder may dispose of the exclusive right to the invention, utility model or industrial design.

2. The following in particular, shall be deemed to be the use of an invention, utility model or industrial design:

1) the import onto the territory of the Russian Federation, manufacture, application, offer for sale, sale, other introduction into civil law transactions or storage for such purposes of the product in which the invention or utility model is used or of an article in which the industrial design is used;

2) committing the actions described in **Subitem 1** of this item in respect of a product directly made by a patented method. If the product made by the patented method is novel, then an identical product shall be deemed produced by the patented method, unless otherwise proven;

3) committing the actions described in **Subitem 1** of this item in respect of an apparatus in whose functioning (operation) the patented method is automatically implemented;

4) committing the actions provided for by **Subitem 1** of this item in respect of the product intended for application in compliance with the purpose thereof cited in the formula of an invention, when the invention is protected in the form of the product's use for a particular purpose;

5) the implementation of the method in which the invention is used, for instance, by means of applying the method.

3. An invention shall be deemed used in a product or in a method if the product contains and the method uses each feature of the invention that had been stated in an independent item of the formula of the invention contained in the patent, or a feature equivalent thereto, and that had become known as such in the given field of technology before the invention's priority date.

A utility model shall be deemed used in a product if the product contains each feature of the utility model stated in an independent item of the formula of the utility model contained in the patent.

When establishing the use of an invention or utility model, the formula of the invention or utility model shall be interpreted in compliance with **Item 2 of Article 1354** of this Code.

An industrial design shall be deemed used in an article if this article contains all the essential features of the industrial design or the totality of the features making on an informed consumer the same general impression as the patented industrial design, provided that the article has a similar purpose.

4. If in the use of an invention or utility model all the features are also used that are stated in an independent item of the formula of another invention contained in the patent, or the feature which is equivalent thereto that had become known as such in the given field of technology before the priority date of another invention, or each feature stated in an independent point of the formula of another utility model contained in the patent or, when using an industrial design, each essential feature of another industrial design or the totality of features of another industrial design making upon an informed consumer the same general impression as the industrial design, provided that an article has a similar purpose, another invention, another utility model or another industrial design shall be also deemed to be used.

5. If the owners of a patent for an invention, utility model or industrial design are two or more persons, the relations between/among them shall be governed respectively by the rules of **Items 2 and 3 of Article 1348** of this Code, irrespective of whether any of the patent owners is the author of this result of intellectual activity or not.

#### **Article 1358.1. A Dependent Invention, Dependent Utility Model and Dependent Industrial Design**

1. An invention, utility model or industrial design whose use in a product or method is impossible without using another invention, utility model or industrial design protected by a patent and having an earlier priority shall be deemed a dependent invention, dependent utility model or dependent industrial design.

Seen as a dependent invention shall be, in particular, an invention protected in the form of application for a particular purpose of the product in which another invention protected by a patent and having an earlier priority is used.

An invention or utility model related to a product or method shall be also deemed to be dependent, if the formula of such invention or such utility model differs from the formula of another patented invention or another patented utility model with an earlier priority solely by the purpose of the product or method.

2. An invention, utility model and industrial design may not be used without a permit of the holder of



the patent to another invention, another utility model or another industrial design with respect to which they are dependent ones.

**Article 1359.** Actions Not Deemed an Infringement of the Exclusive Right to an Invention, Utility Model or Industrial Design

The following are not deemed an infringement of the exclusive right to an invention, utility model or industrial design:

1) the use of a product in which the invention or utility model is used, and the use of an article in which the industrial design is used, in the design, in auxiliary equipment or in the operation of vehicles (water, air, road and rail means of transport) or spacecraft of foreign states, provided these vehicles or spacecraft are temporarily or incidentally located on the territory of the Russian Federation and the said product or article is used solely for the needs of the vehicles or spacecraft. Such action shall not be deemed an infringement of the exclusive right in respect of vehicles or spacecraft of the foreign states that grant the same rights in respect of the vehicles or spacecraft registered in the Russian Federation;

2) the carrying out of scientific research of a product or method in which the invention or utility model is used, or of scientific research of an article in which the industrial design is used, or the carrying out of an experiment in respect of such product, method or article;

3) the use of the invention, utility model or industrial design in emergency circumstances (natural calamities, disasters, accidents), with the patent holder being notified of this use as soon as possible and with commensurate compensation being paid henceforth to the patent holder;

4) the use of the invention, utility model or industrial design for meeting personal, family, household or other needs other than entrepreneurial activity, unless profit-making or making earnings is the purpose of the use;

5) the one-off manufacturing of medicines with the use of the invention in a chemist's shop on a physician's prescription;

6) the importation onto the territory of the Russian Federation, the application, offer for sale, sale, another introduction into civil-law transactions or storage for such purposes of a product in which the invention or utility model is used or of an article in which the industrial design is used, if the product or article has been earlier introduced into civil-law transactions on the territory of the Russian Federation by the patent holder or by another person by permission of the patent holder, or without a permit thereof, but upon condition that such introduction into civil law transactions was rightfully effected in the instances established by this Code.

**Article 1360.** Using an Invention, Utility Model or Industrial Design in the Interests of National Security

1. In the event of extreme necessity related to ensuring the defence and security of the state, or protecting the life and health of citizens the Government of the Russian Federation is entitled to take a decision on the use of an invention, utility model or industrial design without the consent of the patent holder, with the patent holder being notified as soon as possible and with commensurate compensation being paid to the patent holder.

2. The **methodology** for determining the amount of compensation and the procedure for its payment is approved by the Government of the Russian Federation.

**Article 1360.1.** The Use of an Invention for the Production of a Medicinal Product for the Purpose of Its Export in Accordance with an International Treaty of the Russian Federation

1. The Government of the Russian Federation shall have the right, in the cases and on the conditions provided for by the international treaty of the Russian Federation, to make a decision to use an invention for the production of a medicinal product on the territory of the Russian Federation for the purpose of exporting it without the consent of the patent holder, notifying him/her of this as soon as possible and with the payment of proportionate compensation to him/her. The specified decision must contain information on the volume of production of a medicinal product determined by the needs of a foreign state, to the territory of which the medicinal product is to be exported. The packaging of such a medicinal product must have a special

designation.

2. The procedure for sending the notification, specified in **Item 1** of this Article, the grounds and procedure for making a decision to use the invention for the production of a medicinal product on the territory of the Russian Federation for the purpose of exporting it and terminating its validity, the procedure for determining the validity period of the decision, as well as the procedure for determining the amount of compensation and the procedure for its payment shall be approved by the Government of the Russian Federation in accordance with the international treaty of the Russian Federation.

#### **Article 1361.** The Right of Prior Use of an Invention, Utility Model or Industrial Design

1. A person that prior to the priority date of an invention, utility model or industrial design (**Articles 1381 and 1382**) had been properly using on the territory of the Russian Federation an identical solution or a solution that only differs from the invention by equivalent features (**Item 3 of Article 1358**) created independently of the author, or had made the necessary preparations for this, shall retain the right of further free use of the identical solution without broadening the scope of the use (the right of prior use).

2. The right of prior use may be assigned to another person only with the enterprise in which the use of the identical solution took place or the necessary preparations were made for it.

#### **Article 1362.** The Compulsory Licence for an Invention, Utility Model or Industrial Design

1. If an invention or industrial design is not used or is insufficiently used by the patent holder within four years after the issuance of the patent, and a utility model within three years after the issuance of the patent, which leads to insufficient provision of the relevant goods, works or services in the market, any person willing and ready to use the invention, utility model or industrial design -- if the patent holder refuses to conclude a licence contract with this person on terms meeting the prevailing practices -- is entitled to file a claim with the court for the patent holder to issue a compulsory simple (non-exclusive) licence for the use of the invention, utility model or industrial design on the territory of the Russian Federation. In its claim the person shall set out terms for the provision of the licence, including the scope of use of the invention, utility model or industrial design, the amount of, procedure and term for, payment.

Unless the patent holder proves that his/its non-use or insufficient use of the invention, utility model or industrial design was due to a good reason, the court shall take a decision on granting the licence specified in **Paragraph 1** of the present Item and on the terms for the granting thereof. The sum total of payments for the licence shall be set in the court decision as at least equal to a licence price determined in comparable circumstances.

A compulsory simple (non-exclusive) licence may be terminated in a judicial procedure upon a claim of the patent holder, if the circumstances due to which the licence has been issued are no longer existing and it is unlikely that they are going to appear again. In this case the court shall establish a term and procedure for termination of the compulsory simple (non-exclusive) licence and of the rights that have come into being due to the receipt of the licence.

Granting, in compliance with the rules of this item, of a compulsory simple (non-exclusive) licence for the use of an invention pertaining to the technology of semi-conductors shall be allowed solely for its non-commercial use in state, social or other public interests or for changing a situation which is recognised in the established procedure as failure to satisfy the requirements of the **antimonopoly legislation** of the Russian Federation.

2. Unless a patent holder cannot use an invention to which he/it has an exclusive right, without infringing on the rights of the holder of another patent (first patent) for an invention or utility model which has refused to conclude a licence contract on terms complying with the prevailing practices, the holder of the patent (second patent) is entitled to file a claim with a court against the holder of the first patent for the issuance of a compulsory simple (non-exclusive) licence for the use of the invention or utility model of the holder of the first patent on the territory of the Russian Federation. In the claim the holder of the second patent shall indicate his/its terms for granting such licence thereto, including the scope of use of the invention or utility model, the amount of, procedure and term for, payment.

If the patent holder having an exclusive right to such dependent invention manages to prove that it is an important technical achievement and that it has significant economic advantages over the invention or

utility model of the holder of the first patent, the court shall take a decision on granting a compulsory simple (non-exclusive) licence thereto. The right to use the invention protected by the first patent obtained under such licence shall not be assigned to other persons, except for the case of alienation of the second patent.

The sum total of payments for a compulsory simple (non-exclusive) licence shall be set in the court's decision as at least equal to a licence price determined in comparable circumstances.

When a compulsory simple (non-exclusive) licence is granted in accordance with the present item, the holder of the patent for the invention or utility model which may be used under the right granted on the basis of the said licence also has the right to obtain a simple (non-exclusive) licence for the use of the dependent invention in connection with which the compulsory simple (non-exclusive) licence was issued, on terms complying with the prevailing practices.

**3.** Under the court decision described in **Items 1 and 2** of the present article, the federal executive body charged with intellectual property matters shall grant state registration of granting and termination of the right to use an invention, utility model or industrial design under the terms of the compulsory simple (non-exclusive) licence.

### **Article 1363.** The Effective Term of Exclusive Rights to an Invention, Utility Model and Industrial Design

**1.** The exclusive right to an invention, utility model, industrial design, and to the patent certifying this right shall be effective provided that the requirements established by this Code are satisfied, from the day when the patent application was filed with the federal executive body charged with intellectual property matters, or, in the event of a divisional application (**Item 4 of Article 1381**), from the date when the initial application is filed:

- 20 years for inventions;
- 10 years for utility models;
- five years for industrial design.

The protection of a patented exclusive right may only be exercised after the state registration of an invention, utility model, industrial design and the issuance of the patent (**Article 1393**).

**2.** If more than five years have elapsed from filing a patent application for an invention relating to such a product as a medicine, pesticide or agrochemical substance, which requires that permission be secured in the procedure established by law, up to the receipt of the first permission for using it, the effective term of the exclusive right to the relevant invention and the patent certifying this right shall be extended on the basis of an application of the patent holder by the federal executive body charged with intellectual property matters.

The said term shall be extended by the period that has elapsed since filing the patent application for an invention to the date of receipt of the first permission to use the product, less five years, but at most for five years. In this case, the effective term of the patent for the invention shall not be extended by a term exceeding five years.

A term-extension application shall be filed by the holder of a patent within the effective term of the patent before the expiry of six months after the receipt of the first permission to use the product or the date of issuance of the patent, whichever of these terms expires latest.

The patent holder may be asked for additional materials, if without them the consideration of an application is impossible. The additional materials may be presented within three months from the date of forwarding such request. If the patent holder does not present the requested materials within this term or does not file a petition for extension of the term, an application shall be rejected. The term fixed for presenting additional materials may be extended by the federal executive body in charge of intellectual property matters by at most 10 months.

When extending on the basis of Paragraph One of this item the effective term of an exclusive right, an additional patent shall be issued containing the totality of the features of the patented invention describing the product for whose use a permit has been obtained.

**3.** The effective term of the exclusive right to an industrial design and the patent certifying this right may be repeatedly extended on the basis of an application of the patent holder by five years but in total at most by 25 years from the date of filing a patent application with the federal executive body charged with

intellectual property matters or, in the event of filing a divisional application (**Item 4 of Article 1381**), from the date of filing the initial application.

4. The procedure for issuance and operation of an additional patent for an invention and for extending the effective term of a patent for an invention or industrial design shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

5. The exclusive right to an invention, utility model, industrial design and the patent certifying this right shall be deemed invalid or shall be terminated ahead of time on the grounds and in the procedure provided for by **Articles 1398 and 1399** of this Code.

**Article 1364.** The Passing of an Invention, Utility Model, Industrial Design into the Public Domain

1. Upon the expiry of the effective term of the exclusive right the invention, utility model, industrial design shall pass into the public domain.

2. An invention, utility model, industrial design that has passed into the public domain may be freely used by any person without anybody's consent or permission and without a fee being paid for the use thereof.

### **§ 3. Disposing of the Exclusive Right to an Invention, Utility Model or Industrial Design**

**Article 1365.** The Contract of Alienation of the Exclusive Right to an Invention, Utility Model or Industrial Design

1. Under a contract of alienation of the exclusive right to an invention, utility model, industrial design (contract of alienation of a patent) one party (patent holder) shall assign or undertake to assign his/its exclusive right to the relevant result of intellectual activity in full to the other party, that is, to the acquirer of the exclusive right (acquirer of the patent).

2. The alienation of the exclusive right to an industrial design is not allowable if it could cause consumers to be misled in respect of goods or the producer thereof.

**Article 1366.** A Public Offer for Concluding a Contract of Alienation of a Patent for an Invention

1. An applicant being the sole author of an invention, before adoption on the basis of the application of the decision on the patent's issuance or on the refusal to issue the patent, or on declaring the application withdrawn, may file an application to the effect that if a patent is issued he/it undertakes to conclude a contract of alienation of the patent on the terms complying with the prevailing practices with any citizen of the Russian Federation or Russian legal entity which is the first to express such a will and notifies accordingly the patent holder and the federal executive body charged with intellectual property matters. If the cited application exists, the patent duties envisaged by this Code shall not be collected for the commission of legally significant actions, the list of which has been established by the Government of the Russian Federation from the applicant for the patent application for the invention and for the patent issued under the application. The duties paid before filing the cited application shall not be returned.

The federal executive body charged with intellectual property matters shall publish information on the said application in its gazette.

The number of applications submitted within a year by one applicant, in respect of which, when submitting the specified application, the applicant is exempted from paying patent fees provided for by this Code, shall be established by the Government of the Russian Federation.

2. A person that has concluded a contract for alienation of a patent for an invention with the holder of the patent on the basis of his/its application described in **Item 1** of the present article shall pay all the patent duties from which the applicant (patent holder) was relieved. Henceforth, patent duties shall be paid in the established **procedure**.

The state registration of transfer of the exclusive right to the acquirer under a contract of patent's alienation shall be effected with the federal executive body in charge of intellectual property matters upon condition of paying all the patent duties of which the applicant (patent holder) has been relieved.

3. Unless within two years after the publication of information on the issuance of a patent for an invention in respect of which the application specified in **Item 1** of the present article has been made the

federal executive body charged with intellectual property matters has received a notice in writing of the intention to conclude a contract for alienation of the patent, the holder of the patent may file a petition with the said federal body withdrawing his/its application. In this case, the patent duties specified by the present Code from which the applicant (patent holder) was relieved shall be payable. Henceforth, patent duties shall be paid in the established **procedure**.

The federal executive body charged with intellectual property matters shall publish information on the withdrawal of the application specified in **Item 1** of the present article in its gazette.

**Article 1367.** A Licence Contract on Granting a Right to Use an Invention, Utility Model or Industrial Design

Under a licence contract one party, the patent holder (licensor) shall grant or undertakes to grant within the limits established by the contract to the other party (licensee) the right to use an invention, utility model or industrial design certified by a patent.

**Article 1368.** An Open Licence for an Invention, Utility Model or Industrial Design

**1.** The holder of a patent may file an **application** with the federal executive body charged with intellectual property matters on the possibility of granting any person the right to use the invention, utility model or industrial design (open licence).

In this case, the rate of **patent duty** for keeping the patent for the invention, utility model or industrial design in effect shall be cut by 50 per cent starting from the year following the year of publication by the federal executive body charged with intellectual property matters of information on the open licence.

The licence terms on which a right to use the invention, utility model or industrial design may be granted to any person shall be announced by the patent holder to the federal executive body charged with intellectual property matters which shall publish on the patent holder's account relevant information on the open licence. The patent holder shall conclude a licence contract on the terms of a simple (non-exclusive) licence with a person expressing his/its design to use the said invention, utility model or industrial design.

**2.** If within two years after the publication of information about the open licence the patent holder has not received offers in writing to conclude a licence contract on the terms in his/its application, then upon the expiry of two years he/it may file a petition with the federal executive body charged with intellectual property matters withdrawing his/its open licence application. In this case, a patent duty for keeping the patent in effect shall be additionally paid for the period that has elapsed since the publication of information on the open licence, and henceforth it shall be payable in full. The said federal body shall publish information on the withdrawal of the application in its gazette.

**Article 1369.** The Form of a Contract of Disposing of the Exclusive Right to an Invention, Utility Model or Industrial Design and State Registration and the State Registration of Transfer of an Exclusive Right, Its Pledge and Granting of the Right to Use an Invention, Utility Model or Industrial Design

**1.** A contract on alienation of a patent, a licence contract, and also other contracts whereby one disposes of the exclusive right to an invention, utility model or industrial design shall be concluded in writing. Failure to observe the written form thereof shall entail the contract's invalidity.

**2.** The alienation and pledge of the exclusive right to an invention, utility model or industrial design, or granting under a contract of the right to their use are subject to state registration in the procedure established by **Article 1232** of this Code.

**§ 4. An Invention, Utility Model or Industrial Design Created in the Line of Execution of a Service Assignment or When Works Were Performed under a Contract**

**Article 1370.** The Service Invention, Service Utility Model and Service Industrial Design

**1.** An invention, utility model or industrial design created by an employee in the course of his duties or a specific assignment of the employer shall be deemed a service invention, utility model or industrial

design.

2. The right of attribution in respect of a service invention, service utility model or service industrial design is owned by the employee (author).

3. The exclusive right to a service invention, service utility model or service industrial design and the right to obtain a patent are owned by the employer, except as otherwise envisaged by a labour contract or civil law contract between the employee and the employer.

4. Unless a contract between the employer and the employee comprises agreement to the contrary, the employee shall notify in writing the employer that a result that can be legally protected has been created in the course of execution of his duties or of a specific assignment.

Unless within six months after being notified by the employee, the employee files a patent application for the relevant service invention, service utility model or service industrial design with the federal executive body charged with intellectual property matters, assigns the right to obtain a patent to the service invention, service utility model or service industrial design to another person, or notifies the employee that information on the relevant result of intellectual activity is kept secret, the right to obtain a patent for the invention, utility model or industrial design shall be returned to the employee. In this case within the effective term of the patent the employer shall be entitled to use the service invention, service utility model or service industrial design at the employer's production facilities on the terms of a simple (non-exclusive) licence, with remuneration being paid to the holder of the patent of which the rate, terms and payment procedure are defined by a contract between the employee and the employer, or by a court in the case of a dispute.

If the employer obtains a patent for the service invention, service utility model or service industrial design, or decides to keep information about the invention, utility model or industrial design secret and notify the employee accordingly or assigns the right to obtain a patent to another person or does not receive a patent on an application filed by the employer for reasons under the employer's control, the employee shall be entitled to a fee. The amount of the fee, the terms and procedure for the employer to pay it shall be defined by a contract between the employer and the employee, or by a court in the case of a dispute.

Paragraph 4 is **abrogated**.

The right to remuneration for a service invention, service utility model, or service industrial design shall be inseparable and shall pass over to the author's heirs for the remaining effective term of the exclusive right.

4.1. If an employer that received a patent for a service invention, service utility model or service industrial design in his own name decides to terminate the patent early, he shall notify an employee (author) and, upon his request, transfer the patent to him free of charge. The transfer of the exclusive right shall be formalised by an agreement on the gratuitous alienation of the exclusive right.

If the employer refuses to conclude an agreement on the gratuitous alienation of the exclusive right to the author or fails to respond to the author's written proposal to conclude the agreement within a month from the date of sending such proposal, the author has the right to apply to court with a claim against the patent holder for compulsion to conclude an agreement on gratuitous alienation of exclusive rights.

If the employer has not notified the author of the early termination of the patent, the author has the right to apply to the court with a claim against the employer for compulsion to file a petition for the restoration of the patent at the expense of the employer.

5. An invention, utility model or industrial design created by an employee through the use of money, technical or other material means of the employer but other than in the line of duty or a specific assignment of the employer shall not be deemed service. The right to obtain a patent and the exclusive right to such invention, utility model or industrial design are owned by the employee. In this case the employer is entitled at his/its own discretion to claim a free-of-charge simple (non-exclusive) licence for the use of the created result of intellectual activity for his/its own needs for the whole effective term of the exclusive right or compensation for the expenses incurred by the employer in connection with the creation of the invention, utility model or industrial design.

**Article 1371.** An Invention, Utility Model or Industrial Design Created When Works Have Been Performed under a Contract

1. The right to receiving a patent and the exclusive right to an invention, utility model or industrial design created in the course of performance of a contractor's contract or a contract of performance of research and development or technological works, which did not directly require the creation thereof, are owned by the contractor (performer), except as otherwise envisaged by a contract between the contractor and the customer.

In this case the customer is entitled, except as otherwise envisaged by the contract, to use the invention, utility model or industrial design so created for the purposes for which the relevant contract was concluded, on the terms of a simple (non-exclusive) licence during the whole effective term of the patent without an additional fee being charged for the use. If the contractor (performer) assigns the right to obtain a patent or to alienate the patent proper to another person, the customer shall retain the right to use the invention, utility model or industrial design on the said terms.

2. If under the contract between the contractor (performer) and the customer the right to obtain a patent or the exclusive right to the invention, utility model or industrial design is assigned to the customer or to a third party designated by the customer, the contractor (performer) is entitled to use the created invention, utility model or industrial design for his/its own needs on the terms of a free-of-charge simple (non-exclusive) licence during the whole effective term of the patent, except as otherwise envisaged by the contract.

3. In accordance with **Item 4 of Article 1370** of the present Code a fee shall be paid to the author of the invention, utility model or industrial design described in **Item 1** of the present article who is not the holder of the patent.

#### **Article 1372. An Industrial Design Created to Order**

1. The right to obtain a patent and the exclusive right to an industrial design created under a contract which had the creation thereof as its subject matter (to order) are owned by the customer, except as otherwise envisaged by a contract between the contractor (performer) and the customer.

2. If according to **Item 1** of the present article the right to obtain a patent and the exclusive right to an industrial design is owned by the customer the contractor (performer) is entitled, except as otherwise envisaged by a contract, to use the industrial design for his/its own needs on the terms of a free-of-charge simple (non-exclusive) licence for the whole effective term of the patent.

3. If according to a contract between the contractor (performer) and the customer the right to obtain a patent and the exclusive right to the industrial design is owned by the contractor (performer), the customer is entitled to use the industrial design for the purposes for which the relevant contract has been made on the terms of a free-of-charge ordinary (non-exclusive) licence for the whole effective term of the patent.

4. In accordance with **Item 4 of Article 1370** of the present Code a fee shall be paid to the author of an industrial design created to order who is not the holder of the patent.

#### **Article 1373. Invention, Utility Model and Industrial Design Created When Performing Works under a State or Municipal Contract**

1. The right to obtain a patent and the exclusive right to an invention, utility model or industrial design created when performing works under a state or municipal contract for state or municipal needs belongs to a person performing the state or municipal contract (contractor), except for the cases established by the **first paragraph of Item 3** and **Item 4 of Article 1240.1** of this Code.

A state or municipal contract may provide that the right to obtain a patent and the exclusive right to an invention, utility model or industrial design belong jointly to the contractor and the Russian Federation, the contractor and the constituent entity of the Russian Federation, or the contractor and the municipality, except for the cases established by the **first paragraph of Item 3** and **Item 4 of Article 1240.1** of this Code.

2. If, in accordance with a state or municipal contract, the right to obtain a patent and the exclusive right to an invention, utility model or industrial design belong to the Russian Federation, a constituent entity of the Russian Federation or a municipal formation, the state or municipal customer may apply for a patent within six months from the date of notifying him in written by the performer of the result of intellectual activity capable of legal protection as an invention, utility model or industrial design. If within the specified period the state or municipal customer fails to file an application or fails to make a decision on keeping the

invention, utility model, industrial design secret, then the right to the patent shall belong to the contractor.

**3.** If the Russian Federation, a constituent entity of the Russian Federation or a municipality that is the owner of a patent for an invention, utility model or industrial design created when performing work under a state or municipal contract for state or municipal needs, within two years from the date of issue of a patent for the cited invention, utility model or industrial design fails to ensure the use of the corresponding invention, utility model or industrial design, or fails to grant the right to use such invention, utility model or industrial design under a licensing agreement or transfer the exclusive right to an invention, industrial design or utility model to another person, the contractor shall have the right to demand the exclusive right to the corresponding invention, utility model or industrial design free of charge. The transfer of the exclusive right shall be formalised with an agreement on the gratuitous alienation of the exclusive right.

If the Russian Federation, a constituent entity of the Russian Federation or a municipality refuses to conclude an agreement on the gratuitous alienation of an exclusive right, as well as if the patent owner's respond to a written request from the contractor is not received within three months from the date of sending such proposal, the contractor shall have the right to apply to a court with a claim against the patent holder for compulsion to conclude an agreement on the gratuitous alienation of the exclusive right. If the patent owner does not prove that his non-use of the invention, utility model or industrial design is due to valid reasons, the court shall take a decision on the compulsory conclusion of an agreement on the gratuitous alienation of the exclusive right to the corresponding invention, utility model or industrial design.

**4.** If the performer that received the exclusive right to an invention, utility model or industrial design in the procedure provided for in **Item 2** of this Article did not begin, within two years from the date of obtaining the right, using the corresponding invention, utility model or industrial design, or did not transfer the exclusive right to an invention, utility model or industrial design to another person, the author shall have the right to demand that the exclusive right to the corresponding invention, utility model or industrial design be transferred to him free of charge. The transfer of the exclusive right shall be formalised with an agreement on the gratuitous alienation of the exclusive right.

If the patent holder refuses to conclude an agreement on the gratuitous alienation of exclusive rights, as well as if the patent owner's response to the author's written proposal to conclude such an agreement was not received within a month from the date of sending this proposal, the author has the right to apply to the court with a claim against to the patent owner on compulsion to conclude an agreement on the gratuitous alienation of exclusive rights. If the patentee does not prove that his non-use of the invention, utility model or industrial design is due to valid reasons, the court shall take a decision on the compulsory conclusion of an agreement on the gratuitous alienation of the exclusive right to the corresponding invention, utility model or industrial design.

**5.** If a performer that received a patent for an invention, utility model or industrial design in accordance with **Items 2** and **3** of this article in his own name (including together with other rightholders) decides to early terminate the patent, he shall notify the author of the invention, useful model or industrial design on the early termination of the patent and, upon request, transfer to him the exclusive right to such invention, utility model or industrial design free of charge. The transfer of the exclusive right shall be formalised with an agreement on the gratuitous alienation of the exclusive right.

If the performer refuses to conclude an agreement with the author on the gratuitous alienation of the exclusive right or fails to respond to the author's written proposal to conclude the agreement within a month from the date of sending such proposal, the author has the right to apply to the court with a claim against the performer for compulsion to conclude an agreement gratuitous alienation of exclusive rights.

If the performer has not notified the author of the early termination of the patent, the author has the right to apply to the court with a claim against the performer for compulsion to file a petition for the restoration of the patent at the expense of the performer.

**6.** Authors of inventions, utility models or industrial designs mentioned in **Item 1** of this Article, that are not patent holders shall be paid remuneration in accordance with **Item 4 of Article 1370** of this Code.

**7. Items from 2 to 5** of this Article shall not apply to the results of intellectual activity directly related to ensuring defence and security (**Item 2 of Article 1240.1** of this Code).



## § 5. Obtaining a Patent

### 1. The Patent Application, Its Amendment and Revocation

#### **Article 1374.** Filing a Patent Application for an Invention, Utility Model or Industrial Design

1. A patent application for an invention, utility model or industrial design shall be filed with the federal executive body charged with intellectual property matters by a person entitled to obtain a patent according to the present Code (applicant).

2. The patent application for an invention, utility model or industrial design shall be filed in the Russian language. Other documents of the application shall be filed in the Russian language or in another language. If the documents of the application are filed in another language a translation thereof into Russian shall be attached to the application.

3. The patent application for an invention, utility model or industrial design shall be signed by the applicant, or if filed through a patent agent or another representative, by the applicant or his/its representative filing the application.

4. The requirements applicable to patent application documents for an invention, utility model or industrial design shall be established on the basis of the present Code by the federal executive body charged with normative legal regulation in the area of intellectual property.

5. **Abrogated** from October 1, 2014.

#### **Article 1375.** The Patent Application for an Invention

1. A patent application for an invention (invention application) shall relate to one invention or a group of invention interconnected to the extent that they form a united inventive concept (the concept of unity of an invention).

2. The invention application shall comprise the following:

1) a patent **application** including an indication of the author of the invention and of the applicant, that is, of the person entitled to receive a patent, and also the place of residence or location of each of them;

2) a **description of the invention** that discloses its essence to the extent which is sufficient for making the invention by an expert in a given field of technology;

3) the **invention claim** clearly expressing the essence thereof and fully based on its description;

4) drawings and other **materials** if required for understanding the essence of the invention, including, upon the request of an applicant, its 3D pattern in electronic form;

5) a **synopsis**.

3. The date of filing of the invention application is the date when the federal executive body charged with intellectual property matters receives an application comprising a patent application, a description of the invention and drawings if the description contains reference thereto, and the date of receipt of the last document if the said documents were not filed simultaneously.

#### **Article 1376.** The Patent Application for a Utility Model

1. A patent application for a utility model (a utility model application) shall relate to one utility model (the requirement for unity of a utility model).

2. The utility model application shall comprise the following:

1) a patent application including an indication of the author of the utility model and of the applicant, that is, of the person entitled to receive the patent, and also the place of residence or location of each of them;

2) a description of the utility model that discloses its essence to the extent which is sufficient for making the utility model by an expert in a given field of technology;

3) the formula of the utility model related to a single technical solution clearly showing its essence and fully based on its description;

4) **drawings** and, upon request of an applicant, its 3D pattern of the utility model in electronic form if required for understanding the essence of the utility model;

5) a **synopsis**.

3. The date of filing of the utility model application is the date when the federal executive body

charged with intellectual property matters receives an application comprising a patent application, a description of the utility model and drawings if the description contains reference thereto, and the date of the last of the documents if said documents were not filed simultaneously.

**Article 1377.** The Patent Application for an Industrial Design

1. A patent application for an industrial design (industrial design application) shall relate to one industrial design or a group of industrial designs interrelated to the extent of forming a united creative concept (the concept of unity of an industrial design).

2. The industrial design application shall comprise the following:

1) a patent **application** with an indication of the author of the industrial design and of the applicant - of the person enjoying the right to receive the patent, and also the place of residence or location of each of them;

2) a **set** of images of the article (including, upon the request of an applicant, its 3D pattern in electronic form) that provide the complete idea of the essential features of the industrial design that determine the specifics of the article's appearance;

3) a general view drawing of the article and assembly chart, if they are required for disclosing the essence of the industrial design;

4) a **description of the industrial design**;

5) **abrogated** from October 1, 2014.

3. The date of filing of the industrial design application is the date when the federal executive body charged with intellectual property matters receives an application comprising a patent application and a set of the article's images giving a full idea of the essential features of an industrial design that determine the specifics of the article's appearance, and the date of receipt of the last of the documents if these document were not filed simultaneously.

**Article 1378.** Amending the Documents of the Application for an Invention, Utility Model or Industrial Design

1. An applicant is entitled to make in the documents of the application for an invention, utility model or industrial design, additions, updates and corrections by means of filing additional materials at the request of the federal executive body in charge of intellectual property matters, until the decision on issuing a patent, or on refusing to issue a patent, or on declaring the application withdrawn, is taken on the application, unless these additions, updates and corrections change the essence of the application for the invention, utility model or industrial design.

The applicant has the right, on his/her own initiative, to submit an amended claim that does not change the application for an invention in essence, and to make the appropriate changes into description when filing a request for an examination of the application for an invention in essence and (or) after receiving a report on preliminary information retrieval or information retrieval, carried out in accordance with the procedure established by **Item 6 of Article 1384** or **Paragraph Four of Item 2 of Article 1386** of this Code, to submit the useful amended claim which does not change the application for a useful model in essence, and to introduce the corresponding amendments into description after receiving the report on preliminary information retrieval carried out in the procedure prescribed by **Paragraph Two of Item 1 of Article 1390** of this Code.

2. The additional materials are deemed to change the essence of an application for an invention or utility model in one of the following instances, if they contain the following:

another invention that does not satisfy the requirement for the integrity of the invention in respect of the invention or a group of inventions accepted for consideration or other utility model;

the features which are subject to inclusion into the formula of an invention or utility model and which are not disclosed in the documents of an application which are provided for by **Subitems 1-4 of Item 2 of Article 1375** or **Subitems 1-4 of Item 2 of Article 1376** of this Code and presented as of the date of filing the application;

an indication of the technological result which is ensured by an invention or utility model and is not connected with the technological result contained in the same documents.

3. Additional materials shall change an application in respect of an industrial design on its merits, if they contain images of an article on which the following is shown:

another industrial design that does not satisfy the requirement of the integrity of an industrial design in respect of an industrial design or a group of industrial designs accepted for consideration;

the essential features of an industrial design are presented that are absent on the images presented as of the date of filing the application or the images of an article are presented from which the essential features of an industrial design available on the images presented as of the date of filing an application are deleted.

4. Changes in the data on the author, on the applicant, in particular when transferring the right to receive the patent to another person or as a result of changing the author's name, the name or denomination of the applicant, as well as the correction of clear and technical mistakes may be made by the applicant in the documents of the application on the own initiative thereof prior to registration of an invention, utility model or industrial design.

5. The changes made by an applicant to the documents of the application for an invention shall be taken into account when publishing data on the application, if such changes are presented to the federal executive body in charge of intellectual property matters within 15 months from the date of filing the application.

#### **Article 1379.** Transforming an Application for an Invention or Utility Model or Industrial Design

1. Until the publication of information on an invention application (**Item 1 of Article 1385**) but not later than the date of a decision on the issuance of a patent, or, when adopting the decision on the refusal to issue the patent for an invention or declaring an application withdrawn, before the possibility of filing an objection against this decision provided for by this Code, the applicant is entitled to transform it into a utility model or industrial design application by means of filing the appropriate application with the federal executive body charged with intellectual property matters, except if the applicant has filed an application on the proposal to make a contract of the patent's alienation provided for by **Item 1 of Article 1366** of this Code.

2. The transformation of a utility model application into an invention or industrial design or an industrial design application into an invention or utility model application shall be permitted on the basis of an application filed with the federal executive body charged with intellectual property matters until the date of a decision on the issuance of a patent, or if a decision on refusing to issue a patent or on declaring an application withdrawn is taken, until the possibility of filing an objection against this decision provided for by this Code is exhausted.

3. The transformation of an application for an invention, utility model or industrial design in compliance with **Items 1 or 2** of this article shall be allowed, if the priority and date of filing the transformed application subject to the requirements of **Item 3 of Article 1375**, **Item 3 of Article 1376**, **Item 3 of Article 1377**, **Item 3 of Article 1381** or **Article 1382** of this Code remain unchanged.

#### **Article 1380.** Withdrawing an Invention, Utility Model or Industrial Design Application

An applicant is entitled to withdraw his/its invention, utility model or industrial design application until the state registration of the invention, utility model or industrial design in the relevant register.

## **2. The Priority of an Invention, Utility Model or Industrial Design**

#### **Article 1381.** Establishing the Priority of an Invention, Utility Model or Industrial Design

1. The priority of an invention, utility model or industrial design shall be established by the date when the invention, utility model or industrial design application is filed with the federal executive body charged with intellectual property matters.

2. The priority of an invention, utility model or industrial design may be established by the date when additional materials are received, if they are provided by the applicant as an independent application filed before the expiry of three months after the applicant's receipt of a notice from the federal executive body charged with intellectual property matters stating that additional materials could not be taken into account

because they were deemed to change the essence of the solution declared, unless as of the date of filing of the independent application the application containing the said additional materials has been withdrawn or deemed withdrawn.

**3.** The priority of an invention, utility model or industrial design shall be established by the date when an earlier invention, utility model or industrial design application is filed by the same applicant with the federal executive body charged with intellectual property matters that discloses these inventions, utility models or industrial designs, provided that the earlier application is not withdrawn, or declared withdrawn and on the basis of it the invention, utility model or industrial design was not registered in the appropriate register as of the date of filing the application in which the priority is sought and, with this, the application for an invention in which the priority is sought is filed within 12 months from the date of filing an earlier application, while an application for a utility model or industrial design - within six months from the date when an earlier application is filed.

Once an application seeking priority is filed, the earlier application shall be deemed withdrawn.

Priority shall not be established by the date of filing of an application whereby an earlier priority has been sought.

**4.** The priority of an invention, utility model or industrial design under a divisional application shall be established by the date when the same applicant filed with his/its initial application the federal executive body charged with intellectual property matters disclosing the invention, utility model or industrial design or if a right exists to establish an earlier priority, by the initial application by the date of that priority, unless the initial invention, utility model or industrial design application had not been withdrawn or deemed withdrawn, provided the divisional application had been filed before the completion of the appeal envisaged by the present Code against the decision on refusing to issue a patent under the initial application or the date of registration of the invention, utility model or industrial design if a decision on issuing a patent was taken on the initial application.

**5.** The priority of an invention, utility model or industrial design may be established on the basis of several applications filed earlier or of additional materials to such applications, given the observance of the conditions set out in **Items 2, 3 and 4** of the present article and **Article 1382** of the present Code respectively.

#### **Article 1382.** The Convention Priority of an Invention, Utility Model or Industrial Design

**1.** The priority of an invention, utility model or industrial design may be established by the date of filing of the first application for the invention, utility model or industrial design in a member state of the **Paris Convention** for the Protection of Industrial Property (conventional priority), provided an application for the invention or utility model is filed with the federal executive body charged with intellectual property matters within 12 months after the said date or an application for the industrial design within six months after the said date. If due to reasons beyond the applicant's control an application seeking a convention priority could not be filed within the said term, that term may be extended by the federal executive body charged with intellectual property matters by up to two months.

**2.** An applicant wishing to exercise the right of convention priority in respect of an industrial design application shall notify the federal executive body charged with intellectual property matters accordingly within two months after the filing of the application and present an attested copy of the first application specified in **Item 1** of the present article within three months after filing the application whereby a convention priority is sought with the said federal body.

If an attested copy of the first application is not filed within the cited time, the right of propriety, nevertheless, may be recognised by the federal executive body charged with intellectual property matters on the applicant's petition filed with the same the federal executive body charged with intellectual property matters before the expiry of the cited time period. The petition may be allowed on condition that a copy of the first application has been requested by the applicant at the same patent office with which the first application is filed within eight months from the date of filing the first application and presented with the federal executive body charged with intellectual property matters within two months from the date when it is received by the applicant.

**3.** An applicant wishing to exercise the right of convention priority in respect of an application with respect to an invention or utility model shall notify the federal executive body charged with intellectual

property matters accordingly and file a copy of the first application with that federal body within 16 months after it was filed with the patent department of a member state of the **Paris Convention** for the Protection of Industrial Property.

If within the said term no attested copy of the first application is filed, the priority right may nevertheless be recognised by the federal executive body charged with intellectual property matters on the applicant's petition filed by him/it with that federal body within the said term, provided a copy of the first application was requested by the applicant from the patent department to which the first application has been submitted, within 14 months after the filing of the first application, and was submitted to the federal executive body charged with intellectual property matters within two months after its receipt by the applicant.

The federal executive body charged with intellectual property matters is only entitled to demand of an applicant to present a translation into Russian of the first application for an invention or utility model, if the verification of validity of a claim for the priority of the invention or utility model is connected with establishing the patentability of the declared invention or utility model.

### **Article 1383.** The Consequences of the Coincidence of Priority Dates of an Invention, Utility Model or Industrial Design

**1.** If an expert examination has established that various applicants have filed applications for identical inventions, utility models or industrial designs, and that these applications have one and the same priority date, a patent for an invention, utility model or industrial design may be issued only on one of these applications to the person designated by agreement among the applicants.

Within 12 months after forwarding a relevant notice by the federal executive body charged with intellectual property matters, the applicants shall inform that federal body of the agreement reached by them.

When a patent is issued on one of the applications all the authors mentioned in the application shall be deemed co-authors in respect of the identical inventions, utility models or industrial designs.

If applications for identical inventions and/or utility models or identical industrial designs having one and the same priority date have been filed by one and the same applicant, a patent shall be issued on the application chosen by the applicant. The applicant shall notify of its choice within the term and in the procedure set out in **Paragraph 2** of the present article.

Unless within the established term the federal executive body charged with intellectual property matters receives from the applicants the said notice or petition for extension of the established term in the procedure set out in **Item 6 of Article 1386** of the present Code, the applications shall be deemed withdrawn.

**2.** In the event of coincidence of the priority dates of an invention and a utility model identical thereto for which patent applications have been filed by one and the same applicant when a patent is issued under one of the applications, a patent under another application shall be possible only on the condition that an application for termination of that patent is filed with the federal executive body charged with intellectual property matters by the owner of the earlier patent for the identical invention or identical utility model. In this case the patent issued earlier shall be terminated starting from the date of publication of information on the issuance of the patent on other application in keeping with **Article 1394** of the present Code. Information on the issuance of the patent for the invention or the utility model and information on the termination of the earlier patent shall be published simultaneously.

### **3. The Expert Examination of a Patent Application. The Temporary Legal Protection of an Invention and of an Industrial Sample**

#### **Article 1384.** The Formal Expert Examination of an Invention Application

**1.** A formal expert examination shall be carried out in respect of an invention application received by the federal executive body charged with intellectual property matters to verify the availability of the documents mentioned in **Item 2 of Article 1375** of this Code, their compliance with established requirements and the date of application shall be set.

2. The federal executive body charged with intellectual property matters shall immediately notify an applicant of a positive result of a formal expert examination of an application for an invention after the completion of the formal expert examination.

3. If the invention application does not comply with the established requirements applicable to application documents, the federal executive body charged with intellectual property matters shall send a request to the applicant asking him/it to file corrected or missing documents within three months of the receipt of the request. Unless the applicant files the documents so requested within the established term or files a petition for extension of the term, the application shall be deemed withdrawn. The term may be extended by the said federal executive body by up to 10 months.

4. If when conducting a formal expert examination of the invention application it is established that it is filed in breach of the concept of unity of invention (**Item 1 of Article 1375**), the federal executive body charged with intellectual property matters shall propose that the applicant within three months after the receipt of the relevant notice state which of the inventions declared is to be examined, and if necessary amend the application documents. Other inventions declared by means of that application may be formalised under divisional applications. Unless within the established term the applicant notifies which of the inventions declared is to be examined and if necessary files the relevant documents, the invention indicated in the invention claim first shall be considered.

5. If when conducting a formal expert examination of an invention application it is established that the additional materials filed by an applicant change the application on its merits, the rules of **Paragraph Three of Item 6 of Article 1386** of this Code shall apply.

6. Prior to the commencement of an examination of an application for an invention on its merits (**Article 1386**), an applicant has the right to request a scientific or educational organisation to conduct preliminary information retrieval on the application for an invention in relation to the claimed invention and a preliminary assessment of its patentability, about which he/she must notify the federal executive body on intellectual property.

**Article 1385.** The Publication of Information on an Invention Application and of an Industrial Sample

1. Upon the expiry of 18 months after the date of the filing of an invention application that has passed a formal expert examination with a positive result, the federal executive body charged with intellectual property matters shall publish information on the invention application in its gazette. The composition of the details published shall be determined by the federal executive body charged with normative legal regulation in the area of intellectual property.

The author of the invention is entitled to refuse to be mentioned as such in the published information on the invention application.

At a petition of the applicant filed before the expiry of 12 months after the date of filing the invention application, the federal executive body charged with intellectual property matters may publish information on the application before the expiry of 18 months after the date of filing thereof.

No publication shall take place if before the expiry of 15 months after the filing of the invention application it is withdrawn or deemed withdrawn or the invention is registered on the basis of the application.

2. After the publication of information on the invention application any person is entitled to acquaint themselves with the documents of the application, unless the application is withdrawn or deemed withdrawn as of the date of publication of information concerning it. The procedure for reading application documents and for the issuance of copies of such documents shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

3. When information is published on an invention application that has been withdrawn or deemed withdrawn as of the date of publication, such information shall not be included in the state of the art for the subsequent applications of the same applicant filed with the federal executive body charged with intellectual property matters until the expiry of 12 months after the publication of information on the invention application.

4. The federal executive state power body in charge of intellectual property at the applicant's petition shall publish data in an official bulletin on the application for an industrial sample that has passed an official

expert examination with a positive result. The composition of the data to be published shall be defined by the federal executive body engaged in normative legal regulation in the sphere of intellectual property.

The author of an industrial sample is entitled to refuse to be mentioned as such in the data on the application for an industrial sample to be published.

The publication shall not be carried out if an application for an industrial sample has been withdrawn or declared withdrawn, or an industrial sample has been registered on the basis of it.

Any person after publication of data on the application for an industrial sample is entitled to familiarise themselves with the documents of the application. The procedure for familiarising oneself with the documents of an application and for issuance of copies of such documents shall be established by the federal executive body engaged in normative legal regulation in the sphere of intellectual property.

#### **Article 1386.** The Expert Examination of an Invention Application on the Merits Thereof

**1.** Examination of an application for an invention on its merits shall be carried out at the request of the applicant or a third party after completion of the formal examination of this application with a positive result.

A petition to conduct an examination of an application for an invention on its merits shall be filed within three years from the date of filing of the application or from the date of the international filing of an international application for an invention, and in relation to a Eurasian application that has been transformed by the Eurasian Patent Office into a Russian national application, such a petition shall be filed simultaneously with the application for grant of a patent.

The specified term for filing a petition for an expert examination of an invention application on the merits thereof may be extended by the federal executive body charged with intellectual property matters upon a petition of the applicant filed before the expiry of the term, by up to two months.

If a petition for expert examination of the invention application on the merits thereof is not filed within the established term, the application shall be deemed withdrawn.

The federal executive body on intellectual property shall notify the applicant on the applications to conduct an examination of the application for an invention on the merits received from third parties.

**2.** The expert examination of an invention application on the merits thereof includes the following:  
verifying the compliance of the declared invention with the requirements established by **Item 4 of Article 1349** of this Code and with the patentability conditions set out by Paragraph One of **Item 1, Items 5 and 6 of Article 1350** of this Code;

verifying the sufficiency of disclosing the essence of the declared invention in the documents of the application provided for by **Subitems 1 - 4 of Item 2 of Article 1375** of this Code and presented as of the date when it is filed for making the invention by an expert in the given field of technology;

conducting an information retrieval in relation to the claimed invention and checking, taking into account its results, the compliance of the claimed invention with the conditions of patentability provided for by **Paragraph Two of Item 1 of Article 1350** of this Code.

The federal executive body on intellectual property shall forward to an applicant a report on the information retrieval.

Results of the preliminary information retrieval and preliminary assessment of patentability contained in the report on preliminary information retrieval and the conclusion based on the results of the preliminary assessment of patentability conducted by a scientific or educational organisation, if they are received by the specified federal body before a decision has been made on the application to issue a patent or to refuse in the grant of a patent, or on the recognition of the application as withdrawn, shall be taken into account when verifying the compliance of the claimed invention with the conditions of patentability.

No information retrieval shall be carried out in respect of the objects cited in **Item 4 of Article 1349** and in **Items 5 and 6 of Article 1350** of this Code and the federal executive body on intellectual property shall notify an applicant thereof.

**3.** Invalid from August 1, 2021 - **Federal Law No. 262-FZ** of July 31, 2020

**4.** Invalid from August 1, 2021 - **Federal Law No. 262-FZ** of July 31, 2020

**5.** In respect of an invention application published in the procedure established by **Article 1385** of this Code, the federal executive body in charge of intellectual property matter shall publish a report on the

preliminary information retrieval conducted in accordance with **Item 6 of Article 1384** of this Code, and a report on the preliminary information retrieval carried out in accordance with **Item 2** of this Article.

After publishing data on an invention application any person is entitled to present the observations thereof in respect of the compliance of the declared invention to the requirements established by **Item 4 of Article 1349** of this Code, and with the patentability terms established by **Article 1350** of this Code. Such persons shall not take part in the proceedings concerning the application. Observations shall be taken into account when adopting a decision on an application in the procedure established by **Article 1387** of this Code.

The procedure for conducting preliminary information retrieval, information retrieval and preliminary assessment of patentability in accordance with **Item 6 of Article 1384** of this Code, **Item 2** of this Article and **Item 1 of Article 1390** of this Code, publication of reports on preliminary information retrieval and information retrieval, submission of a report on preliminary information retrieval, information retrieval report and conclusion on the results of a preliminary assessment of patentability to the applicant shall be established by the federal executive body which carries out the legal and regulatory framework in the sphere of intellectual property.

**6.** In the course of an expert examination of an invention application on the merits thereof the federal executive body charged with intellectual property matters may request additional materials from the applicant (including a modified invention claim) without which the expert examination or adoption of the decision on issuance of the invention patent is impossible. In this case, additional materials without a change in the essence of the invention shall be provided within three months after forwarding the request or copies of the materials contradicting the application, provided the applicant has asked for the said copies within two months of the request of the said federal body is forwarded. Unless within the established term the applicant provides the requested materials or files a petition for extension of this term, the application shall be deemed withdrawn. The term established for the applicant to submit the materials requested may be extended by the said federal body by at most 10 months.

If it is established while holding an expert examination of an application on its merits that the requirement for the unity of an invention is not satisfied, the provisions of Item 4 of Article 1384 of this Code shall apply.

If an applicant has filed additional materials, it shall be verified whether they have changed the essence of an application or not (**Article 1378**). Additional materials in the part thereof that changes an application on its merits shall not be taken into account when considering an invention application. Such materials may be presented by an applicant as an independent application. The federal executive body in charge of intellectual property matters shall notify an applicant thereof.

#### **Article 1387.** The Decision on Issuance of a Patent for an Invention, on Refusing to Issue It or on Declaring an Application Withdrawn

**1.** If as a result of an expert examination of an invention application on the merits thereof it is established that the declared invention expressed in the invention claim proposed by the applicant does not refer to the objects cited in **Item 4 of Article 1349** of this Code, meets the conditions of patentability set out in **Article 1350** of this Code and the essence of the declared invention in the application documents provided for by **Subitems 1-4 of Item 2 of Article 1375** of this Code and filed as of the date of its submission is disclosed fully enough for making the invention, the federal executive body charged with intellectual property matters shall take the decision on issuing a patent for the invention with this invention claim. The decision shall contain the date of filing the invention application and the priority date of the invention.

If in the course of the expert examination of an invention application on the merits thereof it is established that the declared invention expressed in the invention claim proposed by the applicant does not comply with at least one requirement or condition of patentability cited in Paragraph One of this item or the application documents cited in Paragraph One of this item do not satisfy the requirements provided for by this paragraph, the federal executive body charged with intellectual property matters shall take a decision on refusing to grant a patent.

Until taking the decision on refusing to issue a patent the federal executive body charged with intellectual property matters shall send a notice to the applicant of the results of verification of patentability



of the invention declared with a proposal for presenting its arguments concerning the reasons set out in the notice. The applicant's reply containing arguments concerning the reasons set out in the notice may be presented within six months from the date when the notice is forwarded thereto.

2. The invention application shall be deemed withdrawn under the provisions of this chapter on the basis of a decision of the federal executive body charged with intellectual property matters.

3. The decisions of the federal executive body charged with intellectual property matters on issuance of the patent for an invention, on refusing to grant a patent for the invention or on deeming the invention application withdrawn may be challenged by the applicant by means of filing his/its objection with the cited federal executive body within seven months after forwarding by it to the applicant the corresponding decision or copies of the materials requested from the cited federal executive body which are opposed to the application and are cited in the decision on the refusal to issue the patent, provided that the applicant has requested copies of these materials within three months from the date of sending the decision adopted in respect of the invention application.

#### **Article 1388.** The Applicant's Right to Read Patent Materials

The applicant is entitled to read all the materials relating to invention patenting to which reference is made in the requests, reports, decisions, notices or other documents received by the applicant from the federal executive body charged with intellectual property matters, except for the application documents which are not available for familiarisation to any person (in particular of the application cited in the notice provided for by **Paragraph Two of Item 1 of Article 1383** of this Code), if data on such application are not published. Copies of the patent documents requested by the applicant from the said federal body shall be sent thereto within one month after receipt of the request.

#### **Article 1389.** The Renewal of Term in the Case of Laches Concerning the Expert Examination of an Invention Application

1. If the applicant misses the main term or extended term for filing documents or additional materials at the request of the federal executive body charged with intellectual property matters (**Item 3 of Article 1384** and **Item 5 of Article 1386**), the term for filing a petition for expert examination of an invention application on the merits thereof (Item 1 of Article 1386) and the term for filing an objection with the cited federal executive body (**Item 3 of Article 1387**) may be renewed by the said federal executive body, provided the applicant presents proof of a good reason for missing the term.

The terms provided for by **Item 3 of Article 1384**, **Items 1 and 6 of Article 1386** of this Code shall be renewed in compliance with the provisions of this chapter on the basis of a decision of the federal executive body charged with intellectual property matters on reversal of the decision on declaring the application withdrawn and renewing the term missed.

2. A petition for renewal of the term in case of laches may be filed by the applicant within 12 months after the expiry of the established term. The petition shall be filed with the federal executive body charged with intellectual property matters simultaneously with:

the documents or additional materials whose filing requires that the term be renewed or with a petition for extending the term for filing these documents or materials;

or with a petition for expert examination of the invention application on the merits thereof;

or with an objection with the federal executive body charged with intellectual property matters.

#### **Article 1390.** Expert Examination of a Utility Model Application

1. A formal expert examination shall be carried out in respect of a utility model application received by the federal executive body on intellectual property to verify the availability of the documents provided for by **Item 2 of Article 1376** of this Code, their compliance with established requirements and the date of application shall be set.

Prior to the completion of the formal examination, the applicant has the right to request from a scientific or educational organisation to conduct a preliminary information retrieval on an application for a useful model in relation to the declared useful model and a preliminary assessment of its patentability, about which he/she must notify the federal executive body on intellectual property.

A substantive examination of an application for a useful model shall be carried out after the completion of a formal examination of this application with a positive result.

The expert examination of an application for a useful model on the merits thereof includes the following:

verifying the compliance of the declared useful model with the requirements established by **Item 4 of Article 1349** of this Code and with the patentability conditions set out by **Paragraph One of Item 1, Items 5 and 6 of Article 1351** of this Code;

verifying the sufficiency of disclosing the essence of the declared useful model in the documents of the application provided for by **Subitems 1-4 of Item 2 of Article 1376** of this Code and presented as of the date when it is filed for making the useful model by an expert in the given field of technology;

conducting information retrieval in relation to the declared useful model and checking, taking into account its results, the compliance of the declared useful model with the conditions of patentability provided for by the **Paragraph Two of Item 1 of Article 1351** of this Code.

Results of the preliminary information retrieval and preliminary assessment of patentability contained in the report on preliminary information retrieval and the conclusion based on the results of the preliminary assessment of patentability conducted by a scientific or educational organisation, if they have been received by the specified federal body before a decision on the application to issue a patent or to refuse in the grant of a patent, or the recognition of the application as withdrawn was made, shall be taken into account when checking the patentability of the claimed useful model.

The information retrieval in respect of the objects cited in **Item 4 of Article 1349** and **Items 5 and 6 of Article 1351** of this Code shall not be conducted, and the federal executive body charged with intellectual property matters shall notify an applicant thereof.

2. If as a result of an expert examination of a utility model application on the merits thereof it is established that the declared utility model expressed in the invention claim proposed by the applicant does not refer to the objects cited in **Item 4 of Article 1349** of this Code, meets the conditions of patentability set out in **Article 1351** of this Code, and the essence of the declared invention in the application documents provided for by **Subitems 1-4 of Item 2 of Article 1376** of this Code and filed as of the date of its submission is disclosed fully enough for making the invention by an expert in the given area of technology, the federal executive body charged with intellectual property matters shall take a decision on issuing a patent for the utility model with this invention claim. The decision shall contain the date of filing the utility model application and the priority date of the invention.

If in the course of the expert examination of a utility model application on the merits thereof it is established that the declared object expressed in the claim proposed by the applicant does not comply with at least one requirement or condition of patentability cited in Paragraph One of this item or the application documents provided for by **Subitems 1-4 of Item 2 of Article 1376** of this Code and filed as of the date of its submission do not disclose regarding the utility model fully enough for making the utility model by an expert in the given area of technology, the federal executive body charged with intellectual property matters shall take a decision on refusing to grant a patent.

3. When conducting a formal expert examination of an application for a utility model and an expert examination of an application on its merits, the provisions provided for by **Items 2-5 of Article 1384, Item 6 of Article 1386, Items 2 and 3 of Article 1387, Articles 1388 and 1389** of this Code shall apply, respectively.

4. If, when considering by the federal executive body charged with intellectual property matters a utility model application, it is established that the data contained therein constitutes a state secret, the application documents shall be declassified in the procedure established by the legislation on state secrets. In so doing, the applicant shall be notified of the possibility of withdrawing the utility model application or of transforming it into an application for a secret invention. Consideration of the application shall be suspended pending receipt from the applicant of the corresponding application or pending the application's declassification.

#### **Article 1391. Expert Examination of an Industrial Design Application**

1. An industrial design application received by the federal executive body charged with intellectual

property matters shall be subjected to a formal expert examination to verify the availability of the documents cited in **Item 2 of Article 1377** of this Code and their compliance with established requirements.

If the result of the formal expert examination is positive, an expert examination of the industrial design application on the merits thereof shall be carried out, this including the following:

information retrieval concerning the declared industrial design to determine the generally accessible data subject to which the patentability thereof will be verified;

verifying compliance of the declared industrial design with the requirements established by **Article 1231.1, Item 4 of Article 1349** of this Code and with the patentability conditions set out by **Paragraph One of Item 1, Item 5 of Article 1352** of this Code;

verifying compliance of the declared industrial design with the conditions of the patentability provided for by **Paragraph Two of Item 1 of Article 1352** of this Code.

The information retrieval in respect of the objects cited in **Subitem 4 of Item 4 of Article 1349** of this Code shall not be conducted, and the federal executive body charged with intellectual property matters shall notify an applicant thereof.

**2.** If as a result of an expert examination of an industrial design application on the merits thereof it is established that the declared industrial design shown on images of an article's appearance does not refer to the objects cited in **Article 1231.1** or **Item 4 of Article 1349** of this Code and meets the conditions of patentability set out in **Article 1352** of this Code, the federal executive body charged with intellectual property matters shall take a decision on issuing a patent for the industrial design. The decision shall contain the date of filing the industrial design application and the priority date of the industrial design.

If in the course of the expert examination of a utility model application on the merits thereof it is established that the declared object does not comply with at least one requirement or condition of patentability cited in Paragraph One of this item, the federal executive body charged with intellectual property matters shall take the decision on refusing to grant a patent.

**3.** When conducting a formal expert examination of an application for a utility model and an expert examination of an application on its merits, the provisions stipulated by **Items 2-5 of Article 1384, Item 6 of Article 1386, Items 2 and 3 of Article 1387, Articles 1388 and 1389** of this Code shall apply, respectively.

#### **Article 1392.** The Temporary Legal Protection of an Invention and of an Industrial Sample

**1.** An invention for which an application has been filed with the federal executive body charged with intellectual property matters shall enjoy temporary legal protection starting from the date of publication of information on the application (**Item 1 of Article 1385**) until the date of publication of information on the issuance of a patent (**Article 1394**), within the scope of the invention claim published but not exceeding the scope defined in the claim contained in the decision of the said federal body on the issuance of the patent for the invention.

An industrial sample in respect of which an application is filed with the federal executive body in charge of intellectual property as from the date of publishing data on the application (**Item 4 of Article 1385**) and up to the date of publishing data on issuance of the patent (**Article 1394**) shall be provided with temporary legal protection to the extent determined by an aggregate of the essential features of the industrial sample reflected in the images of the article's exterior contained in the published application for the industrial sample but at most to the extent to be determined by an aggregate of the essential features reflected in the images of the article's exterior contained in the decision of the cited federal body on issuance of the patent for an industrial sample.

**2.** The temporary legal protection shall be deemed non-existent if the application for an invention or for an industrial sample has been withdrawn or deemed withdrawn or if in respect of the invention application a decision has been taken to refuse to issue a patent and the possibility of appealing against this decision envisaged by the present Code has been exhausted.

**3.** A person that uses a declared invention or industrial sample during the period specified in **Item 1** of the present article shall pay monetary remuneration to the patent holder after a patent is received. The amount of the remuneration shall be set by agreement of the parties or, in the case of a dispute, by a court.

#### 4. The Registration of an Invention, Utility Model or Industrial Design, and the Issuance of a Patent

**Article 1393.** The Procedure for State Registration of an Invention, Utility Model or Industrial Design, and the Issuance of a Patent

1. On the basis of the decision on issuing a patent for an invention, utility model or industrial design adopted in the procedure established by **Item 1 of Article 1387, Item 2 of Article 1390, Item 2 of Article 1391 or Article 1248** of this Code, the federal executive body charged with intellectual property matters shall enter the invention, utility model or industrial design into the relevant state register, i.e., the State Register of Inventions of the Russian Federation, the State Register of Utility Models of the Russian Federation, and the State Register of Industrial Designs of the Russian Federation, and it shall issue a patent for the invention, utility model or industrial design.

A patent for an invention, except for patents for secret inventions, a patent for a utility model or a patent for an industrial design, shall be issued in the form of an electronic document and, upon the request of an applicant, on paper. If such a patent is applied for in the name of several persons, one patent shall be granted to them.

2. The state registration of an invention, utility model or industrial design and the issuance of a patent shall be completed if the relevant patent duty has been paid. If an applicant has not paid the patent duty in the established procedure, the invention, utility model or industrial design shall not be registered, and the relevant application shall be deemed withdrawn on the basis of a decision of the federal executive body charged with intellectual property matters.

Should the decision on issuance of a patent for an invention, utility model or industrial design be disputed in the procedure established by **Article 1248** of this Code, the decision of declaring the application withdrawn shall not be taken.

3. The form of a patent for an invention, utility model or industrial design, and the composition of the details available therein shall be established by the **federal executive body** charged with normative legal regulation in the area of intellectual property.

4. The federal executive body charged with intellectual property matters shall enter on the basis of an application of the right holder in a patent issued for an invention, utility model or industrial design and/or in the relevant state register the amendments related to the data on the right holder and/or author, in particular to the denomination or name of the right holder, the location or residence thereof, the author's name and address for correspondence, as well as the amendments aimed at correcting clear and technical errors.

5. The federal executive body charged with intellectual property matters shall publish information in its gazette about any amendments made to entries in the state registers.

**Article 1394.** The Publication of Information on the Issuance of a Patent for an Invention, Utility Model or Industrial Design

1. The federal executive body charged with intellectual property matters shall publish information in its official bulletin on the issuance of a patent for an invention or utility model, including the name of the author (unless the author has refused to be mentioned as such), the name or denomination of the holder of the patent, the title and the invention or utility model claim.

The federal executive body charged with intellectual property matters shall publish in its official bulletin data on the issuance of a patent for an industrial design, including the name of the author (unless the author has refused to be mentioned as such), the name or denomination of the holder of the patent, the name of the industrial design, or an image of an article giving in full an idea about all the essential features of the industrial design.

The **composition** of the data to be published shall be defined by the federal executive body charged with normative legal regulation in the area of intellectual property.

2. Any person has a right to read the documents of the application, reports on preliminary information retrieval and information retrieval in relation to the claimed invention or useful model and a conclusion on the results of a preliminary assessment of their patentability and the report on information retrieval in respect of the declared industrial design, as well as with other documents of the federal executive

body for intellectual property upon an application in connection with the registration of an invention, utility model or industrial design after the publication (in accordance with this Article) of the information on the issuance of the patent for the invention, useful model or industrial design.

The procedure for reading the specified documents shall be established by the authorised federal executive body which carries out the legal and regulatory framework in the sphere of intellectual property.

**Article 1395.** Patenting Inventions or Utility Models in Foreign States and in International Organisations

1. A patent application for an invention or utility model created in the Russian Federation may be filed in a foreign state or with an international organisation upon the expiry of six months after the filing of the relevant application with the federal executive body charged with intellectual property matters, unless within the said term the applicant is notified that the application comprises information deemed a **state secret**. An invention or utility model application may be filed earlier than indicated above but after completion of a verification of the application's comprising information deemed a state secret at the applicant's request. The procedure for carrying out such verification shall be established by the Government of the Russian Federation.

2. The patenting under the Patent Cooperation Treaty or the Eurasian Patent Convention of an invention or utility model created in the Russian Federation is admissible without prior filing of a relevant application with the federal executive body charged with intellectual property matters if the application has been filed in accordance with the Patent Cooperation Treaty (international application) with the federal executive body charged with intellectual property matters as a receiving department and in that application the Russian Federation is referred to as the state in which the applicant intends to obtain a patent, and the Eurasian application has been filed through the federal executive body charged with intellectual property matters.

In respect of the relevant application serving as a basis for seeking the priority for an international application filed with the federal executive body charged with intellectual property matters, the provisions of **Paragraph Two of Item 3 of Article 1381** of this Code shall not apply.

**Article 1396.** The International and Eurasian Applications Having the Effect of the Applications Envisaged by the Present Code

1. The federal executive body charged with intellectual property matters shall commence considering an international application for an invention or utility model, which is filed in accordance with the Patent Cooperation Treaty and in which the Russian Federation is referred to as the state in which the applicant intends to obtain a patent for the invention or utility model upon the expiry of 31 months after the priority date sought in the international application on condition of filing with the cited federal executive body an application for issuance of a patent for the invention or utility model. At the applicant's request the international application shall be considered before the expiry of this time period.

Filing with the federal executive body charged with intellectual property matters an application for issuance of a patent for an invention or utility model may be replaced by the presentation of the application in Russian contained in the international application or of a translation of such application into Russian.

Unless the said documents are filed within the established term, the effect of the international application in accordance with the Patent Cooperation Treaty shall be terminated in respect of the Russian Federation.

The time period for filing the cited documents missed by an applicant may be restored by the federal executive body charged with intellectual property matters on condition that the reasons for failure to observe are specified.

2. The consideration of a Eurasian invention application having under the Eurasian Patent Convention the effect of an invention application envisaged by this Code shall be commenced from the day when the federal executive body charged with intellectual property matters receives an attested copy of the Eurasian application from the Eurasian Patent Department.

3. The publication in the Russian language of an international application by the International Office of the World Organisation Intellectual Property Organisation under the Patent Cooperation Treaty or the

publication of a Eurasian application by the Eurasian Patent Department in accordance with the Eurasian Patent Convention shall replace the publication of information on an application envisaged by **Article 1385** of the present Code.

**Article 1397.** A Eurasian Patent and a Patent of the Russian Federation for Identical Inventions

1. If a Eurasian patent and a patent of the Russian Federation for identical inventions or an identical invention and utility model having the same priority date are owned by different patent holders, such inventions or the invention and utility model may only be used with the observance of the rights of all patent holders.

2. If a Eurasian patent and a patent of the Russian Federation for identical inventions or an identical invention and utility model having the same priority date are owned by the same person, that person may grant a right to any person to use the inventions or the invention and utility model under licence contracts concluded on the basis of these patents.

## § 6. Terminating and Reinstating a Patent

**Article 1398.** Declaring Invalid a Patent for an Invention, Utility Model or Industrial Design

1. A patent for an invention, utility model or industrial design may be declared invalid in full or in part if:

1) the invention, utility model or industrial design does not comply with the conditions of patentability established by this Code or with the requirements provided for by **Item 4 of Article 1349** of this Code, as well as if an industrial design does not comply with the requirements provided for by **Article 1231.1** of this Code;

2) the non-compliance of the documents of the application for an invention or utility model presented as of the date of its filing with the requirement for disclosing the essence of the invention or utility model fully enough for making the invention or utility model by an expert in a given field of technology;

3) the invention or utility model claim contained in the decision on issuance of the patent contains features which are not disclosed as of the date of filing the application in the documents presented as of this date (**Item 2 of Article 1378**) or the materials attached to the decision on issuance of a patent for an industrial design contain the articles' images comprising the essential features of the industrial design that lack the images presented as of the date of filing the application or the articles' images from which the essential features of the industrial design available on the images presented as of the date of filing the application are deleted (**Item 3 of Article 1378**);

4) the patent has been issued when there were several applications for identical inventions, utility models or industrial designs having one and the same priority date, in breach of the conditions envisaged by **Article 1383** of this Code;

5) the patent has been issued with an indication therein as the author or patent holder of a person not being such in accordance with this Code or without an indication in the patent as the author or patent holder of the person being such in accordance with this Code.

2. The issuance of a patent for an invention, utility model or industrial design may be challenged by any person that has learned about the irregularities set out in **Subitems 1-4 of Item 1** of this article, by means of filing an objection with the federal executive body charged with intellectual property matters within its effective term fixed by **Items 1-3 of Article 1363** of this Code.

The issuance of a patent for an invention, utility model or industrial design may be challenged with court by any person that has learned about the irregularities set out in **Subitem 5 of Item 1** of this article within its effective term fixed by **Items 1-3 of Article 1363** of this Code.

The issuance of a patent for an invention, utility model or industrial design may also be challenged with court by any person concerned upon the expiry of the effective term thereof on the grounds and in the procedure established by Paragraphs One and Two of this item.

3. During the time period while a patent for an invention is being disputed, the patent holder is entitled to file an application for transforming a patent for an invention into a patent for a utility model, if the

effective term of the patent for the invention has not exceeded the effective term of the patent for the utility model provided for by **Item 1 of Article 1363** of this Code. The federal executive body charged with intellectual property matters shall allow an application for transforming a patent for an invention into a patent for a utility model on condition of declaring the patent for the invention fully ineffective and of the utility model's compliance with the patentability requirements and conditions for utility models which are provided for by **Item 4 of Article 1349, Article 1351, Subitem 2 of Item 2 of Article 1376** of this Code. The transformation shall not be effected, if a patent for an invention has been issued on the basis of the application in respect of which the proposal has been received to make a contract of the patent's alienation in the procedure established by **Item 1 of Article 1366** of this Code, and this application is not withdrawn in compliance with **Item 3 of Article 1366** of this Code as of the date when the application for the patent's transformation is filed.

In the event of transforming a patent for an invention into a patent for a utility model, the priority and date of filing the application shall be preserved.

**4.** A patent for an invention, utility model or industrial design shall be deemed invalid in full or in part under the decision of the federal executive body charged with intellectual property matters adopted in accordance with **Items 2 and 3 of Article 1248** of this Code or a court's decision that has come into force.

If a patent is deemed partially invalid, a new patent shall be issued for an invention, utility model or industrial design.

In the event of allowing an application for transforming a patent for an invention into a patent for utility model, a patent for the utility model shall be issued.

**5.** A patent for an invention, utility model or industrial design that has been declared invalid in full or in part shall be annulled from the date when the application for the patent was filed.

**6.** The licence contracts concluded on the basis of a patent for an invention, utility model or industrial design that was later deemed invalid shall remain effective in as much as they have been discharged as of the time when the decision on the patent's invalidity was issued.

**7.** Declaring a patent for an invention, utility model or industrial design as invalid shall mean the revocation of the decision of the federal executive body charged with intellectual property matters on the issuance of the patent for the invention, utility model or industrial design (**Article 1387**) and the annulment of the entry made in the relevant state register (**Item 1 of Article 1393**).

#### **Article 1399.** The Early Termination of a Patent for an Invention, Utility Model or Industrial Design

A patent for an invention, utility model or industrial design shall be terminated before the due date: on the basis of an application filed by the holder of the patent with the federal executive body charged with intellectual property matters, as of the date of receipt of the application. If the patent is issued for a group of inventions, utility models or industrial designs, and the patent holder's application is not filed in respect of all the objects of patent rights included in the group, the patent shall be terminated only in as much as it concerns the inventions, utility models or industrial designs indicated in the application;

if a **patent duty** was not paid when due for the maintenance of the patent for the invention, utility model or industrial design in effect, upon the expiry of the term established for the payment of the patent duty for the maintenance of the patent in effect.

#### **Article 1400.** Reinstating a Patent for an Invention, Utility Model or Industrial Design

**1.** A patent for an invention, utility model or industrial design terminated due to the fact that no patent duty has been paid within the **established term** when due for the maintenance of the patent in effect may be reinstated by the federal executive body charged with intellectual property matters at the petition of the person who owned the patent or of the legal successor thereof. A petition for reinstatement of the patent may be filed with the said federal body within three years after the expiry of the **patent duty** payment term but before the expiry of the effective term of the patent envisaged by this Code.

**2.** The federal executive body charged with intellectual property matters shall publish information in its gazette on the reinstatement of the patent for the invention, utility model or industrial design.

**3.** A person that started to use an invention, utility model or industrial design within the period between the termination of the patent for the invention, utility model or industrial design and the date of

publication in the gazette of the federal executive body charged with intellectual property matters of information on the reinstatement of the patent or that made the necessary preparations for it within the said period shall retain the right of further free-of-charge use thereof without the broadening of the scope of such use (right of after-use).

4. The right of after-use may only be transferred to another person jointly with the enterprise where an invention or a solution that only differs from the invention by the equivalent features (**Item 3 of Article 1358**), a utility model or industrial design was used or preparations for it were made.

## § 7. The Details of the Legal Protection and Use of Secret Inventions

### **Article 1401.** Filing and Considering a Patent Application for a Secret Invention

1. The filing of a patent application for a secret invention (a secret invention application), the consideration and the handling of such application shall take place observing the **legislation** on state secrets.

2. Applications for secret inventions for which the secrecy classifications "special importance" or "top secret" have been established, and also the secret inventions deemed means of weaponry and military machinery and methods and means in the area of intelligence, counter-intelligence and operative search activities and for which the secrecy classification "secret" has been established shall be filed depending on the their topic with the federal executive power bodies, or the State Atomic Power Corporation Rosatom, the "Roscosmos" State Corporation on Outer-Space Activity authorised by the Government of the Russian Federation (authorised bodies). Applications for other secret inventions shall be filed with the federal executive body charged with intellectual property matters.

3. If it has been established when the federal executive body charged with intellectual property matters considered an invention application that the information contained therein is classified as a state secret, such application shall be classified as secret in the procedure established by the **legislation** on state secrets, and it shall be deemed a secret invention application.

It is prohibited to classify as secret an application filed by a foreign citizen or a foreign legal entity.

4. When a secret invention application is being examined, the provisions of **Articles 1384, 1386-1389** of the present Code shall be applicable, respectively. In this case no information shall be published concerning the application.

5. While establishing the novelty of a secret invention, the state of the art (**Item 2 of Article 1350**) shall also include -- if having an earlier priority -- the secret inventions patented in the Russian Federation and the secret inventions for which certificates of authorship were issued in the USSR, unless the degree of secrecy established for these inventions exceeds that of the invention whose novelty is being assessed.

6. An objection to a decision taken on a secret invention application by the authorised body shall be considered in the procedure established by it. A decision taken on such objection may be challenged in court.

7. The secret invention applications are not subject to the provisions of **Article 1379** of the present Code on the transformation of an invention application into a utility model application.

### **Article 1402.** The State Registration of a Secret Invention and the Issuance of a Patent for It. Propagating Information on a Secret Invention

1. The state registration of a secret invention in the State Register of Inventions of the Russian Federation and the issuance of a patent for the secret invention shall be carried out by the federal executive body charged with intellectual property matters, or if the decision on the issuance of a patent for the secret invention was taken by an authorised body, by that body. The authorised body that has registered a secret invention and issued a patent for a secret invention shall notify the federal executive body charged with intellectual property matters accordingly.

The authorised body that has registered a secret invention and has issued a patent for it shall make amendments relating to the correction of obvious and technical errors in the patent for the secret invention and/or the State Register of Inventions of the Russian Federation.

2. No information shall be published on applications and patents for secret inventions and also on the amendments relating thereto made to the State Register of Inventions of the Russian Federation. Information



about such patents shall be passed in accordance with the **legislation** on state secrets.

**Article 1403.** Changing the Degree of Secrecy and Declassifying Inventions

1. A change in the degree of secrecy and the declassification of inventions, and also the change and removal of secrecy stamps from the documents of a secret invention application or patent shall take place in the procedure established by the **legislation** on state secrets.

2. When the degree of secrecy of an invention is stepped up, the federal executive body charged with intellectual property matters shall hand over the documents of the application for the secret invention according to their topic to the relevant authorised body. Further consideration of the application whose examination has not been completed by the said federal body shall be the responsibility of the authorised body. When the degree of secrecy of an invention is stepped down, further examination of the application for the secret invention shall be carried out by the same empowered body that had been considering it before.

3. When an invention is declassified, the authorised body shall hand over the declassified application documents it has to the federal executive body charged with intellectual property matters. Further examination of the application of which examination has not been completed by the empowered body shall be the responsibility of the said federal body.

**Article 1404.** Deeming as Invalid a Secret Invention Patent Issued by an Authorised Body

An objection against the issuance by an authorised body of a patent for a secret invention on the grounds set out in **Subitems 1-4 of Item 1 of Article 1398** of the present Code shall be filed with the authorised body and it shall be considered in the procedure established by it. A decision of the authorised body taken on the objection shall be confirmed by the head of that body, and it shall enter into force on the day when it is confirmed, and it may be challenged in court.

**Article 1405.** The Exclusive Right to a Secret Invention

1. The use of a secret invention and the disposal of an exclusive right to a secret invention shall take place in the observance of the **legislation** on state secrets.

2. The transfer of the exclusive right under a contract of alienation of a patent and granting of the right to use a secret invention under licence contract are subject to state registration with the agency that issued the patent for the secret invention or with the legal successor thereof or, in the absence of a legal successor, with the federal executive body charged with intellectual property matters.

3. In respect of a secret invention, it is prohibited to make a public offer to conclude a contract of alienation of a patent and an open licence statement envisaged by **Item 1 of Article 1366** and **Item 1 of Article 1368** of the present Code, respectively.

4. The compulsory licence envisaged by **Article 1362** of the present Code shall not be granted in respect of a secret invention.

5. The following shall not be deemed a breach of the exclusive right of the holder of a patent for a secret invention: the actions envisaged by **Article 1359** of the present Code, and also the use of the secret invention by a person who on legal grounds did not know or could not know of the existence of a patent for the invention. After the invention is declassified, or after the said person is notified by the holder of the patent that the patent for the invention exists, that person shall stop using the invention or conclude a licence contract with the holder of the patent, except for cases when a right of prior use existed.

6. The exclusive right to a secret invention is not subject to levy of execution.

## **§ 8. Protection of the Rights of Authors and Patent Holders**

**Article 1406.** Disputes Relating to the Protection of Patent Rights

1. Disputes relating to the protection of patent rights shall be considered by a court. Such disputes include, without limitation, disputes:

- 1) on the authorship of an invention, utility model or industrial design;
- 2) on the establishment of the patent holder;

- 3) on a breach of the exclusive right to an invention, utility model or industrial design;
- 4) on conclusion, performance, amendment and termination of contracts of assignment of an exclusive right (alienation of a patent) and licence contracts for the use of an invention, utility model or industrial design;
- 5) on a right of prior use;
- 6) on a right of after-use;
- 7) on the amount of, term and procedure for paying, a fee;
- 8) **abrogated** from October 1, 2014.

**2.** In the cases specified in **Articles 1387, 1390, 1391, 1398, 1401 and 1404** of the present Code the protection of patent rights is carried out on administrative lines in accordance with **Items 2 and 3 of Article 1248** of the present Code.

**Article 1406.1.** Liability for Breaching the Exclusive Right to an Invention, Utility Model or Industrial Design

Should the exclusive right to an invention, utility model or industrial design be violated, the author or other right holder, along with the use of other applicable remedies and punitive sanctions established by this Code (**Articles 1250, 1252 and 1253**), are entitled to demand at the choice thereof of the violator payment of the following compensation instead for damages:

- 1) in an amount from 10,000 to 5,000,000 roubles as determined at the discretion of the court on the basis of the nature of the violation;
- 2) in the twofold cost of the right to use the invention, useful model or industrial design, determined on the basis of the price normally charged under comparable circumstances for the legal use of the invention, useful model or industrial design in the way that the infringer has used.

**Article 1407.** The Publication of a Court's Decision on Infringement of a Patent

In accordance with **Subitem 5 of Item 1 of Article 1252** of the present Code a patent holder is entitled to demand that a court decision on illegal use of an invention, utility model or industrial design or another infringement of his/its rights be published in the gazette of the federal executive body charged with intellectual property matters.

## **Chapter 73. The Right to a Breeding Achievement**

### **§ 1. Basic Provisions**

**Article 1408.** Rights to Breeding Achievements

**1.** The author of a breeding achievement that complies with the conditions for provision of legal protection set out in the present Code (breeding achievement) owns the following intellectual rights:

- 1) an exclusive right;
- 2) the right of attribution.

**2.** In the cases set out in the present Code, the author of a breeding achievement also has other rights, including a right to obtain a patent, a right to give a name to the breeding achievement, a right to a fee for a service breeding achievement.

**Article 1409.** The Effect of an Exclusive Right to a Breeding Achievement on the Territory of the Russian Federation

The following shall be recognised on the territory of the Russian Federation: an exclusive right to a breeding achievement certified by a patent issued by the federal executive body charged with breeding achievement matters, or a patent effective on the territory of the Russian Federation in accordance with international treaties of the Russian Federation.

**Article 1410.** The Author of a Breeding Achievement

The author of a breeding achievement is the citizen by whose creative labour the breeding achievement has been created, developed or discovered. Unless otherwise proven, the person specified as the author in a patent application for a breeding achievement is deemed the author of the breeding achievement.

**Article 1411.** The Co-Authors of a Breeding Achievement

1. Citizens who have created, developed or discovered a breeding achievement by their joint labour are deemed co-authors.

2. Each of the co-authors is entitled to use the breeding achievement at his/its own discretion, except as otherwise envisaged by agreement between them.

3. The relationships of the co-authors relating to the distribution of incomes from the use of the breeding achievement and to the disposing of an exclusive right to the breeding achievement are subject to the Rules of **Item 3 of Article 1229** of the present Code, respectively.

The co-authors shall jointly hold the right to obtain a patent for the breeding achievement.

4. Each of the co-authors is entitled to take measures on his/its own to protect his/its rights.

**Article 1412.** The Objects of Intellectual Rights to Breeding Achievements

1. The objects of intellectual rights to breeding achievements are the plant varieties and animal breeds registered in the State Register of Protected Breeding Achievements if these results of intellectual activity meet the requirements established by the present Code as applicable to such breeding achievements.

2. A plant variety is a group of plants, irrespective of protectability, defined by the traits characteristic of a given genotype or combination of genotypes, and differs from other groups of plants of the same botanical taxon by one or several traits.

A variety may be represented by one or several plants, a part or several parts of a plant, provided the part or parts can be used to reproduce entire plants of the variety.

A clone, line, first-general hybrid and population are protected categories of a plant variety.

3. For animals the breed is a group of animals that, irrespective of protectability, possesses genetically-specific biological and morphological properties and traits, some of these being specific to the given group and distinguishing it from other groups of animals. A breed may be represented by a female or male individual animal or by breeding material, i.e., by animals (pedigree animals), their gametes or zygotes (embryos).

For animals, the protected categories of breed are the type and cross of lines.

**Article 1413.** The Conditions of Protectability of a Breeding Achievement

1. A patent shall be issued for a breeding achievement that meets the protectability criteria, and concerns the botanical and zoological genera and species, a list of which is established by the federal executive body charged with normative legal regulation in the area of agriculture.

2. The criteria of protectability of a breeding achievement are as follows: novelty (**Item 3** of the present article), distinctness (**Item 4** of the present article), uniformity (**Item 5** of the present article) and stability (**Item 6** of the present article).

3. A plant variety and an animal breed are deemed novel if when a patent application is filed the seeds or breeding material of this breeding achievement had neither been on sale nor had been otherwise transferred by the breeder, his successor or with their consent to other persons for the breeding achievement to be used:

1) on the territory of the Russian Federation more than one year before the said date;

2) on the territory of another state more than four years, or for varieties of vine, arboreal decorative and arboreal fruit cultures, more than six years before the said date.

4. A breeding achievement shall be clearly different from any other generally known breeding achievement in existence as of the time of filing of a patent application.

A generally-renowned breeding achievement is a breeding achievement about which information is available in official catalogues or reference information stock or which has a precise description in a

published material.

The filing of a patent application also makes a breeding achievement generally known starting from the date of filing of the application, provided a patent has been issued for the breeding achievement.

**5.** Plants of the same variety and animals of the same breed shall be sufficiently uniform in terms of their traits, with account taken of individual deviations that may take place due to the specific features of reproduction.

**6.** A breeding achievement shall be deemed stable if its basic traits remain unchanged after several reproduction cycles or in the case of a special reproduction cycle, at the end of each reproduction cycle.

#### **Article 1414.** State Registration of a Breeding Achievement

The exclusive right to a breeding achievement shall be recognised and protected on the condition of state registration of the breeding achievement in the State Register of Protected Breeding Achievements, according to which the federal executive body charged with breeding achievements matters shall issue a patent to the applicant for the breeding achievement.

#### **Article 1415.** A Patent for a Breeding Achievement

**1.** A patent for a breeding achievement shall certify the priority of the breeding achievement, authorship and the exclusive right to the breeding achievement.

**2.** The scope of the protection of intellectual rights to the breeding achievement granted under the patent is defined by the entirety of significant traits recorded in a description of the breeding achievement.

#### **Article 1416.** The Certificate of Authorship

The author of a breeding achievement is entitled to obtain a certificate of authorship that is issued by the federal executive body charged with breeding achievements matters and certifies authorship.

#### **Article 1417.** State Incentives for the Creation and Use of Breeding Achievements

The state shall provide incentives for the creation and use of breeding achievements, and it shall provide the authors thereof and other holders of exclusive rights to breeding achievements (licensor) and the licensees using the breeding achievements with privileges in accordance with the legislation of the Russian Federation.

## **§ 2. Intellectual Rights to Breeding Achievements**

#### **Article 1418.** The Right of Attribution in Respect of a Breeding Achievement

The right of attribution, i.e., the right of being recognised as the author of a breeding achievement, is unalienable and unassignable, for instance when the exclusive right to the breeding achievement is assigned or transferred to another person or when a right to use it is granted to another person. The waiver of this right is null and void.

#### **Article 1419.** The Right to Name a Breeding Achievement

**1.** The author is entitled to give a name to the breeding achievement.

**2.** The name of the breeding achievement shall allow the identification of the breeding achievement, it shall be brief and different from the names of existing breeding achievements of the same or similar botanical or zoological species. It shall neither be made up of figures only nor be misleading as to the properties, origin, significance of the breeding achievement, the personality of its author, nor be conflicting with the principles of humanity and moral principles.

**3.** The name of the breeding achievement suggested by the author or on the consent thereof by another person (applicant) filing a patent application shall be approved by the federal executive body charged with breeding achievement matters.

If the name suggested does not meet the requirements established by **Item 2** of the present article the applicant shall suggest another name within 30 days at the request of the said federal body.

Unless within the said term the applicant suggests another name meeting the said requirements or disputes, the refusal to approve the name of the breeding achievement in the court, the federal executive body charged with breeding achievements matters shall be entitled to refuse to register the breeding achievement.

**Article 1420. The Right to Obtain a Patent for a Breeding Achievement**

1. A right to obtain a patent for a breeding achievement is initially owned by the author of the breeding achievement.

2. A right to obtain a patent for a breeding achievement may be transferred to another person (successor) or be assigned thereto in the cases and on the grounds established by law, for instance, in the line of universal succession or under a contract, including a labour contract.

3. A contract of alienation of a right to obtain a patent for a breeding achievement shall be concluded in writing. Non-observance of the written form shall cause the invalidity of the contract.

4. Unless otherwise established by agreement of the parties to a contract of alienation of a right to obtain a patent for a breeding achievement, the risk of unprotectability is borne by the acquirer of the right.

**Article 1421. The Exclusive Right to a Breeding Achievement**

1. The licensor owns the exclusive right to use a breeding achievement in accordance with **Article 1229** of the present Code in the manner specified in **Item 3** of the present article. The patent holder may dispose of the exclusive right to the breeding achievement.

2. The exclusive right to a breeding achievement also extends to plant material, i.e., to a plant or a part thereof used for purposes other than the purposes of reproducing a variety, to commercial animals, i.e., animals used for purposes other than the purposes of reproducing a breed, which have been obtained from seeds or from pedigree animals respectively if such seeds or pedigree animals have been introduced into civil-law transactions without the permission of the licensor. In this case, seeds shall mean a plant or its part used to reproduce the variety.

3. The use of a breeding achievement means the carrying out of the following actions with seeds and breeding materials of the breeding achievement:

- 1) production and reproduction;
- 2) bringing to planting condition for subsequent multiplication;
- 3) offering for sale;
- 4) sale and other methods of introduction into civil-law transactions;
- 5) exportation from the territory of the Russian Federation;
- 6) importation onto the territory of the Russian Federation;
- 7) storage for the purposes set out in **Subitems 1-6** of the present item.

4. Also the exclusive right to the breeding achievement extends to seeds and breeding materials which:

essentially inherit the characters of another protected (initial) plant variety or animal breed, unless the protected variety or breed, of its own, is a breeding achievement essentially inheriting the characters of other breeding achievements;

differ not obviously from a protected plant variety or animal breed;

require the use of a protected plant variety several times to produce seeds.

The following shall be deemed a breeding achievement that essentially inherits the characters of another protected (initial) breeding achievement: a breeding achievement which has an obvious distinction from the initial one and which:

inherits the most essential characteristics of the initial breeding achievement or of a breeding achievement which, on its own, inherits the essential characteristics of the initial breeding achievement while retaining the basic traits reflecting the genotype or the combination of genotypes of the initial breeding achievement;

corresponds to the genotype or the combination of genotypes of the initial breeding achievement, except for the deviations caused by the use of such methods as individual selection from the initial plant variety or animal breed, selection of an induced mutant, back-cross and genetic engineering.

**Article 1422. Actions Not Deemed an Infringement of the Exclusive Right to a Breeding Achievement**

The following are not deemed an infringement of the exclusive right to a breeding achievement:

- 1) actions carried out to meet personal, family, household or other needs not relating to entrepreneurial activity, unless the purpose of such activities is profit-making or earnings;
- 2) actions committed for scientific-research or experimental purposes;
- 3) the use of the protected breeding achievement as initial material for creating other plant varieties and animal breeds, and also the actions in respect of these created varieties and breeds specified in **Item 3 of Article 1421** of the present Code, except for the cases described in **Item 4 of Article 1421** of the present Code;
- 4) the use of a vegetable material produced on a farm for two years as seeds for growing on the area of the farm a plant type available on the list of genera and species established by the Government of the Russian Federation. The provision, provided for by this Subitem, shall apply to individual entrepreneurs and legal entities classified in accordance with the Law as small and medium-sized businesses, as well as citizens;
- 5) the reproduction of commercial animals for use on the given farm;
- 6) any actions involving seeds, vegetable materials, breeding materials and commercial animals which have been introduced into civil-law transactions by a patent holder or by other persons on his/its consent, except for:
  - the subsequent multiplication of the plant variety and animal breed;
  - the export from the territory of the Russian Federation of the vegetable materials or commercial animals that allow the multiplication of the plant type or animal breed to a country where this genus or species is not protected, except for exportation for the purpose of processing for subsequent consumption.

**Article 1423. The Compulsory Licence for a Breeding Achievement**

**1.** Upon the expiry of three years after the issuance of a patent for a breeding achievement, any person willing and ready to use the breeding achievement, provided the holder of the patent has refused to conclude a licence contract for the production or sale of seeds, breeding material on terms that comply with the prevailing practices, is entitled to file a complaint with a court claiming a compulsory simple (non-exclusive) licence from the holder of the patent for the use of the breeding achievement on the territory of the Russian Federation. In his claim, the person shall indicate the terms he has offered for the granting of such licence, including the scope of use of the breeding achievement, the rate of, and the procedure and term for, payment.

Unless the patent holder proves that there is a good reason for refusing to grant to the applicant a right to use the breeding achievement, the court shall take a decision on granting the said licence and on the terms for the grant thereof. The sum total of payments for the licence shall be set by the court's decision at least at a licence price defined in comparable circumstances.

**2.** On the basis of the court's decision envisaged by **Item 1** of the present article, the federal executive body charged with breeding achievements matters shall carry out the state registration of granting the right to use a breeding achievement under the terms of the compulsory simple (non-exclusive) licence.

**3.** On the basis of the court's decision on granting the compulsory simple (non-exclusive) licence, the patent holder shall provide the holder of the licence for a payment and on the terms acceptable thereto seeds or breeding materials respectively in quantities sufficient for the use of the compulsory simple (non-exclusive) licence.

**4.** The compulsory simple (non-exclusive) licence may be terminated in a judicial procedure on the complaint of the patent holder if the holder of the licence is in breach of the terms on which the licence has been granted, or if the circumstances due to which the licence was granted have changed so that if they were in existence as of the time when the licence was granted it would not have been granted at all or it would have been granted on significantly different terms.

**Article 1424. The Effective Term of the Exclusive Right to a Breeding Achievement**

1. The effective term of the exclusive right to a breeding achievement and of a patent certifying such right shall be counted from the date of state registration of the breeding achievement in the State Register of Protected Breeding Achievements, and it is equal to 30 years.

2. For varieties of vine, arboreal decorative, fruit cultures and forest varieties, including their stock, the effective term of the exclusive right and of a patent certifying such right is equal to 35 years.

**Article 1425.** The Passing of a Breeding Achievement into the Public Domain

1. Upon the expiry of the exclusive right the breeding achievement shall pass into the public domain.

2. A breeding achievement that has passed into the public domain may be freely used by any person without consent or permission and without a fee being paid for its use.

### § 3. Disposing of the Exclusive Right to a Breeding Achievement

**Article 1426.** The Contract of Alienation of the Exclusive Right to a Breeding Achievement

Under a contract of alienation of the exclusive right to a breeding achievement (contract of alienation of a patent) one party (patent holder) assigns or undertakes to assign his/its exclusive right to the breeding achievement in full to the other party being the acquirer of the exclusive right (the acquirer of the patent).

**Article 1427.** A Public Offer to Conclude a Contract of Alienation of a Patent for a Breeding Achievement

1. While filing a patent application for a breeding achievement, the applicant being the author of the breeding achievement may attach to the documents of the application his/its application to the effect that if a patent is issued he/it undertakes to conclude a contract of alienation of the patent on terms complying with the prevailing practices with any citizen of the Russian Federation or a Russian legal entity that is the first to express his/its wish to do so and to notify the holder of the patent and the federal executive body charged with breeding achievements matters. If such an application is filed, the patent duties envisaged by the present Code shall be charged to the applicant neither for the patent application for the breeding achievement nor for the patent issued under such application.

The federal executive body charged with breeding achievement matters shall publish information about said application in its gazette.

2. A person that has concluded a contract of alienation of the patent with the patent holder on the basis of his/its application specified in **Item 1** of the present article shall pay all the patent duties from which the applicant (patent holder) has been relieved. Henceforth, patent duties shall be payable in the established procedure.

The state registration of transfer of the exclusive right to the acquirer under a contract of alienation of a patent shall be effected by the federal executive body charged with breeding achievement matters on condition of paying the patent duties, which the applicant (patent holder) has been relieved of.

3. Unless, within two years after the publication of information on the issuance of the patent in respect of which the application specified in **Item 1** of the present article has been filed the federal executive body charged with breeding achievement matters receives a notice in writing of somebody's wish to conclude a contract of alienation of the patent, the patent holder may file a petition for withdrawal of his/its application with the said federal body. In this case the patent duties envisaged by the present Code from which the applicant (patent holder) has been relieved shall become payable. Henceforth, patent duties shall be payable in the established procedure.

The federal executive body charged with breeding achievement matters shall publish information on the withdrawal of the said application in the gazette.

**Article 1428.** The Licence Contract Granting the Right to Use a Breeding Achievement

Under the licence contract one party being the grantor of a patent (licenser) grants or undertakes to grant to the other party being a user (licensee) the right to use the breeding achievement certified by the patent, within the scope established by the contract.

**Article 1429. The Open Licence for a Breeding Achievement**

1. The holder of a patent may file an application with the federal executive body charged with breeding achievement matters to the effect that any person may obtain a right to use the breeding achievement (open licence).

In this case the rate of duty for the maintenance of the patent in effect shall be cut by 50 per cent starting from the year following the year in which the federal executive body charged with breeding achievement matters published information on the open licence in the gazette.

The terms on which the right to use the breeding achievement may be granted to any person shall be sent to the federal executive body charged with breeding achievement matters which shall publish relevant information on the open licence in the gazette on the account of the patent holder. The patent holder shall conclude a licence contract with the person that has expressed his/its desire to use the breeding achievement on the terms of a simple (non-exclusive) licence.

2. Upon the expiry of two years after the publication in the gazette by the federal executive body charged with breeding achievements matters of information concerning the open licence the patent holder shall be entitled to file a petition with the said federal body for withdrawal of his/its open licence application.

Unless before the withdrawal of the open licence somebody has expressed his/its wish to use the breeding achievement, the patent holder shall additionally pay a duty for the maintenance of the patent in effect for the period of time elapsed since the publication of information about the open licence, and henceforth shall pay it in full.

If before the withdrawal of the open licence the relevant licence contracts had been concluded on the terms of an open licence, the licensees shall retain their rights over the whole effective term of these contracts. In this case the patent holder shall pay a duty for the maintenance of the patent in effect in full starting from the date of withdrawal of the open licence.

The federal executive body charged with breeding achievement matters shall publish information on the open licence in the gazette.

**§ 4. A Breeding Achievement Created, Developed or Discovered in the Line of Duty or when Works Were Performed under a Contract**

**Article 1430. The Service Breeding Achievement**

1. A breeding achievement created, developed or discovered by an employee in the line of duty or on a specific assignment of the employer shall be deemed a service breeding achievement.

2. The right of attribution in respect of the breeding achievement is owned by the employee (author).

3. The exclusive right to the service breeding achievement and the right to obtain a patent are owned by the employer, except as otherwise envisaged by a labour contract or civil law contract between the employee and the employer.

4. Except as otherwise agreed by the employer and the employee in a contract (**Item 3** of the present article), the employee shall notify the employer in writing of the creation, development or discovery in the line of duty or on a specific assignment of the employer, of a result which can enjoy legal protection as a breeding achievement.

Unless within four months after the employee's notice of the result created, developed or discovered which can enjoy legal protection as a breeding achievement, the employer files a patent application for the breeding achievement with the federal executive body charged with breeding achievement matters or assigns the right to obtain a patent for the service breeding achievement to another person or informs the employee that information about that result is to be kept secret, the right to obtain a patent for the breeding achievement shall be returned to the employee. In this case, the employer shall be entitled over the effective term of the patent to use the service breeding achievement on the employer's own production facilities on the terms of a simple (non-exclusive) licence, with the patent holder being entitled to compensation of which the amount, payment terms and procedure shall be defined by a contract between the employee and the employer or by a court in the case of a dispute.



5. The employee is entitled to receive a fee from the employer for the use of the service breeding achievement created, developed or discovered, in the amount and on the terms defined by agreement between them but below two per cent of the sum of annual income from the use of the breeding achievement, including incomes from licence granting. A dispute concerning the amount of, procedure or terms for payment of, a fee in connection with the use of the service breeding achievement shall be referred to a court for resolution.

A fee shall be paid to the employee within six months after the expiry of each year in which the breeding achievement was used.

The right to remuneration for a service breeding achievement shall be unalienable but shall be transferred to the author's heirs for the remaining part of the effective term of the exclusive right.

6. A breeding achievement created, developed or discovered by an employee with the use of monetary, technical or other material means of the employer, but other than in the line of duty or on a specific assignment of the employer shall not be deemed a service breeding achievement. The employee owns the right to obtain a patent for the breeding achievement and the exclusive right to the breeding achievement. In this case, the employer is entitled at his/its own discretion to claim a free-of-charge simple (non-exclusive) licence for the use of the breeding achievement for the employer's own needs for the whole effective term of the exclusive right to the breeding achievement or compensation for the expenses incurred by the employer in connection with the creation, development or discovery of the breeding achievement.

#### **Article 1431. Breeding Achievements Created, Developed or Discovered to Order**

1. The right to receive a patent and the exclusive right to a breeding achievement that has been created, developed or discovered under a contract whose subject matter was the creation, development or discovery of such breeding achievement (by order) shall be owned by the customer, except as otherwise envisaged by the contract made by the contractor (performer) and the customer.

2. If the customer owns the right to obtain a patent for the breeding achievement and the exclusive right to the breeding achievement under **Item 1** of the present article the contractor (performer) is entitled, unless otherwise envisaged by a contract, to use the breeding achievement for his/its own needs on the terms of a free-of-charge simple (non-exclusive) licence during the whole effective term of the patent.

3. If according to a contract between the contractor (performer) and the customer, the right to obtain a patent for the breeding achievement and the exclusive right to the breeding achievement are owned by the contractor (performer) the customer is entitled to use the breeding achievement for the purposes for which the relevant contract has been made on the terms of a free-of-charge simple (non-exclusive) licence for the whole effective term of the patent.

4. The author of the breeding achievement described in **Item 1** of the present article who is not a holder of the patent is entitled to a fee under **Item 5 of Article 1430** of the present Code.

#### **Article 1432. Breeding Achievements Created, Developed or Discovered When Works Were Performed under a State or Municipal Contract**

Breeding achievements created, developed or discovered when works were performed under a state or municipal contract are subject to the rules of **Article 1373** of the present Code respectively.

### **§ 5. Obtaining a Patent for a Breeding Achievement. Terminating a Patent for a Breeding Achievement**

#### **Article 1433. The Patent Application for a Breeding Achievement**

1. A patent application for a breeding achievement (patent application) shall be filed with the federal executive body charged with breeding achievements matters by a person having a right to obtain a patent in accordance with the present Code (applicant).

2. The patent application shall comprise the following:

1) a patent application including an indication of the author of the breeding achievement and the person in whose name the patent is sought, and also the place of residence or whereabouts of each of them;

2) a breeding achievement questionnaire;

3) **abrogated** from October 1, 2014.

3. The requirements applicable to a patent application shall be established on the basis of the present Code by the federal executive body charged with normative legal regulation in the area of agriculture.

4. The patent application shall cover one breeding achievement.

5. The documents specified in **Item 2** of the present article shall be filed in Russian or in another language. If the documents are filed in another language, translations into Russian shall be attached to the patent application.

#### **Article 1434.** The Priority of a Breeding Achievement

1. The priority of a breeding achievement is established by the date on which the federal executive body charged with breeding achievement matters received the patent application.

2. If on one and the same day the federal executive body charged with breeding achievements matters receives two or more patent applications for one and the same breeding achievement, the priority shall be established by the earlier application dispatch date. If according to an expert examination these applications have one and the same dispatch date a patent may be issued for the application having an earlier registration number assigned by the federal executive body charged with breeding achievement matters, unless otherwise is envisaged by agreement between the applicants.

3. If a patent application received by the federal executive body charged with breeding achievement matters was preceded by an application filed by an applicant in a foreign state with which the Russian Federation has concluded an agreement on the protection of breeding achievements, the applicant shall use the priority of the first application for 12 months after the filing thereof.

In the application sent to the federal executive body charged with breeding achievement matters, the applicant shall indicate the priority date of the first application. Within six months after the receipt of the application by the federal executive body charged with breeding achievements matters the applicant shall file a copy of the first application attested by a competent body of the relevant foreign state, and its Russian translation. While meeting these requirements the applicant need not file additional documents and materials for testing within three years after the filing of the first application.

#### **Article 1435.** The Preliminary Expert Examination of a Patent Application

1. During a preliminary expert examination of a patent application it is necessary to establish a priority date, verify the availability of the documents required according to **Item 2 of Article 1433** of the present Code, and their compliance with the established requirements. The preliminary expert examination of the patent application shall be completed within one month.

2. During the preliminary expert examination the applicant is entitled to add, update or correct the documents of the application on his/its own initiative.

The federal executive body charged with breeding achievement matters may request the provision of missing documents or updating of documents which have to be filed by the applicant within the established term.

Unless the documents missing as of the time of receipt of the application are filed when due, the application shall not be accepted for consideration, with the applicant being informed accordingly.

3. Immediately on completion of the preliminary expert examination, the applicant shall be informed by the federal executive body charged with breeding achievements matters about a positive result thereof and of the date of filing the patent application.

Information on accepted applications shall be published in the gazette of the said federal body.

4. If the applicant disagrees with the decision of the federal executive body charged with breeding achievement matters taken on the results of the preliminary expert examination of the patent application he/it is entitled to challenge it in a judicial procedure within three months after receipt of the decision.

#### **Article 1436.** The Temporary Legal Protection of a Breeding Achievement

1. A breeding achievement for which an application has been filed with the federal executive body charged with breeding achievements matters shall enjoy temporary legal protection starting from the date of

filing of the application up to the date of issuance of a patent for the breeding achievement to the applicant.

2. Having received a patent for a breeding achievement the holder of the patent is entitled to monetary compensation from a person that committed the actions specified in **Item 3 of Article 1421** of the present Code within the term of temporary legal protection of the breeding achievement. The amount of the compensation shall be defined by agreement of the parties, or by a court in the case of a dispute.

3. During the period of temporary legal protection of the breeding achievement the applicant is permitted to sell and otherwise transfer seeds or breeding materials only for scientific purposes, and also in cases when the sale and other transfer relate to alienation of the right to obtain a patent for the breeding achievement or with the production of seeds or breeding materials on the applicant's order for the purpose of stockpiling.

4. The temporary legal protection of a breeding achievement shall be deemed invalid if the patent application has not been accepted for consideration (**Article 1435**) or if a decision has been taken on the application to refuse to issue a patent, and if the possibility of filing an objection against such decision envisaged by the present Code has been exhausted, and also if the applicant has committed a breach of the provisions of **Item 3** of the present article.

#### **Article 1437.** The Expert Examination of a Breeding Achievement for the Novelty Thereof

1. Within six months after the publication of information about a patent application, any person concerned may send a petition to the federal executive body charged with breeding achievements matters for an expert examination of the breeding achievement declared to assess the novelty thereof.

The applicant shall be notified of the receipt of the petition by the federal executive body charged with breeding achievements matters, with the essence of the petition being provided. Within three months after the receipt of the notice the applicant is entitled to send a substantiated objection against the petition to the federal executive body charged with breeding achievements matters.

2. On the materials it has on hand, the federal executive body charged with breeding achievements matters shall take its decision and inform the person concerned about it. If the breeding achievement does not qualify under the novelty criterion, a decision shall be taken to refuse to issue a patent for the breeding achievement.

#### **Article 1438.** Testing a Breeding Achievement for Distinctness, Uniformity and Stability

1. A breeding achievement shall be tested for distinctness, uniformity and stability by the methods and within the term established by the federal executive body charged with normative legal regulation in the area of agriculture.

For testing, the applicant shall provide the necessary quantity of seeds or breeding material to the address and within the term specified by the federal executive body charged with breeding achievements matters.

2. For the purposes set out in **Item 1** of the present article the federal executive body charged with breeding achievements matters is entitled to use the results of tests carried out by competent bodies of other states with which relevant contracts have been concluded, the results of tests carried out by other Russian organisations under a contract with the said federal body, and also the information provided by the applicant.

#### **Article 1439.** The Procedure for State Registration of a Breeding Achievement, and the Issuance of a Patent

1. If a breeding achievement meets the protectability criteria (**Item 2 of Article 1413**) and the name of the breeding achievement meets the requirements set out in **Article 1419** of the present Code, the federal executive body charged with breeding achievement matters shall take a decision on the issuance of a patent for the breeding achievement, and it shall also draw up a description of the breeding achievement and enter the breeding achievement in the State Register of Protected Breeding Achievements.

2. The following details shall be entered in the State Register of Protected Breeding Achievements:

- 1) the gene and species of the plant or animal;
- 2) the name of the plant variety or animal breed;
- 3) the date of state registration of the breeding achievement and registration number;

- 4) the name of the patent holder and his place of residence or its whereabouts;
- 5) the name of the author of the breeding achievement and his place of residence;
- 6) a description of the breeding achievement;
- 7) the fact of the patent for the breeding achievement being assigned to another person with an indication of the name thereof, place of residence or whereabouts;
- 8) information on the licence contracts concluded;
- 9) the date of expiry of the patent for the breeding achievement with an indication of the reason.

**2.1.** On the basis of the right holder's application, the federal executive body charged with breeding achievement matters shall make the amendments related to the data on the right holder and/or the author of a breeding achievement, in particular to the denomination or name of the right holder, the location or place of residence thereof, the name of the author of the breeding achievement, postal address, as well as the amendments aimed at correcting clear and technical mistakes to the State Register of Protected Breeding Achievements and to the patent for a breeding achievement.

**3.** The patent for the breeding achievement shall be issued to the applicant. If in the patent application several applicants were mentioned, the patent shall be issued to the applicant that stands first in the application, and it shall be used by the applicants jointly by agreement among them.

**4.** The form of a patent for a breeding achievement and the composition of the information specified therein shall be established by the federal executive body for breeding achievements.

#### **Article 1440.** Preserving a Breeding Achievement

**1.** The holder of a patent shall maintain the plant variety or animal breed during the effective term of the patent for the breeding achievement so as to preserve the characteristics specified in the description of the plant variety or animal breed drawn up as of the date of inclusion of the breeding achievement in the State Register of Protected Breeding Achievements.

**2.** At a request of the federal executive body charged with breeding achievements matters, the patent holder shall dispatch on his/its own account seeds or breeding materials for check testing and allow a field inspection.

#### **Article 1441.** Deeming a Patent for a Breeding Achievement Invalid

**1.** A patent for a breeding achievement may be deemed invalid for its effective term if it is established that:

- 1) the patent has been issued on the basis of unconfirmed information on the uniformity and stability of the breeding achievement provided by the applicant;
- 2) as of the date of issuance of the patent the breeding achievement did not meet the novelty or distinctness criterion;
- 3) the person mentioned in the patent of the holder thereof did not have legal grounds for obtaining a patent.

**2.** The issuance of a patent for a breeding achievement may be challenged by any person who has learned about the irregularities described in **Item 1** of the present article, by means of filing an application with the federal executive body charged with breeding achievement matters.

The federal executive body charged with breeding achievement matters shall send a copy of said application to the patent holder, who may submit a substantiated objection within three months after the dispatch of such copy thereto.

The federal executive body charged with breeding achievement matters shall take a decision on the said application within six months after the submission of the application, unless additional testing is required.

**3.** A patent for a breeding achievement that is deemed invalid shall be annulled as of the date of filing of the patent application. In this case, the licence contracts concluded before the taking of the decision on the invalidity of the patent shall remain effective to the extent to which they have been discharged by that date.

**4.** The deeming of a patent for a breeding achievement invalid shall mean the revocation of the decision of the federal executive body charged with breeding achievement matters on the issuance of the patent (**Article 1439**) and the annulment of the relevant entry in the State Register of Protected Breeding

Achievements.

**Article 1442.** The Early Termination of a Patent for a Breeding Achievement

A patent for a breeding achievement shall be terminated early in the following cases:

- 1) the breeding achievement no longer complies with the uniformity and stability criteria;
- 2) the holder of the patent did not provide seeds or breeding materials, the documents and information required for verifying the preservation of the breeding achievement at the request of the federal executive body charged with breeding achievement matters or did not allow a field inspection of the breeding achievement for such purposes within 12 months;
- 3) the patent holder has filed an early patent termination application with the federal executive body charged with breeding achievement matters;
- 4) the patent holder did not pay when due a duty for the maintenance of the patent in effect.

**Article 1443.** Publishing Information on Breeding Achievements

1. The federal executive body charged with breeding achievement matters shall publish a gazette in which it shall publish information on:

- 1) received patent applications, including an indication of the priority date of the breeding achievement, the name of the applicant, the name of the breeding achievement, and also the name of the author of the breeding achievement, unless the latter has refused to be mentioned as such;
  - 2) the decisions taken on the patent application;
  - 3) the changes that have taken place in the names of breeding achievements;
  - 4) deeming patents for breeding achievements invalid;
  - 5) other information concerning the protection of breeding achievements.
2. After the publication of information on a received patent application for a breeding achievement and on the decision taken on this application, any person is entitled to read the materials of the application.

**Article 1444.** Using Breeding Achievements

1. The seeds and breeding materials sold in the Russian Federation shall have a document certifying their variety, breed and origin.
2. The document mentioned in **Item 1** of the present article shall be issued for the breeding achievements included in the State Register of Protected Breeding Achievements only by the patent holder and a licensee.

**Article 1445.** Patenting a Breeding Achievement in Foreign States

A patent application for a breeding achievement may be filed in a foreign state. The expenses relating to the protection of a breeding achievement outside the Russian Federation shall be borne by the applicant.

## **§ 6. Protecting the Rights of Authors of Breeding Achievements and of Other Patent Holders**

**Article 1446.** The Infringement of Rights of the Author of a Breeding Achievement or of Another Patent Holder

The following shall be deemed without limitation an infringement of the rights of the author of a breeding achievement or of another patent holder:

- 1) the use of the breeding achievement in breach of requirements set out in **Item 3 of Article 1421** of the present Code;
- 2) the assigning to produced and/or sold seeds or breeding materials of a name different from the name of the relevant registered breeding achievement;
- 3) the assigning of the name of the relevant registered breeding achievement to produced and/or sold seeds or breeding materials that are not seeds or breeding materials of that breeding achievement;
- 4) the assigning to produced and/or sold seeds or breeding materials of a name similar to the name of a registered breeding achievement to the degree of confusion.

**Article 1447. Publishing a Court's Decision on an Infringement of the Exclusive Right to a Breeding Achievement**

The author of a breeding achievement or another patent holder is entitled to demand that the federal executive body charged with breeding achievements matters publish in its gazette a court's decision on illegal use of the breeding achievement or on another infringement of the patent holder's rights in accordance with **Item 1 of Article 1252** of the present Code.

**Chapter 74. The Right to Integrated Circuit Layout-Designs**

**Article 1448. An Integrated Circuit Layout-Design**

**1.** The integrated circuit layout-design (topology) is a spatial-geometric arrangement of an array of integrated circuit elements fixed on a material medium and the interconnections thereof. Here, the integrated circuit is a microelectronic article of a final form or an intermediate form intended for performing the functions of an electronic circuit whose elements and connections are integrally formed in, and/or on the surface of, the material on the basis of which the article is manufactured.

**2.** The legal protection granted by the present Code extends only to an original integrated circuit layout-design created as the result of a creative activity of the author and unknown to the author and/or specialists in the field of integrated circuit topography development as of the date when it was created. An integrated circuit layout-design shall be deemed original, unless otherwise proven.

An integrated circuit layout-design composed of the elements known to specialists in the field of integrated circuit topography development as of the date of creation thereof shall enjoy legal protection if the spatio-geometric layout of the entirety of such elements and links between them meets the originality requirement.

**3.** The legal protection granted by the present Code does not extend to the ideas, methods, systems, technologies or encoded information that can be embodied by an integrated circuit layout-design.

**Article 1449. Rights to an Integrated Circuit Layout-Design**

**1.** The author of an integrated circuit layout-design that qualifies for legal protection under the criteria set out in the present Code (layout-design) owns the following intellectual rights:

- 1) an exclusive right;
- 2) the right of attribution.

**2.** In the cases specified by the present Code the author of an integrated circuit layout-design also owns other rights, including the right to a fee for a service layout-design.

**Article 1450. The Author of an Integrated Circuit Layout-Design**

The author of an integrated circuit layout-design is the citizen by whose creative labour the layout-design has been created. The person indicated as the author in an application for a certificate of state registration of an integrated circuit layout-design is deemed the author of the layout-design, unless otherwise proven.

**Article 1451. The Co-Authors of an Integrated Circuit Layout-Design**

**1.** Citizens who have created an integrated circuit layout design by joint creative labour shall be deemed co-authors.

**2.** Each of the co-authors is entitled to use the layout-design at his own discretion, except as otherwise envisaged by agreement between them.

**3.** The relationships of the co-authors that have to do with the distribution of incomes from the use of the layout-design and with disposing of the exclusive right to the layout-design, respectively are subject to **Item 3 of Article 1229** of the present Code.

The co-authors shall jointly have the right to obtain a certificate of state registration of the integrated circuit layout design.

**Article 1452.** The State Registration of an Integrated Circuit Layout-Design

1. Within the effective term of the exclusive right to an integrated circuit layout-design (**Article 1457**), the right holder may at his own discretion register the layout-design with the federal executive body charged with intellectual property matters.

A layout-design containing information deemed a **state secret** is not subject to state registration. The person that has filed an application for state registration of a layout-design (applicant) is accountable for the disclosure of information on the layout-design containing a state secret in accordance with the **legislation** of the Russian Federation.

2. If prior to the filing of an application for state registration of a layout-design (registration application) the layout-design has been used the application may be filed within a term not exceeding two years after the first time the layout-design was used.

3. The registration **application** shall cover one layout-design and it shall comprise the following:

1) an application for state registration of the layout-design with reference to the person in whose name the state registration is sought, and also the name of the author, unless he has refused to be mentioned as such, the place of residence or whereabouts of each of them, the date on which the layout-design was used for the first time, if any;

2) deposited materials intended to identify the layout-design, including a synopsis;

3) **abrogated** from October 1, 2014.

4. The **rules** for drawing up the registration application shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

5. On the basis of the registration application the federal executive body charged with intellectual property matters shall verify the availability of the necessary documents and their compliance with the requirements set out in **Item 3** of the present article. If the result of the verification is positive the said federal body shall enter the layout-design in the Register of Integrated Circuit Layout-Designs, issue a certificate of state registration of the integrated circuit layout-design in the form of an electronic document and, upon the request of an applicant, on paper, and publish information on the registered layout-design in its gazette.

At a request of the cited federal executive body or on the own initiative, the author or other right holder is entitled to add, update and correct the materials of the registration application before the time of the state registration.

6. The procedure for state registration of layout-designs, the **forms** of certificates of state registration, a list of the details entered in certificates and a list of the details published by the federal executive body charged with intellectual property matters in the gazette shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

7. On the basis of the right holder's application the federal executive body charged with intellectual property matters shall make the amendments related to the data on the right holder and/or the author of a layout designs, in particular to the denomination or name of the right holder, the location or place of residence thereof, the name of the author of the layout design, postal address, as well as the amendments aimed at correcting clear and technical mistakes to the State Register of Integrated Circuits Layout Designs and to the certificate of the state registration of the layout design.

The federal executive body charged with intellectual property matters shall publish in the official gazette data on any changes in the entries made in the Register of Integrated Circuits Layout Designs.

8. The information entered in the Register of Integrated Circuit Layout-Designs shall be deemed trustworthy unless otherwise proven. Responsibility for the trustworthiness of the information provided for registration purposes shall be borne by the applicant.

**Article 1453.** The Right of Attribution in Respect of an Integrated Circuit Layout-Design

The right of attribution, i.e., the right of being recognised as the author of a layout-design, is unalienable and unassignable, including in the event of the assignment to another person or transfer to another person of the exclusive right to the layout-design and of granting the right to use it to another person. The waiver of this right is null and void.

**Article 1454.** The Exclusive Right to a Layout-Design

1. A right holder owns an exclusive right to use a layout-design in accordance with **Article 1229** of the present Code in any manner not conflicting with the law (exclusive right to a layout-design), including by the methods specified in **Item 2** of the present article. The right holder may dispose of the exclusive right to the layout-design.

2. Actions aimed at making a profit are deemed use of a layout design, including the following without limitation:

1) the reproduction of the layout-design in full or in part by means of including in an integral circuit or otherwise, except for the reproduction of only the part of the layout-design which is not original;

2) the importation onto the territory of the Russian Federation, the sale and another introduction into civil-law transactions of the layout-design or an integrated circuit incorporating the layout-design or an article including such integrated circuit.

3. A person that has independently created a layout-design identical to another layout-design is deemed to own an independent exclusive right to that layout-design.

**Article 1455.** The Sign of Protection of Integral Circuit Layout-Design

For the purpose of warning of his exclusive right to a layout design, the right holder is entitled to use a protection sign which shall be placed on the layout-design and also on articles incorporating the layout-design, and which is composed of the accentuated capital letter "T" ("T", [T], T, T\* or T), the date of commencement of the effective term of the exclusive right to the layout-design and information allowing one to identify the right holder.

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The accentuated capital letter "T" is in a circle.

The accentuated capital letter "T" is in a square.

**Article 1456.** Actions Not Deemed an Infringement of the Exclusive Right to a Layout-Design

The following are not deemed an infringement of the exclusive right to a layout-design:

1) the committing of the actions specified in **Item 2 of Article 1454** of the present Code in respect of an integrated circuit incorporating an illegally reproduced layout-design, and also in respect of any article incorporating such integrated circuit if the person that commits such actions did not know and could not know that the integrated circuit incorporated the illegally reproduced layout design. Having received a notice of the illegal reproduction of the layout-design, said person may use the available stock of the articles incorporating the integrated circuit that incorporates the illegally reproduced layout-design, and such articles that had been ordered before that time. In this case, the said person shall pay compensation to the right holder for the use of the layout-design commensurate with the fee that would be paid out in comparable circumstances for a similar layout-design;

2) the use of a layout-design for non-profit making personal purposes, and also for the purpose of assessing, analysing, researching or teaching;

3) the distribution of integrated circuits with a layout-design that has been earlier introduced into civil-law transactions by the person having an exclusive right to the layout-design or by another person with the permission of the right holder.

**Article 1457.** The Effective Term of the Exclusive Right to a Layout-Design

1. The exclusive right to a layout-design is effective for 10 years.

2. The effective term of an exclusive right to a layout-design shall be counted either from the date of the first use of the layout-design, i.e., the earliest documented date of introduction into civil-law transactions in the Russian Federation or in any foreign state of the layout-design or an integrated circuit incorporating the layout-design or an article incorporating such integrated circuit or from the date of registration of the layout-design with the federal executive body charged with intellectual property matters, depending on which of these events came about first.

3. If an identical original topology is created independently by another author, then the exclusive



rights to both topologies shall terminate upon the expiry of 10 years from the day of the origin of the exclusive right to the first one of them.

4. Upon the expiry of the exclusive right, the layout-design shall pass into the public domain, i.e., it may be freely used by any person without anybody's consent or permission and without paying a fee.

**Article 1457.1. The Transfer of the Exclusive Rights to a Layout Design by Inheritance**

The provisions on transfer of the exclusive right to a work by inheritance (**Article 1283**) shall apply to the exclusive right to a layout-design.

**Article 1458. The Contract of Alienation of Exclusive Right to a Layout-Design**

Under a contract of alienation of the exclusive right to a layout-design one party (right holder) assigns or undertakes to assign his/its exclusive right to the layout-design in full to the other party being the acquirer of the exclusive right to the layout-design.

**Article 1459. The Licence Contract for the Granting of the Right to Use an Integrated Circuit Layout-Design**

Under the licence contract one party being the owner of an exclusive right to a layout-design (licensor) grants or undertakes to grant to the other party (licensee) the right to use the layout-design within the scope established by the contract.

**Article 1460. The Form of a Contract of Disposal of the Exclusive Right to a Layout Design and the State Registration of Transfer of the Exclusive Rights to a Layout Design, Its Pledge and Provision of the Rights to Use a Layout Design**

1. A contract of alienation of the exclusive right to a layout design and a licence contract shall be made in writing. Failure to observe the written form of the contract shall entail the contract's invalidity.

2. If a layout design has been registered (**Article 1452**), the alienation and pledge of the exclusive right to the layout design, the provision on a contractual basis of the right to use the layout design and the transfer of the exclusive right to the layout design and the licence contract shall be subject to state registration with the federal executive body charged with intellectual property matters in the procedure established by **Article 1232** of this Code.

**Article 1461. A Service Layout-Design**

1. A layout-design created by an employee in the line of duty or a specific assignment of the employer shall be deemed a service layout-design.

2. The right of attribution in respect of the service layout-design is owned by the employee.

3. The employer owns an exclusive right to the service layout design, except as otherwise envisaged by a labour or civil law agreement between the employer and the employee.

4. If the exclusive right to the layout-design is owned by the employer or if it has been assigned by the employer to a third party, the employee is entitled to receive a fee from the employer. The rate of the fee, and the terms and procedure for paying the fee shall be defined by a contract between the employee and the employer, or by a court in the case of a dispute.

The right to remuneration for a service layout design shall be unalienable but shall pass over to the author's heirs for the remaining part of the effective term of the exclusive right.

If the exclusive right to a layout design is held by the author, the employer is entitled to use such layout design under the terms of an ordinary (non-exclusive) licence with remuneration to be paid to the right holder.

5. A layout-design created by an employee through the use of monetary, technical or other material means of the employer but other than in the line of duty or on a specific assignment of the employer shall not be deemed a service layout-design. The employee owns the exclusive right to such layout-design. In this case the employer is entitled at his/its discretion to claim a free-of-charge simple (non-exclusive) licence for the use of the created layout-design for the employer's own needs for the whole effective term of the exclusive right to the layout design or compensation for the expenses incurred by the employer in connection

with the creation of the layout-design.

**Article 1462.** The Layout-Design Created When Works Were Performed under a Contract

1. The exclusive right to a layout design created when a contractor's contract or a contract of research and development or technological work was performed which did not expressly envisage the creation thereof, shall belong to the contractor, unless otherwise envisaged by a contract between him/it and the customer.

In this case, the customer is entitled, except as otherwise envisaged by a contract, to use the layout-design so created for the purposes for the attainment of which the relevant contract has been concluded, on the terms of a simple (non-exclusive) licence for the whole effective term of the exclusive right, without an additional fee being payable for the use. If the contractor (performer) assigns the exclusive right to the layout-design to another person the customer shall retain the right to use the layout-design on the said terms.

2. If according to a contract between the contractor (performer) and the customer, the exclusive right to the layout-design has been assigned to the customer or to a third party designated by him/it the contractor (performer) is entitled to use the created layout-design for his/its own need on the terms of a free-of-charge simple (non-exclusive) licence for the whole effective term of the exclusive right to the layout-design, except as otherwise envisaged by the contract.

3. The author of the layout-design mentioned in **Item 1** of the present article who does not own the exclusive right to the layout design is entitled to a fee in accordance with **Item 4 of Article 1461** of the present Code.

**Article 1463.** A Layout-Design Created to Order

1. The exclusive right to a layout design created under a contract whose subject matter was the creation thereof (to order) shall belong to the customer, unless otherwise envisaged by the contract between the contractor (performer) and the customer.

2. If according to **Item 1** of the present article the exclusive right to the layout-design is owned by the customer or a third party designated by him/it, the contractor (performer) is entitled, except as otherwise envisaged by a contract, to use the layout-design for his/its own needs on the terms of a free-of-charge simple (non-exclusive) licence for the whole effective term of the exclusive right.

3. If according to the contract between the contractor (performer) and the customer, the contractor (performer) owns the exclusive right to the layout-design, the customer is entitled to use the layout-design for the purposes for which the relevant contract has been made on the terms of a free-of-charge simple (non-exclusive) licence for the whole effective term of the exclusive right.

4. According to **Item 4 of Article 1461** a fee is payable to the author of a layout-design created to order.

**Article 1464.** A Layout-Design Created When Works Were Performed under a State or Municipal Contract

A layout-design created when works were performed under a state or municipal contract is subject to the rules of **Article 1298** of the present Code respectively.

## **Chapter 75. The Right to a Production Secret (Know-How)**

**Article 1465.** A Production Secret (Know-How)

1. As a manufacturing secret (know-how) shall be deemed information of any nature (production, technological, economic, organisational and others) about the results of intellectual activities in the area of science and technology and about the methods of carrying out professional activities that has a real or potential commercial value due to its not being known to third parties, which is not freely accessible to third parties on legal grounds, and the holder of such information takes reasonable measures aimed at keeping it confidential, in particular by way of introducing a commercial secret regime.

2. As a manufacturing secret may not be deemed the data whose mandatory disclosure or inadmissibility of restricting access to them are established by law or any other legal act.

**Article 1466.** The Exclusive Right to a Production Secret

1. The owner of a production secret has an exclusive right to use it in accordance with **Article 1229** of the present Code in any manner not conflicting with a law (exclusive right to a production secret), including the case of manufacturing articles and implementing economic and organisational solutions. The owner of the production secret may dispose of the said exclusive right.

2. A person that has become an owner of the information constituting the content of the protected production secret in a bona fide manner and independently of other owners of a production secret acquires an independent exclusive right to this production secret.

**Article 1467.** The Effect of an Exclusive Right to a Production Secret

The exclusive right to a production secret shall remain effective as long as the confidentiality of the information making up its content exists. Once the relevant information is no longer confidential the exclusive right to the production secret is terminated for all right holders.

**Article 1468.** The Contract of Alienation of an Exclusive Right to a Production Secret

1. Under a contract of alienation of the exclusive right to a production secret, one party (right holder) assigns or undertakes to assign his/its exclusive right to the production secret in full to the other party being the acquirer of the exclusive right to the production secret.

2. In the event of alienation of an exclusive right to a production secret, the person that has disposed of his/its right shall keep the production secret confidential until the termination of the exclusive right to the production secret.

**Article 1469.** The Licence Contract for the Grant of a Right to Use a Production Secret

1. Under the licence contract one party being the owner of an exclusive right to a production secret (licensor) assigns or undertakes to assign to the other party (licensee) a right to use the production secret within the scope established by the contract.

2. A licence contract may be concluded either with or without an indication of its effective term. Unless the effective term of the licence contract is not specified therein, any of the parties may waive the contract at any time, having notified the other party at least six months in advance, except if a longer term is envisaged by the contract.

3. In the event of grant of the right to use a production secret the person that has disposed of his/its right shall keep the confidential nature of the production secret for the whole effective term of the licence contract.

The persons that have acquired relevant rights under a licence contract shall keep the confidential nature of the secret until the termination of the right to the production secret.

**Article 1470.** A Service Production Secret

1. The exclusive right to a production secret created by an employee in the line of duty or on a specific assignment of the employer (service production secret) is owned by the employer.

2. A citizen who has learned a production secret in connection with his carrying out labour duties or a specific assignment of the employer shall keep the confidential nature of the information so received until the termination of the exclusive right to the production secret.

**Article 1471.** Production Secrets Obtained When Performing Work under a Contract, or When Performing work under a State or Municipal Contract

1. If a production secret was obtained during the performance of a work contract, an agreement for the performance of research, development and technological work, or under a state or municipal contract for state or municipal needs, the exclusive right to such a secret of production belongs to the contractor

(performer), except for the cases established by **Items 3 and 4 of Article 1240.1** of this Code.

A state or municipal contract may provide that the exclusive right to a secret of production belongs jointly to the performer and the Russian Federation, the performer and the constituent entity of the Russian Federation, or the performer and the municipality, except for the cases established by the **first paragraph of Item 3 and Item 4 of Article 1240.1** of this Code.

**2.** A production secret (know-how) directly related to defense and security (**Item 2 of Article 1240.1** of this Code) includes, among other things, the information contained in the design and (or) technical documentation.

Production secrets (know-how) directly related to defense and security, obtained within the framework of state programs or a state defense order, the implementation of which is ensured by the federal executive authority responsible for defense, or which are the own development of the said federal executive authority or state institutions subordinate to it, are subject to registration in the Register of the results of intellectual activity directly related to defense and security, which is maintained by the federal executive authority responsible for defense, in the procedure approved by the Government of the Russian Federation.

Sending information for registration in the Register of the results of intellectual activity directly related to defense and security, the exchange of such information between government customers, the provision of such information to the executors of government contracts, subject to ensuring confidentiality requirements are not recognised as a loss of confidentiality of information that constitutes the content of a protected trade secret directly related with the provision of defense and security, and are not grounds for terminating its legal protection.

**3.** The exclusive right to a production secret (know-how) directly related to defense and security arises from the date the state customer makes a decision on the legal protection of information as a production secret (know-how) and terminates, from the date when the state customer decides to terminate it, legal protection or at the time of loss of confidentiality of the information that constitutes the content of such secret, in accordance with **Article 1467** of this Code, depending on which of the specified events occurred earlier.

#### **Article 1472. Liability for Infringement of the Exclusive Right to a Production Secret**

**1.** The perpetrator of an infringement of an exclusive right to a production secret, including a person that has illegally received the information constituting a production secret and has disclosed or used the information, and also a person whose duty was to keep a production secret confidential according to **Item 2 of Article 1468, Item 3 of Article 1469 or Item 2 of Article 1470** of the present Code, shall compensate the damage caused by the infringement of the exclusive right to the production secret, unless another liability is set out in a law or in the contract concluded with the person.

**2.** A person that has used a production secret but did not know and could not know that the use thereof was illegal, for instance after having received access to the production secret incidentally or by mistake, is not accountable in accordance with **Item 1** of the present article.

## **Chapter 76. Rights to the Means of Individualisation of Legal Entities, Goods, Works, Services and Enterprises**

### **§ 1. The Right to a Company Name**

#### **Article 1473. The Company Name**

**1.** A legal entity being a commercial organisation acts in civil-law transactions under its own company name, which is defined in its constitutive documents and is included in the unified state register of legal entities at the state registration of the legal entity.

**2.** The company name of the legal entity shall comprise a reference to its organisational legal form and the name of the legal entity proper, which cannot be composed only of words designating a kind of activity.

**3.** The legal entity shall have a single full company name and is entitled to have a short company name in Russian. The legal entity is also entitled to have a single full and/or an abbreviated company name in any language of peoples of the Russian Federation and/or in a foreign language.

The company name of the legal entity in Russian and in the languages of peoples of the Russian Federation may comprise borrowed foreign words in a Russian transcription or in a transcription of the languages of peoples of the Russian Federation, except for the terms and abbreviations reflecting the legal entity's organisational legal form.

**4.** The following shall not be included in the company name of a legal entity:

- 1) the full or abbreviated official names of foreign states, and also derivative words from such names;
- 2) the full or abbreviated official names of federal governmental bodies, governmental bodies of subjects of the Russian Federation and local government bodies;
- 3) **abrogated** from October 1, 2014;
- 4) the full or abbreviated names of public associations;
- 5) designations inconsistent with the public interest and also with humane and moral principles.

The company name of a state unitary enterprise may contain reference to the enterprise's belonging to the Russian Federation and to a subject of the Russian Federation, respectively.

The inclusion in the firm name of a legal entity of the official name Russian Federation or Russia, and also words derivative from this name, shall be permitted with a permit issued in the **procedure** established by the Government of the Russian Federation.

In the event of revocation of the permit for inclusion in the firm name of a legal entity of the official name Russian Federation or Russia, and also words derivative from this name, the legal entity must, within three months, make respective changes in its constituent documents.

**5.** If the company name of a legal entity does not comply with the requirements of **Article 1231.1** of this Code, **Items 3** and **4** of this article, the body responsible for state registration of legal entities is entitled to file a claim against such legal entity whereby it is forced to change its company name. On such occasion, the provisions of **Item 3 of Article 61** of this Code shall not apply.

#### **Article 1474.** The Exclusive Right to a Company Name

**1.** A legal entity owns an exclusive right to use its company name as a means of individualisation in any manner not conflicting with the law (exclusive right to a company name), for instance by posting it on billboards, letterheads and other documents, in announcements and advertisements, on goods or packages of goods, or on the Internet.

Abbreviated company names and also company names in the languages of peoples of the Russian Federation and in foreign languages are protected by an exclusive right to a company name if they are included in the unified state register of legal entities.

**2.** The disposal of an exclusive right to a company name (for instance by means of alienation or granting to another person of a right to use the company name) is prohibited.

**3.** It is prohibited for a legal entity to use a company name identical to the company name of another legal entity or similar to such name to the degree of confusion if the said legal entities pursue similar activities and if the latter's company name had been included in the unified state register of legal entities earlier than the former's.

**4.** A legal entity that has violated the rules of **Item 3** of this article, If the right holder so demands, at the choice thereof, shall either stop using a company name identical to the company name of the right holder or similar thereto to the extent of confusion in respect of the types of activity similar to those pursued by the right holder, or to change its company name, and is bound to compensate the right holder for the damages inflicted.

#### **Article 1475.** The Effect of an Exclusive Right to a Company Name on the Territory of the Russian Federation

**1.** The exclusive right to a company name included in the unified state register of legal entities is effective on the territory of the Russian Federation.

**2.** An exclusive right to a company name comes into being as of the date of state registration of the

legal entity and is terminated as of the time when the company name is deleted from the unified state register of legal entities in connection with the termination of the legal entity or a change in its company name.

**Article 1476.** Correlation Between Rights to a Company Name and Rights to a Commercial Name, a Trademark and a Service Mark

1. A company name or specific elements thereof may be used by the right holder as part of a commercial name owned by the right holder.

A company name included in a commercial name is protected irrespective of the protection of the commercial name.

2. A company name or specific elements thereof may be used by the right holder in his/its trademark and service mark.

A company name included in a trademark or service mark shall be protected irrespective of the protection of the trademark or service mark.

## **§ 2. The Right to a Trademark and the Right to a Service Mark**

### **1. Basic Provisions**

**Article 1477.** The Trademark and the Service Mark

1. An exclusive right certified by a trademark certificate (**Article 1481**) is recognised for the trademark, i.e., a designation serving for individualising goods of legal entities or individual entrepreneurs.

2. The rules of the present Code concerning trademarks are applicable to service marks, i.e., to designations serving for individualising the works or services performed/provided by legal entities or individual entrepreneurs respectively.

**Article 1478.** The Owner of an Exclusive Right to a Trademark

A legal entity or an individual entrepreneur may be the owner of an exclusive right to a trademark.

**Article 1479.** The Effect of Exclusive Right to a Trademark on the Territory of the Russian Federation

An exclusive right to a trademark registered by the federal executive body charged with intellectual property matters is effective on the territory of the Russian Federation as well as in other cases envisaged by an international treaty of the Russian Federation.

**Article 1480.** The State Registration of a Trademark

The state registration of a trademark shall be carried out by the federal executive body charged with intellectual property matters in the State Register of Trademarks and Service Marks of the Russian Federation (the State Register of Trademarks) in the procedure established by **Articles 1503** and **1505** of the present Code.

**Article 1481.** The Trademark Certificate

1. A trademark certificate shall be issued for a trademark registered in the State Register of Trademarks.

2. A certificate of a trademark certifies the priority of the trademark and the exclusive right to the trademark in respect of the goods specified in the certificate.

**Article 1482.** The Types of Trademarks

1. Word, image, three-dimensional and other designations or combinations thereof may be registered as trademarks.

2. A trademark may be registered in any colour or in any colour-combination.

### **Article 1483.** Grounds for Refusing State Registration to a Trademark

1. No trademark state registration shall be granted designations not having a distinguishing capability or composed only of elements:

- 1) that have come into general usage as designations for goods of a certain kind;
- 2) being generally-accepted symbols and terms;
- 3) that characterise goods, for instance indicating their kind, quality, quantity, properties, intended purpose, value, and the time, place and method of their manufacture or sale;
- 4) representing a form of goods that is defined exclusively or mainly by the properties or intended purpose of the goods.

The said elements may be included in a trademark as non-protected elements, unless they dominate therein.

Paragraph 7 has **lost force** from October 1, 2014.

**1.1.** The provisions of **Item 1** of this article shall not apply in respect of the denominations which:

- 1) have acquired the discrimination performance as a result of their use;
- 2) are made up of the elements cited in **Subitems 1-4 of Item 1** of this article and form a combination having the discrimination performance.

**2.** It is not allowed to effect state registration as trademarks of the designations related to the objects which are not subject to legal protection in compliance with **Article 1231.1** of this Code or are similar to them to the degree of confusion.

**3.** No trademark state registration shall be granted to designations which are or comprise elements:

- 1) which are false or capable of misleading the consumer concerning goods or the manufacturer of goods;
- 2) which conflict with the public interest and with humanity and moral principles.

**4.** No trademark state registration shall be granted to designations identical or similar to the extent of confusion with the official names and images of especially-precious objects of cultural heritage of the peoples of the Russian Federation or objects of world cultural or natural heritage, and also with images of cultural valuables preserved in collections, collected items and stocks if registration is sought in the names of persons not being owners without the consent of the owners or persons authorised by the owners for these designations to be registered as trademarks.

**5.** In accordance with an international treaty of the Russian Federation, no trademark state registration shall be granted to designations which are or which comprise elements protected in a member state of that international treaty as designations allowing identification of wines or alcoholic beverages as originating from its territory (produced within the borders of a geographical object of that state) and having a special quality, reputation or other characteristics predominantly defined by the origin thereof, if the trademark is intended for designating wines or alcoholic beverages not originating from the territory of the given geographical object.

**6.** No trademark registration shall be granted to designations identical or similar to the extent of confusion with:

1) other persons' trademarks declared for registration purposes (**Article 1492**) for uniform goods and having an earlier priority, unless the trademark state registration application is withdrawn, is deemed withdrawn or a decision to deny the state registration has been adopted with respect to it;

2) other persons' trademarks protected in the Russian Federation, including under an international treaty of the Russian Federation for uniform goods and having an earlier priority;

3) other persons' trademarks that have been recognised in the procedure established by the present Code as generally-renowned trademarks in the Russian Federation, for uniform goods from an earlier date than the priority of the declared designation.

The registration as a trademark for uniform goods of a designation similar to the extent of confusion with any of the trademarks cited in **Subitems 1** and **2** of this item shall be only admissible with the consent of the right holder, provided that such registration may not be a reason for consumers' misleading. The consent may not be withdrawn by the right holder.

The provisions stipulated by Paragraph Five of this item shall not apply to the designations which are

similar to the degree of confusion with collective marks.

7. No trademark registration shall be granted for any goods to designations identical or similar to the degree of confusion to a geographical indication or an appellation of origin of goods protected in accordance with this Code, and also a designation declared for registration as such before the priority date of a trademark, except for cases when such geographical indication or such appellation or a designation similar to them to the degree of confusion is included as a non-protected element in a trademark registered in the name of the person having the right to use such geographical indication or such appellation, on the condition that the trademark registration is in respect of the same goods for the individualisation of which such geographical indication or such appellation of origin of goods have been registered.

8. No trademark registration shall be granted for uniform goods to designations identical or similar to the extent of confusion to a company name or a commercial name (specific elements of such names) protected in the Russian Federation or with the name of a breeding achievement registered in the State Register of Protected Breeding Achievements to which rights had emerged owned by other persons in the Russian Federation prior to the priority date of the trademark being registered.

9. No trademark registration shall be granted to designations identical to:

1) the title/name of a scientific, literary or artistic work, a character or quotation from such work, known in the Russian Federation as of the date of filing of the trademark state registration application (**Article 1492**) or to an artistic work or a fragment thereof without the consent of the right holder, if rights to the relevant work emerged prior to the priority date of the trademark being registered;

2) the name (**Article 19**), pseudonym (**Item 1 of Article 1265** and **Subitem 3 of Item 1 of Article 1315**) or a designation derivative from them, a portrait or facsimile of a person known in the Russian Federation as of the date of filing of the application, without the consent of that person or his heir;

3) an industrial design, mark of compliance, in respect of which rights had emerged prior to the priority date of the trademark being registered.

The provisions of this article shall also apply in respect of the designations which are similar to the degree of confusion with the objects cited therein.

10. The designations whose elements are the individualisation means of other persons similar to them to the extent of confusion, as well as the objects cited in **Item 9** of this article, protected in compliance with this article, may not be registered as trademarks in respect of homogeneous goods.

The state registration as trademarks as such designations shall be allowed where there is the appropriate consent provided for by **Item 6** and **Subitems 1 and 2 of Item 9** of this article.

11. On the grounds provided for by this article legal protection shall not be also provided to the trademarks registered in compliance with international treaties made by the Russian Federation.

## 2. Using a Trademark and Disposing of the Exclusive Right to a Trademark

### **Article 1484.** The Exclusive Right to a Trademark

1. A person in whose name a trademark has been registered (right holder) owns an exclusive right to use the trademark in accordance with **Article 1229** of the present Code in any manner not conflicting with the law (exclusive right to a trademark), including the methods specified in **Item 2** of the present article. The right holder may dispose of the exclusive right to the trademark.

2. The exclusive right to a trademark may be exercised to individualise the goods, works or services for which the trademark has been registered, for instance by placing the trademark:

1) on the goods including labels, the packaging of goods which are manufactured, offered for sale, are sold, exhibited at exhibitions and fairs, or are otherwise introduced into civil-law transactions on the territory of the Russian Federation or are stored or transported for that purpose or are imported into the territory of the Russian Federation;

2) when works are performed or services are provided;

3) on the document relating to the introduction of the goods in civil-law transactions;

4) in offers for the sale of goods, performance of works, provision of services, and also in announcements, billboards and in advertisements;



5) on the Internet, including in a domain name or in other address methods.

3. Nobody has the right without a right holder's permission to use designations which are similar to his/its trademark for goods for the individualisation of which the trademark has been registered or uniform goods if such use might result in confusion.

#### **Article 1485.** The Mark of Trademark Protection

For the purpose of warning of his/its exclusive right to a trademark, the right holder is entitled to use a protection mark that is placed next to the trademark and is composed of the Latin letter "R" or the Latin letter "R" in a circle (R) or the word designation "trademark" or "registered trademark" and indicates that the designation used is a trademark protected on the territory of the Russian Federation.

#### **Article 1486.** The Consequences of the Non-Use of a Trademark

1. The legal protection of a trademark may be terminated before due date in respect of all goods or part of the goods for the individualisation of which the trademark has been registered, due to the trademark's being not used continuously for three years.

The interested person who believes that the right holder is not using the trademark in respect of all goods or part of the goods for the individualisation of which the trademark has been registered shall send to such right holder a proposal to file with the federal executive body in charge of intellectual property matters a statement waiving his right to the trademark or to make with the interested person an agreement to alienate the exclusive right to the trademark in respect of all goods or part of the goods, for the individualisation of which the trademark has been registered (hereinafter referred to as the interested person's offer). The interested person's offer is communicated to the right holder as well as to an address cited in the State Register of Trademarks or in a relevant register envisaged by an international agreement of the Russian Federation.

The interested person's offer may be sent to the right holder not earlier than three years after the trademark state registration date.

If within two months after the interested person's offer has been sent the right holder will not file a statement waiving the right to the trademark and will not make with the interested person an agreement alienating the exclusive right to the trademark, within a 30-day period upon the expiry of the mentioned two months, the interested person may file a lawsuit with a court seeking early termination of legal protection of a trademark owing to its not being used.

A new offer of the interested person may be communicated to the right holder of the trademark not earlier than after three months from the date when the previous offer of the interested person was sent.

A decision on early termination of legal protection of a trademark owing to its not being used shall be adopted by a court if the right holder fails to use the trademark with respect to the relevant goods for the individualisation of which the trademark has been registered within the three years immediately preceding the day the interested person's offer was sent to the right holder.

Legal protection of a trademark shall be terminated from the effective date of the court judgement.

2. For the purposes of the present article, the use of a trademark means it is being used by the right holder or the person to which such right has been granted by a licence contract in accordance with **Article 1489** of the present Code or another person using the trademark under the control of the right holder, provided the trademark is used in accordance with **Item 2 of Article 1484** of the present Code, except for cases when relevant actions are not directly related to the introduction of goods in civil-law transactions, and also the use of the trademark involving a modification of specific elements thereof not modifying the essence of the trademark and not limiting the protection granted to the trademark.

3. The right holder shall bear the burden of proving that the trademark is in use.

When resolving the issue of early termination of the legal protection of a trademark due to its non-use, account may be taken of the evidence of the trademark's not being used due to circumstances beyond the right holder's control, such evidence being provided by the right holder.

4. The termination of legal protection of a trademark means the termination of the exclusive right to the trademark.

**Article 1487.** The Exhaustion of the Exclusive Right to a Trademark

The exclusive right to a trademark shall not be deemed infringed if the trademark is used by other persons in respect of goods that have been introduced into civil-law transactions on the territory of the Russian Federation directly by the right holder or with the consent thereof.

**Article 1488.** The Contract of Alienation of the Exclusive Right to a Trademark

1. Under a contract of alienation of an exclusive right to a trademark one party (right holder) assigns or undertakes to assign in full his/its exclusive right to the relevant trademark in respect of all the goods or in respect of a part of the goods for the individualisation of which it has been registered to the other party being the acquirer of the exclusive right.

2. The alienation of an exclusive right to a trademark is prohibited if it can mislead the consumer in respect of the goods or of the manufacturer thereof.

3. The alienation of an exclusive right to a trademark incorporating as a non-protected element a geographical indication or an appellation of origin that enjoys legal protection on the territory of the Russian Federation (**Item 7 of Article 1483**) is admissible only if the acquirer has an exclusive right to the geographical indication or such appellation of origin.

**Article 1489.** The Licence Contract for the Granting of a Right to Use a Trademark

1. Under a licence contract one party being the owner of an exclusive right to a trademark (licensor) assigns or undertakes to assign to the other party (licensee) the right to use the trademark within the scope defined by the contract either with or without an indication of the territory on which the use is permitted with respect to all or part of the goods for which the trademark is registered.

1.1. The licence agreement on granting the right to use a trademark shall contain, along with the terms provided for by **Item 6 of Article 1235** of this Code, a list of the goods in respect of which the right to use the trademark is granted.

2. The licensee shall ensure the compliance of quality of the goods manufactured or sold by him/it on which he/it places the licensed trademark with the quality standard set by the licensor. The licensor is entitled to monitor observance of this condition. The licensee and the licensor are jointly liable for the claims addressed to the licensee as the manufacture of the goods.

3. The grant of a right to use a trademark incorporating as a non-protected element, geographical indication or an appellation of origin of goods that enjoys legal protection on the territory of the Russian Federation (**Item 7 of Article 1483**) is admissible only if the licensee has the exclusive right to such geographical indication or appellation of original.

**Article 1490.** The Form of a Contract of Disposing the Exclusive Right to a Trademark and the State Registration of Transfer of the Exclusive Right to a Trademark, of the Pledge of the Exclusive Right to a Trademark, and of Granting the Right to Use a Trademark

1. A contract of alienation of an exclusive right to a trademark, a licence contract, and also other contracts used to dispose of the exclusive right to a trademark shall be concluded in writing. Failure to observe the written form thereof shall entail the invalidity of a contract.

2. The alienation and pledge of the exclusive right to a trademark, granting on a contractual basis of the right to use it, and transfer of the exclusive right to a trademark without a contract are subject to state registration in the procedure established by **Article 1232** of this Code.

**Article 1491.** The Effective Term of the Exclusive Right to a Trademark

1. The exclusive right to a trademark shall be effective for 10 years after filing the trademark state registration application with the federal executive body charged with intellectual property matters or, in the event of registration of a trademark on the basis of a divisional application, from the date when the initial application is filed.

2. The effective term of the exclusive right to the trademark may be extended by 10 years by application of the right holder filed during the last year of the right's effective term.

The effective term of the exclusive right to the trademark may be extended an infinite number of

times.

By petition of the right holder, a six-month term may be granted thereto upon the expiry of the effective term of the exclusive right to the trademark to file the said application.

**3.** An entry on an extension of the effective term of the exclusive right to the trademark shall be made by the federal executive body charged with intellectual property matters in the State Register of Trademarks and in the trademark certificate.

### **3. The State Registration of a Trademark**

#### **Article 1492.** The Trademark Application

**1.** An **application** for state registration of a trademark (trademark application) shall be filed with the federal executive body charged with intellectual property matters by a legal entity or individual entrepreneur (applicant).

**2.** The trademark application shall cover one trademark.

**3.** The trademark application shall comprise the following:

1) an application for state registration of a designation as a trademark with reference to the applicant, his/its place of residence/whereabouts;

2) the designation being declared including, upon the request of an applicant, its 3D pattern in electronic form;

3) a list of the goods for which the trademark state registration is sought and which are classified under the classes of the International Classification of Goods and Services for Marks Registration;

4) a description of the designation being declared.

**4.** The trademark application shall be signed by the applicant, or, if the application is filed by a patent attorney or another representative, by the applicant or his/its representative who files the application.

**6.** The application for a trademark shall be submitted in the Russian language.

The documents attached to the application shall be submitted in Russian or another language. If such documents are submitted in another language, then their translation into Russian shall be attached to the application. The Russian translation may be submitted by the applicant within two months from the day the federal body of executive power for intellectual property sends him a notification about the necessity of fulfilling such a requirement.

**7.** The **requirements** applicable to the documents contained in the trademark application and the documents attached thereto (application documents) shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

**8.** The date of filing of a trademark application is the date when the documents envisaged by **Subitems 1-3 of Item 3** of the present article were received by the federal executive body charged with intellectual property matters, or if these documents were not filed simultaneously, the date of receipt of the last document.

#### **Article 1493.** The Right of Reading the Documents of a Trademark Application

**1.** After a trademark application is filed with the federal executive body charged with intellectual property matters, any person is entitled to become familiarised with the documents of the application.

The federal executive body charged with intellectual property matters shall publish in the official gazette data on the applications filed for trademarks.

After publishing data on an application and pending the adoption of the decision on the state registration of a trademark, any person is entitled to file with the federal executive body charged with intellectual property matters a petition in writing that contains arguments as to the non-compliance of the declared designation with the requirements of **Articles 1477** and **1483** of this Code.

**2.** The procedure for reading application documents and for issuing copies of such documents shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

**Article 1494.** The Priority of a Trademark

1. The priority of a trademark shall be established by the date of filing of the trademark application with the federal executive body charged with intellectual property matters.

2. The priority of a trademark on an application filed by an applicant in accordance with **Item 2 of Article 1502** of the present Code (divisional application) on the basis of another application of the same applicant for the same designation (initial application) shall be established by the date of filing of the initial application with the federal executive body charged with intellectual property matters, or if a right exists to an earlier priority on the initial application, by the date of that priority, unless as of the date of filing of the divisional application the initial application is withdrawn or deemed withdrawn, and if the divisional application had been filed prior to the decision taken on the initial application.

**Article 1495.** The Convention and Exhibition Priority of a Trademark

1. The priority of a trademark may be established by the date of filing of the first trademark application in a member-state of the **Paris Convention** for the Protection of Industrial Property (convention priority) if the trademark application is filed with the federal executive body charged with intellectual property matters within six months after the said date.

2. The priority of a trademark placed on exhibits of the official or officially-recognised international exhibitions organised on the territory of a member-state of the **Paris Convention** for the Protection of Industrial Property may be established by the date of commencement of the open showing of the exhibit at the exhibition (exhibition priority), if the trademark application is filed with the federal executive body charged with intellectual property matters within six months after the said date.

3. An applicant wishing to use a right of convention priority or a right of exhibition priority shall indicate that while filing a trademark application, or within two months after it was filed with the federal executive body charged with intellectual property matters, and shall attach the necessary documents confirming the legality of such claim or file these documents with the said federal body within three months after the filing of the application.

4. The priority of a trademark may be established by the date of its international registration in accordance with the international treaties of the Russian Federation.

**Article 1496.** The Consequences of Coincidence of the Priority Dates of Trademarks

1. If applications were filed by different applicants for identical trademarks in respect of fully coinciding or partially coinciding lists of goods, and these applications have one and the same priority date, the trademark so declared for the goods of which lists coincide may be registered only in the name of one of the applicants to be chosen by agreement between them.

2. If applications for identical trademarks for fully or partially coinciding lists of goods have been filed by one and the same applicant, and these applications have one and the same priority date, the trademark for the goods for which the said lists are coincident may be registered only under one of the applications to be chosen by the applicant.

3. If applications for identical trademarks have been filed by different applicants (**Item 1** of the present article), then within seven months from the date of sending by the federal executive body charged with intellectual property matters they shall notify that federal body of the agreement they have reached in choosing the specific application whereby the state registration will be sought for the trademark. During the same term the applicant that has filed applications for identical trademarks shall notify of his/its choice made (**Item 2** of the present article).

Unless during the established term the federal executive body charged with intellectual property matters receives the said notice or a petition for extension of the established term, the trademark applications shall be deemed withdrawn on the basis of a decision of that federal body.

**Article 1497.** The Expert Examination of a Trademark Application and the Making of Amendments to Application Documents

1. An expert examination of a trademark shall be carried out by the federal executive body charged with intellectual property matters.

The expert examination of the application shall include a formal expert examination and an expert examination of the designation declared as a trademark (declared designation).

2. During the expert examination of the trademark application the applicant is entitled to amend, update or correct the materials of the application, for instance by means of filing additional materials, until the time when a decision is taken on the application.

If the additional materials comprise a list of the goods not mentioned in the application as of the date when the application was filed, or significantly modify the declared designation of the trademark, such additional materials shall not be accepted for consideration. They may be arranged and filed by the applicant as an independent application.

3. A change in the details of the applicant in a trademark application, for instance in the event of assignment or transfer of the right of registering the trademark or due to a change in the name of the applicant, and also the correction of obvious and technical errors in application documents may be made before the state registration of the trademark (**Article 1503**) or the adoption of the decision on the denial of the state registration thereof.

4. During the expert examination of a trademark application the federal executive body charged with intellectual property matters is entitled to request additional materials from the applicant without which the expert examination is impossible.

The additional materials shall be submitted by the applicant within three months of forwarding thereto by the federal executive body charged with intellectual property matters the relevant request or copies of the materials opposed to the application, provided these copies have been requested by the applicant within two months of forwarding the request by the federal executive body charged with intellectual property matters. Unless within the said term the applicant files the additional materials requested or a petition for extension of the term set for the filing thereof, the application shall be deemed withdrawn under a decision of the federal executive body charged with intellectual property matters. On the applicant's petition the term set for the filing of the additional materials may be extended by the said federal body by up to six months.

The additional materials comprising a list of the goods not mentioned in the application as of the date when it was filed or significantly modifying the declared designation of the trademark are subject to the rules of **Item 2** of the present article.

#### **Article 1498.** The Formal Expert Examination of a Trademark Application

1. A formal expert examination of a trademark application shall be carried out within one month after it was filed with the federal executive body charged with intellectual property matters.

2. During the formal expert examination of the trademark application the presence of the necessary application documents and their compliance with established requirements shall be verified. According to the results of the formal examination, either the application shall be accepted for consideration or a decision shall be taken on refusal to accept it for consideration. The applicant shall be notified of the results of the formal expert examination by the federal executive body charged with intellectual property matters.

Simultaneously with a notice of a positive result of the formal expert examination of the application information shall be sent to the applicant about the date of filing of the application established according to **Item 8 of Article 1492** of the present Code.

#### **Article 1499.** The Expert Examination of a Designation Declared as a Trademark

1. An expert examination of a designation declared as a trademark (expert examination of a declared designation) shall be carried out on an application accepted for consideration as the result of a formal expert examination.

During the expert examination the compliance of the declared designation with the requirements set out in **Article 1477** and **Items 1-7, Subitem 3 of Item 9** (as regards industrial designs), **Item 10** (as regards means of individualisation and industrial designs) of Article 1483 of this Code shall be verified and the priority of the trademark shall be established.

In the event of receiving the petition in compliance with **paragraph three of Item 1 of Article 1493** of this Code, the arguments as to non-compliance of the declared designation with the requirements of

**Articles 1477 and 1483** of this Code contained in the petition shall be taken into account when conducting an expert examination of the declared designation.

2. According to the result of the expert examination of the declared designation, the federal executive body charged with intellectual property matters shall take a decision either on the state registration of the trademark or on the refusal to grant registration thereto. In compliance with international treaties of the Russian Federation, on the basis of the results of an expert examination of a trademark, the federal executive body charged with intellectual property matters shall render the decision on providing legal protection or on the refusal to provide legal protection to the trademark on the territory of the Russian Federation.

3. Before the taking of a decision on the refusal of state registration of a trademark or a decision on state registration of a trademark with respect to the goods contained in a list of goods as of the date of filing an application or in the list modified by an applicant in compliance with **Item 2 of Article 1497** of this Code, a notice in writing shall be sent to the applicant on the results of the verification of compliance of the declared designation with the requirements set out in **Paragraph 2 of Item 1** of the present article with a proposal to provide the applicant's arguments concerning the reasons set out in the notice. The applicant's arguments shall be taken into account when a decision is taken on the results of the expert examination of the declared designation, if they are submitted within six months after the dispatch of the said notice to the applicant.

4. A decision on the state registration of a trademark may be reviewed by the federal executive body charged with intellectual property matters before the registration of the trademark, in connection with:

1) receipt of an application having an earlier priority in accordance with **Articles 1494, 1495 and 1496** of the present Code for an identical designation or a designation similar thereto to the extent of confusion in respect of uniform goods;

2) the state registration as a geographical indication or an appellation of origin of goods of a designation identical or similar to the extent of confusion to the trademark specified in the decision on registration;

3) the finding of an application comprising an identical trademark or the finding of a protected identical trademark in respect of fully or partially coinciding lists of goods having the same or an earlier trademark priority;

4) a change of applicant that can lead in the event of state registration of the declared designation as a trademark to the consumer's being misled concerning the goods or the manufacturer thereof.

#### **Article 1500. Challenging Decisions on a Trademark Application**

1. The decisions of the federal executive body charged with intellectual property matters on a refusal to accept for consideration a trademark application, on the state registration of a trademark, on refusal to grant the state registration to a trademark and on declaring a trademark application withdrawn, the decision on granting or on the refusal to grant legal protection to a trademark on the territory of the Russian Federation or to deny the state protection thereof in compliance with international treaties of the Russian Federation may be challenged by the applicant by means of filing an objection with the federal executive body charged with intellectual property matters within four months after forwarding the relevant decision or copies of the materials opposing the application requested from the said federal executive body, provided the applicant requested copies of the materials within one month of his/its receipt of the relevant decision.

2. During examination of the objection by the federal executive body charged with intellectual property matters the applicant may make the amendments permitted in accordance with **Items 2 and 3 of Article 1497** of the present Code to the application documents if such amendments eliminate the reasons serving as the only ground for refusal to grant state registration to the trademark, and if the making of these amendments allows a decision to be taken on granting state registration to the trademark.

#### **Article 1501. The Renewal of the Missed Term Connected with Holding the Expert Examination of a Trademark Application**

1. The term provided for by **Item 4 of Article 1497** and **Item 1 of Article 1500** of this Code and missed by an applicant may be renewed by the federal executive body charged with intellectual property matters on petition of the applicant filed within six months of the expiry of the term, if the applicant cites the

reasons for his/its failure to observe it. The petition for renewal of a missed term shall be filed by the applicant with the said federal executive body simultaneously with the additional materials requested in accordance with Item 4 of Article 1497 of this Code or with a petition for extension of the term for filing thereof or simultaneously with filing an objection with the federal executive body charged with intellectual property matters under **Article 1500** of this Code.

**2.** The term provided for by **Item 4 of Article 1497** of this Code shall be restored in compliance with the provisions of this chapter on the basis of the decision of the federal executive body charged with intellectual property matters on the reversal of the decisions on declaring an application withdrawn and on restoration of the missed term.

#### **Article 1502.** Withdrawing a Trademark Application and Dividing the Application

**1.** A trademark application may be withdrawn by the applicant at any stage of examination thereof but not later than the date of state registration of the trademark.

**2.** During the expert examination of the trademark application or consideration by the federal executive body charged with intellectual property matters of an objection against the decision of the federal executive body charged with intellectual property matters on the state registration of a trademark or on the denial of the state registration of a trademark adopted on the basis provided for by **Item 6 of Article 1483** of this Code, the applicant is entitled until the taking of a decision on the application to file a divisional application with the federal executive body charged with intellectual property matters for the same designation. Such application shall comprise a list of the goods from among those specified in the initial application as of the date of filing thereof with this federal body that are not uniform with other goods mentioned in the list comprised by the initial application which shall remain covered by the initial application.

#### **Article 1503.** The Procedure for State Registration of a Trademark

**1.** Under the decision on the state registration of a trademark adopted in the procedure established by **Item 2 and 4 of Article 1499** or **Article 1248**, the federal executive body charged with intellectual property matters within a month from the date of paying the duty for state registration of the trademark and for issuance of the certificate in respect of it shall complete the state registration of the trademark in the State Register of Trademarks.

The entry in the State Register of Trademark shall comprise the trademark, information on the right holder, the priority date of the trademark, a list of the goods to be individualised by the registered trademark, the date of its state registration, other information relating to the registration of the trademark, and also subsequent amendments to these details.

**2.** If an applicant has not paid in the established procedure the duty cited in **Item 1** of this article, a trademark shall not be registered and the appropriate application shall be deemed withdrawn on the basis of a decision of the federal executive body charged with intellectual property matters.

In the event of disputing the decision on registration of a trademark in the procedure established by **Article 1248** of this Code, the decision on declaring the application withdrawn shall not be rendered.

#### **Article 1504.** The Issuance of a Trademark Certificate

**1.** A trademark certificate shall be issued by the federal executive body charged with intellectual property matters in the form of an electronic document and, upon the request of an applicant, on paper within one month after the state registration of the trademark in the State Register of Trademarks.

**2.** The **form** of a trademark certificate and the **list** of the details to be given therein shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

#### **Article 1505.** Making Amendments to the State Register of Trademarks and a Trademark Certificate

**1.** The federal executive body charged with intellectual property matters shall make on the basis of the right holder's application in the State Register of Trademarks and the issued certificate for the trademark the amendments related to the data on registration of the trademark, in particular on the right holder,

denomination or name thereof, location or place of residence, postal address, as well as the amendments connected with the reduction of a list of goods and services for whose individualisation the trademark has been registered and the amendments in individual elements of the trademark that do not change the essence thereof, and also the amendments for correcting obvious and technical mistakes.

2. If the provision of legal protection to a trademark is challenged (**Article 1512**) the state registration of the trademark effective in respect of several goods may be separated at an application of the right holder to make a separate registration of the trademark for one goods item or a part of the goods from among those specified in the initial registration as being non-uniform with the goods given on the list remaining in the initial registration. Such application may be filed by the right holder up until a decision is taken on the results of consideration of the dispute on the registration of the trademark.

3. **Abrogated** from October 1, 2014.

4. **Abrogated** from October 1, 2014.

**Article 1506.** Publishing Information on the State Registration of a Trademark

Information concerning the state registration of a trademark and its entry into the State Register of Trademarks in accordance with **Article 1503** of the present Code shall be published by the federal executive body charged with intellectual property matters in its gazette immediately after the registration of the trademark in the State Register of Trademarks or after the relevant amendments have been made to the State Register of Trademarks.

**Article 1507.** Trademark Registration in Foreign States and International Trademark Registration

1. Russian legal entities and citizens of the Russian Federation are entitled to register a trademark in foreign states or to carry out its international registration.

2. An application for the international registration of a trademark shall be filed through the federal executive body charged with intellectual property matters.

#### 4. The Details of Legal Protection of a Generally-Recognised Trademark

**Article 1508.** A Generally-Recognised Trademark

1. At an application of a person that deems a trademark he/it uses or a designation used as a trademark to be "a trademark generally-recognised in the Russian Federation" a trademark protected on the territory of the Russian Federation on the basis of its state registration or under an international treaty of the Russian Federation or designation used as a trademark but not having legal protection on the territory of the Russian Federation **may be deemed** "a trademark generally-renowned on the territory of the Russian Federation" by a decision of the federal executive body charged with intellectual property matters, if as the result of intensive use this trademark or this designation had become broadly known in the Russian Federation among relevant consumers in respect of the applicant's goods as of the date indicated in the application.

The trademark and the designation used as a trademark shall not be deemed "generally-recognised trademarks" if they have become broadly known after the priority date of another person's identical trademark or one similar to the extent of confusion that is intended for use in respect of uniform goods.

2. The legal protection envisaged by the present Code for a trademark shall be granted to a generally-recognised trademark.

The grant of legal protection to a generally-recognised trademark means the recognition of an exclusive right to the generally-recognised trademark.

The legal protection of a generally-recognised trademark has infinite duration.

3. The legal protection of a generally-recognised trademark also extends to goods which are not uniform with those for which it has been declared generally-recognised if the use of this trademark by another person in respect of the said goods is going to be associated by consumers with the holder of the exclusive right to a generally-recognised trademark and it may infringe the lawful interests of the holder.

**Article 1509.** The Grant of Legal Protection to a Generally-Recognised Trademark



1. Legal protection shall be granted to a generally-recognised trademark under a decision of the federal executive body charged with intellectual property matters taken in accordance with **Item 1 of Article 1508** of the present Code.

2. A trademark deemed generally-recognised shall be entered by the federal executive body charged with intellectual property matters in the List of the Trademarks Generally-Recognised in the Russian Federation (List of Generally-Recognised Trademarks).

3. A certificate of a generally-recognised trademark shall be issued by the federal executive body charged with intellectual property matters in the form of an electronic document and, upon the request of an applicant, on paper within one month after the trademark is entered in the List of Generally-Recognised Trademarks.

The **form** of a certificate of a generally-recognised trademark and a **list** of the details that must be in the certificate shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

4. Information concerning a generally-recognised trademark shall be published by the federal executive body charged with intellectual property matters in the gazette immediately after it is entered in the List of Generally-Recognised Trademarks.

## 5. The Details of Legal Protection of a Collective Mark

### **Article 1510.** The Right to a Collective Mark

1. An association of persons whose creation and activity do not conflict with the legislation of the state in which it is formed is entitled to register a collective mark in the Russian Federation.

The collective mark is a trademark intended for designating the goods manufactured or sold by the persons being members of the association and which have uniform characteristics of quality or other common characteristics.

Each person being a member of the association may use the collective mark.

2. A right to a collective mark is unalienable and it shall not be the subject matter of a licence contract.

3. A person being a member of an association that has registered a collective mark is entitled to use his/its own trademark and the collective mark.

### **Article 1511.** The State Registration of a Collective Mark

1. The application for registration of a collective mark (collective mark application) filed with the federal executive body charged with intellectual property matters shall be accompanied by a charter of the collective mark comprising the following:

- 1) the name of the association authorised to register the collective mark in its name (right holder);
- 2) a list of the persons entitled to use the collective mark;
- 3) the purpose of registration of the collective mark;
- 4) a list of the uniform characteristics of quality of, or other common characteristics of the goods which are going to be designated by the collective mark;
- 5) terms for using the collective mark;
- 6) provisions on the procedure for monitoring the use of the collective mark;
- 7) provisions on liability for a breach of the charter of the collective mark.

2. In addition to the details required by **Articles 1503** and **1504** of the present Code, the following shall be entered into the State Register of Trademarks and a **certificate** of a collective mark: information on the persons entitled to use the collective mark. This information and also an abstract from the charter of the collective mark on the uniform characteristics of the quality, and the common characteristics, of the goods for which this mark is registered shall be published by the federal executive body charged with intellectual property matters in the gazette.

The right holder shall notify the federal executive body charged with intellectual property matters of the amendments made to the charter of a collective mark.

3. If a collective mark is used on goods not having uniform quality characteristics or other common characteristics, the legal protection of the collective mark may be terminated before the due date in full or in part under a court decision adopted at the application of any person concerned.

4. A collective mark and a collective mark application may be transformed into a trademark and a trademark application respectively and vice versa. The **procedure** for such transformation shall be established by the federal executive body charged with normative legal regulation in the area of intellectual property.

## 6. Terminating the Exclusive Right to a Trademark

### **Article 1512.** Grounds for Challenging and Deeming Invalid the Grant of Legal Protection to a Trademark

1. Challenging the grant of legal protection to a trademark means challenging the decision on the state registration of the trademark (**Item 2 of Article 1499**) and the recognition of an exclusive right to the trademark based thereon (**Article 1477 and 1481**).

Deeming the granting of legal protection to a trademark invalid shall cause the revocation of the decision of the federal executive body charged with intellectual property matters on the registration of the trademark.

2. The granting of legal protection to a trademark may be challenged and deemed invalid:

1) in full or in part for the whole effective term of the exclusive right to the trademark if legal protection has been granted thereto in breach of the provisions of **Items 1-5, 8 and 9 of Article 1483** of the present Code;

2) in full or in part within five years after the date of publication of information on the state registration of the trademark in the gazette (**Article 1506**) if legal protection has been in breach of provisions of **Items 6, 7 and 10 of Article 1483** of this Code;

3) in full for the whole effective term of the exclusive right to the trademark if legal protection has been granted thereto in breach of provisions of **Article 1478** of the present Code;

4) in full for the whole effective term of legal protection if it was granted to the trademark with a later priority in comparison with another person's trademark recognised as generally-recognised which is under legal protection in accordance with **Item 3 of Article 1508** of the present Code;

5) in full for the whole effective term of the exclusive right to the trademark if legal protection has been granted thereto in the name of an agent or a representative of the person being the holder of that exclusive right in a member-state of the **Paris Convention** for the Protection of Industrial Property in breach of the provisions of the **Convention**;

6) in full or in part within the whole effective term of legal protection, if the right holder's actions connected with the provision of legal protection to a trademark or to another trademark which is similar to it to the degree of confusion are declared in the established procedure an abuse of the right or unfair competition;

7) in full or in part for the whole effective term of legal protection if it is provided with a failure to satisfy the requirements of **Item 3 of Article 1496** of this Code.

The provisions of **Subitems 1-3** of this item shall apply subject to the circumstances that have occurred as of the date of filing an objection (**Article 1513**);

3. The grant of legal protection to a generally-recognised trademark by means of registration thereof in the Russian Federation may be challenged and deemed invalid in full or in part during the whole effective term of the exclusive right to this trademark if legal protection has been granted thereto in breach of provisions of **Item 1 of Article 1508** of the present Code.

4. The provision of legal protection on the territory of the Russian Federation to a trademark registered in compliance with international treaties of the Russian Federation may be disputed and declared invalid on the grounds provided for by Item 2 of this article.

### **Article 1513.** Procedure for Challenging and Deeming Invalid the Grant of Legal Protection to a

## Trademark

1. The grant of legal protection to a trademark may be challenged on the grounds and within the term envisaged by **Article 1512** of the present Code by means of filing an objection against such granting with the federal executive body charged with intellectual property matters.

2. Objections against the grant of legal protection to a trademark on the grounds set out in **Subitems 1-4, 6 and 7 of Item 2 and Item 3 of Article 1512** of the present Code may be filed by the person concerned.

3. An objection against the grant of legal protection to a trademark on the ground set out in **Subitem 5 of Item 2 of Article 1512** of the present Code may be filed by the concerned owner of the exclusive right to the trademark in a member state of the **Paris Convention** for the Protection of Industrial Property.

Paragraph 2 **lost force** from October 1, 2014.

4. Decisions of the federal executive body charged with intellectual property matters on deeming invalid the granting of legal protection to a trademark or on refusing to deem it as such shall take effect in accordance with the rules of **Article 1248** of the present Code and they may be challenged in court.

5. If the grant of legal protection to a trademark is deemed invalid in full the certificate of the trademark and the entry in the State Register of Trademarks shall be annulled.

If the grant of legal protection to a trademark is deemed partially invalid a new certificate for the trademark shall be issued and relevant amendments shall be made to the State Register of Trademarks.

6. The licence contracts concluded before a decision is taken on deeming invalid the grant of legal protection to a trademark shall remain in effect to the extent in which they had been discharged as of the time when the decision was taken.

### **Article 1514.** Terminating the Legal Protection of a Trademark

1. The legal protection of a trademark shall be terminated:

1) in connection with the expiry of the effective term of the exclusive right to the trademark;  
2) on the ground of a court decision on early termination of the legal protection of the collective trademark in accordance with **Item 3 of Article 1511** of the present Code in connection with this mark being used on goods not having uniform quality characteristics or other common characteristics;

3) on the basis of a decision on early termination of the legal protection of the trademark due to its not being used, such decision being taken in accordance with **Article 1486** of the present Code;

4) on the basis of the decision of the federal executive body charged with intellectual property matters on early termination of the legal protection of the trademark in connection with termination of the legal entity being the right holder or registration of termination by a citizen of the entrepreneurial activity of the individual entrepreneur being the right holder;

5) if the right holder has waived his/its right to the trademark;

6) on the basis of a decision taken by the federal executive body charged with intellectual property matters on the application of a person concerned on early termination of the legal protection of the trademark if it has turned into a designation commonly used as a term for goods of a certain kind;

7) on the basis of a decision -- taken at an application of any person -- of the federal executive body in charge of intellectual property matters on early termination of the legal protection of a trademark that has been registered in accordance with **Item 7 of Article 1483** of this Code, in the case of termination of the right to use the relevant geographical indication or appellation of origin of goods.

2. The legal protection of a generally-recognised trademark shall be terminated on the grounds set out in **Subitems 3-6 of Item 1** of the present article, and also by a decision of the federal executive body charged with intellectual property matters if the generally-recognised trademark has lost the characteristics established by **Paragraph 1 of Item 1 of Article 1508** of the present Code.

3. When an exclusive right to a trademark is transferred without the conclusion of a contract with the right holder (**Article 1241**), the legal protection of the trademark may be terminated by a court decision at a claim of a person concerned if it is proven that the transfer misleads consumers concerning goods or the manufacturer thereof.

4. The termination of legal protection of a trademark means the termination of the exclusive right to the trademark.

5. The legal protection on the territory of the Russian Federation of a trademark registered in

compliance with international treaties of the Russian Federation shall be terminated on the grounds and in the procedure which are provided for by this article.

## **7. The Protection of a Right to a Trademark**

### **Article 1515. Liability for the Illegal Use of a Trademark**

1. The goods, labels, packaging of goods on which a trademark or a designation similar thereto to the extent of confusion has been illegally placed are counterfeit.

2. The right holder is entitled to claim withdrawal from transactions and destruction of the counterfeit goods, labels, packaging of goods on which the illegally used trademark or a designation similar thereto to the extent of confusion has been placed at the expense of the infringer. If the placing of these goods in transactions is required for the public interest the right holder is entitled to demand removal at the infringer's expense of the illegally used trademark or a designation confusingly similar thereto that has been placed on the counterfeit goods, labels and packages of goods.

3. A person that has infringed an exclusive right to a trademark while carrying out works or providing services shall remove the trademark or a designation confusingly similar thereto from the materials involved in the performance of such works or the provision of such services, including from documents, advertisements and billboards.

4. The right holder is entitled to demand, at his/its option, that the infringer pays compensation instead of reimbursement of damages:

1) in the amount of 10,000 to 5,000,000 roubles at the court's discretion on the basis of the nature of the infringement;

2) in the amount equal to double the value of the goods on which the trademark has been illegally placed or double the value of the right to use the trademark assessed on the basis of the price normally charged in comparable circumstances for the legal use of the trademark.

5. A person carrying out preliminary marking in respect of a trademark not registered in the Russian Federation is liable in the procedure established by the legislation of the Russian Federation.

## **§ 3. The Right to a Geographical Indication and the Appellation of Origin of Goods**

### **1. General Provisions**

#### **Article 1516. The Geographical Indication and the Appellation of Origin of Goods**

1. A geographical indication to which legal protection is granted means a designation that identifies merchandise originating from the territory of a geographical location, with the quality, reputation or other characteristics thereof being substantially connected with its geographical origin (characteristics of the merchandise). At least one of the stages of the making of the merchandise substantially affecting the shaping of the merchandise's characteristics must be carried out on the territory of the given geographical location.

An appellation of origin of goods to which legal protection is granted means a designation that is the contemporary or historical, official or unofficial, full or abbreviated name of a country, an urban or rural settlement, area or another geographical location that includes such appellation or a derivative of such appellation, and has become known as a result of its being used in respect of the merchandise whose special properties are exclusively determined by the natural conditions and/or the human factors which are typical for the given geographical location. On the territory of the given location there have to be carried out all the stages of making the merchandise which substantially affect the shaping of the special properties of the merchandise.

The stages and the boundaries of manufacture of the merchandise, and also the characteristics of the merchandise, or the special properties of the merchandise for the designation of which a geographical indication or an appellation of origin of goods is used shall meet the requirements established by federal laws

and other normative legal acts of the Russian Federation. The observance of the established requirements shall be monitored in accordance with federal laws.

2. It is hereby prohibited to grant state registration as a geographical indication or appellation of origin of goods to a designation:

1) that, though being related to the name of the geographic location within whose boundaries the merchandise was initially manufactured or put into civil circulation, has not become a designation generally used in the Russian Federation as a designation of merchandise of a certain kind that is not connected with the place where it is produced;

2) is registered as a geographical indication or an appellation of origin of goods in respect of merchandise of the same kind;

3) that is identical or similar to a trademark having earlier priority, if the use of such geographical indication or of such appellation of origin of goods can mislead the consumer concerning the merchandise or the manufacturer thereof;

4) that is the name of a species of plant or animal, if the use of such geographical indication or such appellation of origin of goods can mislead the consumer concerning the merchandise;

5) that can mislead the consumer concerning the merchandise or the manufacturer thereof;

6) that has been declared for state registration as a geographical indication or appellation of the origin of goods for merchandise that does not meet the requirements envisaged by **Paragraph 3 of Item 1** of this article.

3. The rules of this Code on geographical indications are applicable to appellations of origin of goods, except as otherwise established by this Code.

#### **Article 1517.** The Effect of an Exclusive Right to a Geographical Indication or Appellation of Origin of Goods on the Territory of the Russian Federation

1. The exclusive right to a geographical indication or an appellation of origin of goods that has been registered by the federal executive body in charge of intellectual property matters shall be effective on the territory of the Russian Federation, and also in other cases envisaged by an **international treaty** of the Russian Federation.

2. The state registration as geographical indication of a designation allowing one to identify merchandise originating from the territory of a geographical location that is in a foreign state is admissible if that designation is protected as a geographical indication or another means of merchandise individualisation in the country of origin of the merchandise, provided it meets the requirements set out in **Article 1516** of this Code. The owner of the exclusive right to a geographical indication may only be a person whose right to such geographical indication or other means of merchandise individualisation is protected in the country of origin of the merchandise.

The state registration of the name of a geographical location which is in a foreign state as an appellation of origin of goods is admissible if the name of that geographical location is protected as an appellation of origin of goods in the country of origin of the merchandise. The owner of the exclusive right to an appellation of origin of goods may only be a person whose right to such appellation is protected in the country of origin of the merchandise.

#### **Article 1518.** The State Registration of a Geographical Indication

1. A geographical indication shall be recognised and protected by virtue of the state registration thereof.

A geographical indication may be registered by one or several citizens, one or several legal entities, and also an alliance (union) or another association of persons whose creation and activities do not contravene the legislation of the country of origin of goods.

2. The persons that have registered a geographical indication acquire the exclusive right to that geographical indication, provided the merchandise in respect of which the geographical indication is registered meets the requirements set out in **Item 1 of Article 1516** of this Code.

The exclusive right to a geographical indication may be granted in respect of the same geographical indication in the procedure established by this code to any person that, within the boundaries of the same

geographical location, manufactures merchandise possessing the characteristics cited in the State Register of Geographical Indications and Appellations of Origin of Goods of the Russian Federation (the State Register of Indications and Appellations).

## 2. Using a Geographical Indication

### **Article 1519.** The Exclusive Right to a Geographical Indication

1. The right holder has the right to use the geographical indication in accordance with by **Article 1229** of this Code by any method not contravening the law, including the methods specified in **Item 2** of this article.

If the exclusive right to a geographical indication is granted to an association of persons the right to use such geographical indication is granted to every person that is a member of that association and is included in the State Register of Indications and Appellations, provided such geographical indication is used in respect of merchandise that has the characteristics cited in the State Register of Indications and Appellations.

2. Inter alia, the use of a geographical indication means the application of that geographical indication:

1) on goods, labels, packing of goods which are manufactured, offered for sale, sold, exhibited at exhibitions and fairs or otherwise are put into civil circulation on the territory of the Russian Federation, or are stored or transported for that purpose, or are imported into the territory of the Russian Federation;

2) on forms, invoices and other document and in printed matter connected with putting the goods into civil circulation;

3) in offers to sell the goods and also in announcements, on billboards and in advertisements;

4) on the Internet, in particular in the name of a domain and in other addressing techniques.

3. The following shall be deemed illegal use of a geographical indication:

1) the use of a registered geographical indication by persons that do not have the right to use it, even though in this case the real place of origin of merchandise or geographical indication is used in a translation or in combination with such words as "kind/genus", "type", "imitation" and the like;

2) the use of a registered geographical indication by persons that have the right to use it, in respect of merchandise that does not have the characteristics cited in the State Register of Indications and Appellations, or is made outside the boundaries of the geographical location specified in the State Register of Indications and Appellations;

3) the use for any goods of a designation similar to a registered geographical indication capable of misleading consumers as to the origin of the goods or the characteristics of the goods.

4. The goods, labels or packing of goods which illegally bear a geographical indication or designations similar to it to the degree of confusion are deemed counterfeit.

5. The following shall not be deemed infringement of the exclusive right to a geographical indication: the use of that geographical indication by other persons in respect of goods that have been put into civil circulation directly by the right holder or with his consent.

6. The disposal of the exclusive right to a geographical indication, in particular by the alienation thereof, or the grant to another person of the right to use that geographical indication, and also the transfer of the exclusive right to a geographical indication without the conclusion of a contract is prohibited.

### **Article 1520.** The Mark of Protection of a Geographical Indication and an Appellation of Origin of Goods

1. For the purposes of notifying others about the right, a person having the right to use a geographical indication in accordance with **Item 2 of Article 1518** of this Code may post next to the geographical indication a mark of protection in the form of the textual designations "registered geographical indication", "with protected geographical indication", "registered GI" or relevant emblems pointing to the fact that the used designation is a geographical indication registered in the Russian Federation.

For the purposes of notifying others about the right, a person having the right to use an appellation of

origin of goods in accordance with **Item 2 of Article 1518** of this Code may post next to the appellation of origin of goods a mark of protection in the form of the textual designations "registered appellation of origin of goods", "with protected appellation of origin of goods", "registered NMPT" or a relevant emblem pointing to the fact that the used designation is an appellation of origin of goods registered in the Russian Federation.

2. The federal executive body in charge of intellectual property matters shall endorse the emblems cited in **Item 1** of this article.

#### **Article 1521. The Effect of Legal Protection of a Geographical Indication**

1. A geographical indication shall be protected during the entire period of existence of the possibility of manufacturing merchandise that meets the requirements set out in **Item 1 of Article 1516** of this Code.

2. The effective term of the exclusive right to a geographical indication, and the procedure for extension of that term, are defined by **Article 1531** of this Code.

### **3. The State Registration of a Geographical Indication and the Grant of an Exclusive Right to a Geographical Indication**

#### **Article 1522. The Application for a Geographical Indication**

1. An application for state registration of a geographical indication and for grant of an exclusive right to such geographical indication, and also an application for granting an exclusive right to a geographical indication registered earlier (a geographical indication application) shall be filed with the federal executive body in charge of intellectual property matters.

A geographical indication application shall pertain to one geographical indication.

A geographical indication application may be filed by the persons specified in **Paragraph 2 of Item 1 of Article 1518** of this Code.

2. A geographical indication application shall contain the following:

1) an application for state registration of the geographical indication and for grant of an exclusive right to such geographical indication, or only for the grant of an exclusive right to a geographical indication registered earlier, with an indication of the applicant and also of the place of residence or location thereof;

2) the declared designation;

3) reference to the merchandise in respect of which the state registration of the geographical indication and for grant of an exclusive right to such geographical indication, or only grant of an exclusive right to a geographical indication registered earlier are being requested;

4) reference to the place of origin (manufacture) of the merchandise (the boundaries of the geographical location);

5) information concerning the connection of the characteristics of the merchandise with the place of origin (manufacture) thereof (for an application for state registration of a geographical indication and for grant of an exclusive right to such geographical indication);

6) a description of the characteristics of the merchandise, in particular the initial material used to manufacture the merchandise, physical, chemical, microbiological, organoleptic or artistic characteristics of the merchandise;

7) a description of the method whereby the merchandise is manufactured, and also information on the conditions of storage and transportation thereof, if this substantially affects the shaping and preservation of the merchandise's characteristics;

8) a description of the procedure for monitoring the observance of conditions of manufacture and the preservation of the characteristics of the merchandise for which legal protection of the geographical indication is being requested;

9) a list of the persons entitled to use the geographical indication, if the geographical indication application is filed by an alliance of persons, and terms for the use of the geographical indication by the persons who are members of that alliance;

10) information confirming the right to manufacture the merchandise, if provision is made for this in

federal laws.

**3.** Attached to the geographical indication application shall be documents confirming that the applicant manufactures merchandise that has relevant characteristics which are to a substantial degree due to its geographical origin, and also the information cited in **Item 2** of this article.

If the geographical indication application is filed by several persons then attached to the application shall be the documents cited in **Paragraph 1** of this item, in respect of the merchandise of each applicant.

If the geographical indication application is filed by an alliance of persons then attached to the documents cited in **Paragraph 1** of this item shall be documents confirming that the persons being members of that alliance manufacture or put on the market merchandise that has the relevant characteristics which are substantially due to its geographical origin, and/or use the declared indication in respect of the given merchandise.

Attached to an application for grant of an exclusive right to a geographical indication registered earlier as identifying merchandise with origin on the territory of a geographical location that is on the territory of the Russian Federation shall be documents confirming that the applicant manufactures merchandise having the characteristics described in the State Register of Indications and Appellations (**Article 1529**), and also observes the conditions set out in **Subitem 7 of Item 2** of this article and in the State Register of Indications and Appellations.

If the geographical location in respect of which a geographical indication application has been filed is outside the Russian Federation, then attached to the application shall be documents confirming that such indication meets the requirements set out in **Item 1 of Article 1516** of this Code, the applicant's exclusive right to the declared designation in the country of origin of the merchandise, and also the information mentioned in **Item 2** of this article.

**4.** The requirements applicable to the documents contained in the geographical indication application or to the documents attached thereto (application documents) shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

**5.** The date of filing of a geographical indication application is the date on which the federal executive body in charge of intellectual property matters receives the documents envisaged by **Item 2** of this article, or if said documents are not filed simultaneously, the date of receipt of the last of the documents.

#### **Article 1522.1.** Specifics of the Application for an Appellation of Origin of Goods

**1.** An application for state registration of an appellation of origin of goods and for grant of an exclusive right to such appellation, and also an application for the grant of an exclusive right to an appellation of origin of goods registered earlier (an application for an appellation of origin of goods) shall contain the information cited in **Subitems 1 - 4, 7 - 10 of Item 2 of Article 1522** of this Code, including:

1) information containing substantiation of the fact that the merchandise in respect of which the appellation of origin of goods is declared for state registration possesses the special properties mentioned in Paragraph 2 of Item 1 of Article 1516 of this Code;

2) a description of the merchandise's special properties, in particular reference to the initial material used to manufacture it, and the basic physical, chemical, microbiological, organoleptic or artistic characteristics of the merchandise.

**2.** If the geographical location whose name is declared as an appellation of origin of goods is on the territory of the Russian Federation the application for the appellation of origin of goods shall be filed together with a report of the federal executive body authorised by the Government of the Russian Federation, or if it is not available, a statement of an executive body of a constituent entity of the Russian Federation, or of the organisation which are authorised by the supreme governmental body of the constituent entity of the Russian Federation on whose territory the given geographical location is located (the authorised body) which shall confirm that within the boundaries of the given geographical location the applicant manufactures merchandise that meets the requirements set out in **Item 1 of Article 1516** of this Code, and shall confirm the information mentioned in **Item 1** of this article. Also attached to the application for state registration of the appellation of origin of goods and for the grant of an exclusive right to such appellation shall be documents confirming that such appellation is known in respect of the merchandise.

If the application for an appellation of origin of goods is filed by several persons then the application



shall be filed together with the report cited in in **Paragraph 1** of this item, in respect of the merchandise of each of the applicants.

If the application for an appellation of origin of goods is filed by an alliance of persons, the report cited in **Paragraph 1** of this item shall concern each person being a member of the given alliance.

Attached to an application for the grant of an exclusive right to an appellation of origin of goods registered earlier pertaining to a geographical location that is on the territory of the Russian Federation shall be a report of the authorised body to the effect that within the boundaries of the given geographical location the applicant manufactures merchandise that possesses the special properties mentioned in the State Register of Indications and Appellations.

Unless the report cited in **Paragraphs 1** and **4** of this item is filed by the applicant, the federal executive body in charge of intellectual property matters shall request said statement or the information contained therein from the authorised body. The statement shall be issued by the authorised body in the procedure established by it, if the applicant has provided the documents envisaged by such procedure.

The authorised body shall monitor the preservation of the special properties of the merchandise in respect of which an appellation of origin of goods has been registered; in particular it shall issue a report on the disappearance of the conditions that used to be typical for the given geographical location, and on the impossibility of manufacturing the merchandise having the special properties mentioned in the State Register of Indications and Appellations in respect of which an appellation of origin of goods has been registered. The procedure for exercising such control shall be established by federal laws, or by the Government of the Russian Federation.

If the geographical location in respect of which an application for an appellation of origin of goods has been filed is outside the Russian Federation, then the application shall be filed together with a document confirming the applicant's right to the declared appellation of origin of goods in the country of origin of the merchandise.

**3.** An appellation of origin of goods and an application for an appellation of origin of goods may be transformed into a geographical indication and a geographical indication application respectively, and vice versa, given the observance of the provisions of this Code. The procedure for such transformation shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

**4.** The requirements applicable to the documents contained in an application for an appellation of origin of goods, and to the documents attached thereto (application documents) shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

#### **Article 1523.** The Expert Examination of a Geographical Indication Application and Amending Application Documents

**1.** An expert examination of a geographical indication application shall be carried out by the federal executive body in charge of intellectual property matters.

The expert examination of a geographical indication application shall include a formal expert examination and an expert examination of the designation declared as a geographical indication (declared designation).

**2.** During the realisation of an expert examination of a geographical indication application the federal executive body in charge of intellectual property matters has the right to request additional materials from the applicant without which the completion of the expert examination is impossible.

The additional materials shall be provided by the applicant within three months after the date of dispatch of the relevant enquiry by the federal executive body in charge of intellectual property matters. At the applicant's request this term may be extended by up to six months, provided the request is received before the expiry of the term for giving a reply to the request. If the applicant is in breach of said term, or left the request for additional materials without reply, the application shall be deemed withdrawn under a decision of the federal executive body in charge of intellectual property matters.

#### **Article 1524.** The Formal Expert Examination of a Geographical Indication Application

**1.** In the course of a formal expert examination of a geographical indication application the

availability of the necessary application documents shall be checked, and also the compliance thereof with the established requirements. According to the results of the formal expert examination the application shall be accepted for consideration, or a decision shall be taken on refusal to accept the application for consideration.

Simultaneously with notification about the positive result of the formal expert examination of the application the applicant shall be informed about the application filing date set in accordance with **Item 5 of Article 1522** of this Code.

**2.** The federal executive body in charge of intellectual property matters shall bring information concerning the geographical indication application to the notice of the general public, in particular shall publish information in the official bulletin about the application accepted for consideration, and also the information contained in it, in the procedure established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property. The federal executive body in charge of intellectual property matters shall notify the authorised bodies and the bodies which exercise control envisaged by **Paragraph 3 of Item 1 of Article 1516** of this Code about the receipt of the geographical indication application.

**3.** After the publication of the information cited in **Item 2** of this article within three months any person has the right to present an objection to the federal executive body in charge of intellectual property matters against the grant of legal protection to the geographical indication and/or against the grant of the exclusive right to the geographical indication.

**4.** After the publication of the information cited in **Item 2** of this article, any person has the right to acquaint themselves with the application documents. The procedure for acquainting oneself with application documents and for handing out copies of such documents shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

#### **Article 1525.** The Expert Examination of a Designation Declared as a Geographical Indication or an Appellation of Origin of Goods

**1.** An expert examination of a designation declared as a geographical indication or an appellation of origin of goods (and expert examination of a declared designation) for the compliance of such designation with the provisions of this Code shall be carried out on an application accepted for consideration as a result of a formal expert examination.

In the course of an expert examination of a designation declared as a geographical indication, the compliance of the declared designation with the provisions of **Item 1, Subitems 1, 2, 5, 6 of Item 2 of Article 1516** of this Code shall be checked, and also the availability of the information and documents cited in **Article 1522** of this Code.

In the course of an expert examination of a designation declared as an appellation of origin of goods the compliance of the declared designation with the provisions of **Item 1, Subitems 1, 2, 5, 6 of Item 2 of Article 1516** of this Code shall be checked, and also the availability of the information and documents cited in **Article 1522.1** of this Code.

**2.** According to the results of an expert examination of the declared designation, the federal executive body in charge of intellectual property matters shall take a decision on state registration of the geographical indication and on granting of the exclusive right to the geographical indication, a decision on state registration of the appellation of origin of goods, and on granting of an exclusive right to such appellation or a decision on refusal to grant state registration to the geographical indication and/or to grant an exclusive right to such geographical indication, a decision on refusal to grant state registration to the appellation of origin of goods and/or to grant an exclusive right to such appellation.

If a geographical indication application or an application for an appellation of origin of goods contained a request for granting an exclusive right to a geographical indication or appellation of origin of goods that has been registered earlier, the federal executive body in charge of intellectual property matters shall take a decision on the grant of, or on refusal to grant such exclusive right.

An objection of the body exercising control envisaged by **Paragraph 3 of Item 1 of Article 1516** of this Code against the registration of the geographical indication or of the appellation of origin of goods shall be taken into account by the federal executive body in charge of intellectual property matters in the event of

the taking of a decision according to the results of an expert examination of the declared designation.

In the case of proposed refusal to grant state registration to the geographical indication and/or to grant an exclusive right to the geographical indication, to grant state registration to the appellation of origin of goods and/or to grant an exclusive right to the appellation of origin of goods a notice in writing shall be sent to the applicant about the result of the check of compliance of the declared designation with the provisions of **Articles 1516 and 1522 or 1522.1** of this Code with a proposal for submitting his arguments concerning the motives set out in the notice. The applicant's arguments shall be taken into account when a decision is taken according to the results of an expert examination of the declared designation, if they are submitted within three months after the date of dispatch of said notice to the applicant.

**Article 1526. A Decision Taken According to the Results of Consideration of an Objection against Granting Legal Protection to a Geographical Indication and/or Against Granting an Exclusive Right to a Geographical Indication**

1. According to the results of consideration of an objection against the granting of legal protection to a geographical indication and/or against the granting of the exclusive right to a geographical indication cited in **Item 3 of Article 1524** of this Code, the federal executive body in charge of intellectual property matters shall take a decision on state registration of the geographical indication and on granting of the exclusive right to such geographical indication or a decision on refusal to grant state registration to the geographical indication and/or to grant the exclusive right to such geographical indication, with account being taken of the results of an expert examination of the declared designation (**Item 1 of Article 1525** of this Code).

If the geographical indication application contained a request for granting an exclusive right to a geographical indication registered earlier, according to the results of consideration of the objection against the grant of the exclusive right to the geographical indication cited in **Item 3 of Article 1524** of this Code, the federal executive body in charge of intellectual property matters shall take a decision on the grant of, or on refusal to grant such exclusive right, with account being taken of the results of an expert examination of the declared designation.

2. The taking of the decisions envisaged by **Item 1** of this article shall cause the cancellation of the decision on state registration of the geographical indication and/or on grant of the exclusive right to the geographical indication (**Article 1525**).

3. The procedure for considering objections against the grant of legal protection to a geographical indication and/or against the grant of an exclusive right to a geographical indication shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

**Article 1527. Withdrawing a Geographical Indication Application**

1. A geographical indication application may be withdrawn by the applicant at any stage of consideration thereof until the entry of information on the state registration of the relevant geographical indication and/or grant of an exclusive right to such geographical indication in the State Register of Indications and Appellations.

2. A geographical indication application shall be deemed withdrawn on the basis of a decision on deeming such application withdrawn taken by the federal executive body in charge of intellectual property matters.

**Article 1528. The Applicant's Challenging Decisions on a Geographical Indication Application. Renewal of Term in the Case of Laches**

1. Decisions of the federal executive body in charge of intellectual property matters on refusing to accept a geographical indication application for consideration, on deeming such application withdrawn, and also decisions of that body accepted according to the results of an expert examination of a declared designation (**Article 1525**) may be challenged by the applicant by means of filing an objection with the federal executive body in charge of intellectual property matters within three months after the date of dispatch of the relevant decision.

2. The term envisaged by **Item 2 of Article 1523** of this Code, **Item 1** of this article and missed by the applicant may be renewed by the federal executive body in charge of intellectual property matters at the

applicant's request filed within six months after the date of expiry of that term, provided the applicant cites a good reason for the non-observance of the term.

An application for renewal of the missed period of limitation shall be filed by the applicant with the federal executive body in charge of intellectual property matters simultaneously with the additional materials requested in accordance with **Item 2 of Article 1523** of this Code, or with an application for extension of the term for filing thereof, or simultaneously with the filing of an objection with the federal executive body in charge of intellectual property matters under **Item 1** of this article.

The renewal of the period in accordance with this item shall be effectuated on the basis of a decision of the federal executive body in charge of intellectual property matters on cancellation of a decision on deeming the application withdrawn and on renewal of the missed period.

#### **Article 1529.** Procedure for State Registration of a Geographical Indication

**1.** On the basis of a decision taken according to the results of the expert examination of a declared designation (**Article 1525**), given the lack of the objections cited in **Item 3 of Article 1524** of this Code, or according to the results of the consideration of an objection against the grant of legal protection to a geographical indication and/or against the grant of the exclusive right to a geographical indication (**Article 1526**), the federal executive body in charge of intellectual property matters shall carry out the state registration of the geographical indication in the State Register of Indications and Appellations.

**2.** The geographical indication, information the person(s) having an exclusive right to the geographical indication and/or the right to use the geographical indication, an indication and a description of the characteristics of the merchandise for individualisation of which the geographical indication is registered, and other information pertaining to the state registration and/or the grant of an exclusive right to the geographical indication, extension of the effective term of such exclusive right, and also subsequent amendments to the information shall be entered in the State Register of Indications and Appellations.

#### **Article 1530.** Issuing a Certificate of an Exclusive Right to a Geographical Indication or an Appellation of Origin of Goods

**1.** A certificate of an exclusive right to a geographical indication or an appellation of origin of goods shall be issued by the federal executive body in charge of intellectual property matters in the form of an electronic document and, upon the request of an applicant, on paper, provided that **duty** has been paid for the issuance of the certificate of an exclusive right to the geographical indication or the appellation of origin of goods.

**2.** The form of a certificate of an exclusive right to a geographical indication or appellation of origin of goods, and a list of the details included in such certificate shall be established by the federal executive body carrying out normative legal regulation in the sphere of intellectual property.

#### **Article 1531.** The Effective Term of an Exclusive Right to a Geographical Indication or an Appellation of Origin of Goods

**1.** An exclusive right to a geographical indication or an appellation of origin of goods shall remain effective for 10 years after the date of filing of the geographical indication application or the application for the appellation of origin of goods with the federal executive body in charge of intellectual property matters.

**2.** The effective term of an exclusive right to a geographical indication or an appellation of origin of goods may be extended at an application of the right holder. Attached to the application shall be documents confirming that the applicant manufactures merchandise having the characteristics cited in the State Register of Indications and Appellations, or a statement of the authorised body to the effect that the applicant manufactures merchandise having the special properties mentioned in the State Register of Indications and Appellations.

In respect of the geographical indication whereby merchandise is identified as originating from the territory of a geographical location that is outside the Russian Federation, the right holder shall submit a document confirming its right to the relevant designation in the country of origin of the merchandise as of the date of filing the application for extension of the effective term of the exclusive right.

In respect of an appellation of origin of goods being the name of a geographical location that is

outside the Russian Federation, the right holder shall submit a document confirming its right to the relevant appellation of origin of goods in the country of origin of the merchandise as of the date of filing of the application for extension of the effective term of the exclusive right.

An application for extension of the effective term of the exclusive right shall be filed during the last year of its effective term.

At a request of the right holder a six-month term may be granted thereto after the expiry of the effective term of the exclusive right to the geographical indication or the appellation of origin of goods for filing an application for extension of the effective term of the exclusive right.

The effective term of an exclusive right shall be extended each time by 10 years.

3. An entry on extension of the effective term of an exclusive right to a geographical indication or an appellation of origin of goods shall be made by the federal executive body in charge of intellectual property matters in the State Register of Indications and Appellations.

#### **Article 1532. Amending the State Register of Indications and Appellations**

1. At an application of a right holder the federal executive body in charge of intellectual property matters shall introduce amendments into the State Register of Indications and Appellations concerning the state registration of a geographical indication or an appellation of origin of goods, and the grant of an exclusive right to a geographical indication or an appellation of origin of goods (**Item 2 of Article 1529**), in particular to the company name or the name of the right holder, its/his location or place of residence, address for correspondence, the information concerning a list of the persons entitled to use the geographical indication or the appellation of origin of goods, terms for the use of the geographical indication or the appellation of origin of goods by the persons which are members of an alliance, and also amendments made to correct obvious and technical errors.

2. Attached to the application for making amendments to the information pertaining to the state registration of a geographical indication or an appellation of origin of goods, in particular those cited in **Subitems 1 - 4, 6 - 9 of Item 2 of Article 1522, Item 1 of Article 1522.1** of this Code, shall be documents or a report of the authorised body confirming the existence of good grounds and of the need for making such amendments.

#### **Article 1533. Publication of Information on the State Registration of a Geographical Indication**

The information which concerns the state registration of a geographical indication and/or the grant of an exclusive right to such geographical indication, and has been entered into the State Register of Indications and Appellations shall be published by the federal executive body in charge of intellectual property matters in the official bulletin immediately after it is entered in the State Register of Indications and Appellations.

#### **Article 1534. The Registration of a Geographical Indication in Foreign States**

1. Russian legal entities and citizens of the Russian Federation have the right to register a geographical indication in foreign states.

2. An application for registration of a geographical indication in a foreign state may be filed after the state registration of the geographical indication, and the grant of an exclusive right to such geographical indication in the Russian Federation.

### **4. Termination of Legal Protection of a Geographical Indication and an Exclusive Right to a Geographical Indication**

#### **Article 1535. Grounds for Challenging and Deeming Invalid the Grant of Legal Protection to a Geographical Indication, and an Exclusive Right to Such Geographical Indication**

1. Challenging the grant of legal protection to a geographical indication means contesting the decision of the federal executive body in charge of intellectual property matters on state registration of the geographical indication and on the grant of an exclusive right to such geographical indication, and also the issuance of all certificates of an exclusive right to the geographical indication.

Challenging the grant of an exclusive right to a geographical indication registered earlier means contesting a decision of the federal executive body in charge of intellectual property matters on granting the exclusive right to the geographical indication registered earlier, and the issuance of the certificate of the exclusive right to the geographical indication.

The deeming invalid of the grant of legal protection to a geographical indication shall cause the cancellation of the decision of the federal executive body in charge of intellectual property matters on the state registration of the geographical indication, and on the grant of the exclusive right to such geographical indication, the cancellation of the entry in the State Register of Indications and Appellations, and of all certificates of an exclusive right to such geographical indication.

The deeming invalid of the grant of an exclusive right to a geographical indication registered earlier shall cause cancellation of the decision on granting of the exclusive right to the geographical indication registered earlier, cancellation of the entry in the State Register of Indications and Appellations and of the certificate of the exclusive right to such geographical indication.

**2.** The grant of legal protection to a geographical indication is subject to challenge, and it may be recognised as invalid during the entire period of protection, if legal protection was granted in breach of the provisions of this Code, with the exception of the cases envisaged by **Paragraph 2** of this item. The grant of an exclusive right to a geographical indication registered earlier is subject to challenge, and it may be recognised as invalid during the entire effective term of the exclusive right to the geographical indication, if the exclusive right was granted in breach of the provisions of this Code.

The grant of legal protection to a geographical indication is subject to challenge, and it may be recognised as invalid within five years from the date of publication of information on the state registration of the geographical indication in the official bulletin, if legal protection was granted thereto in breach of the provisions of **Subitems 3 and 4 of Item 2 of Article 1516** of this Code.

**3.** On the grounds envisaged by **Item 2** of this article a person concerned, in particular an authorised body or a body exercising the control envisaged by **Paragraph 3 of Item 1 of Article 1516** of this Code may file an objection with the federal executive body in charge of intellectual property matters.

#### **Article 1536.** Termination of Legal Protection of a Geographical Indication and the Effect of an Exclusive Right to Such Geographical Indication

**1.** The legal protection of a geographical indication shall be terminated in the case of:

- 1) disappearance of the conditions typical for the given geographical location, and impossibility of the manufacture of merchandise having the characteristics cited in the State Register of Indications and Appellations in respect of the given geographical indication;
- 2) termination of the legal protection of the geographical indication in the country of origin of the merchandise.

**2.** The effect of an exclusive right to a geographical indication shall be terminated in the case of:

- 1) non-compliance of the merchandise manufactured by the right holder with the product characteristics cited in the State Register of Indications and Appellations in respect of the given geographical indication;
- 2) the right holder's losing the right to manufacture merchandise having the characteristics cited in the State Register of Indications and Appellations in respect of the given geographical indication;
- 3) non-observance of the provisions set out in **Paragraph 3 of Item 1 of Article 1516** of this Code;
- 4) the right holder's systematically failing to observe the method whereby the merchandise is made, and the conditions for storage and transportation thereof cited in the State Register of Indications and Appellations;
- 5) termination of the legal protection of the geographical indication on the grounds specified in **Item 1** of this article;
- 6) termination of the legal entity being the right holder, or registration of the citizen being the right holder terminating activity in the capacity of an individual businessman, or the citizen's death;
- 7) expiry of the effective term of the exclusive right;
- 8) filing by the owner of the exclusive right of the relevant application with the federal executive body in charge of intellectual property matters;

9) loss of the right to the given geographical indication in the country of origin of the merchandise by a foreign legal entity, foreign citizen or stateless person.

**3.** On the grounds envisaged by **Item 1** of this article any person, in particular an authorised body or a body exercising the control envisaged by **Paragraph 3 of Item 1 of Article 1516** of this Code, may file an application with the federal executive body in charge of intellectual property matters for termination of the legal protection of a geographical indication, and of the effect of an exclusive right to such geographical indication, and on the grounds envisaged by **Item 2** of this article, an application for termination of the effect of an exclusive right to the geographical indication.

The legal protection of a geographical indication, and the effect of an exclusive right to such geographical indication shall be terminated on the basis of a decision of the federal executive body in charge of intellectual property matters.

## **5. The Protection of Geographical Indication and an Appellation of Origin**

**Article 1537.** Liability for the Illegal Use Geographical Indication and of an Appellation of Origin

**1.** The right holder has the right to demand withdrawal from circulation and destruction at the wrongdoer's expense of the counterfeit goods, labels and packing of the goods which bear a geographical indication or appellation of origin of goods that is illegally used, or a designation similar thereto to the degree of confusion. In cases when the putting of such goods into circulation is needed for public interests the right holder has the right to demand removal at the wrongdoer's expense of counterfeit goods, labels and packing of the goods of a geographical indication or an appellation of origin of goods that is illegally used, or a designation similar thereto to the degree of confusion.

**2.** A right holder is entitled to claim compensation at his/its own discretion from an infringer in place of a reimbursement of damages:

1) of 10,000 to 5,000,000 roubles as determined at the court's discretion depending on the nature of the infringement;

2) of double value of the counterfeit goods on which the geographical indication or the appellation of the place of goods' origin was placed illegally.

**3.** A person using the mark of protection of the appellation of the place of goods' origin to an appellation of origin that has not been registered in the Russian Federation shall be liable in the procedure set out in the legislation of the Russian Federation.

## **§ 4. The Right to a Commercial Name**

**Article 1538.** The Commercial Name

**1.** Legal entities pursuing entrepreneurial activities (including non-commercial organisations to which a right to pursue such activities has been conferred in accordance with the law by their constitutive documents) and also individual entrepreneurs may use commercial names to individualise their trade, industrial and other enterprises (**Article 132**), such names not being company names and not subject to compulsory inclusion in the constitutive documents and the unified state register of legal entities.

**2.** A commercial name may be used by the right holder to individualise one or several enterprises. Two or more commercial names shall not be simultaneously used to individualise one enterprise.

**Article 1539.** The Exclusive Right to a Commercial Name

**1.** A right holder owns an exclusive right to use a commercial name as a means of individualisation of his/its enterprise in any manner not conflicting with the law (exclusive right to a commercial name), including by means of posting the commercial name on billboards, letterhead paper, bills and other documents, in announcements and advertisements, on goods or on the packaging thereof, or on the Internet, if the name has sufficient distinctiveness of character and if its use by the right holder for the purpose of individualising his/its enterprise is renowned within a certain territory.

2. It is prohibited to use a commercial name capable of misleading as to the belonging of an enterprise to a certain person, for instance a name similar to the extent of confusion with a company name, trademark or a commercial name protected by an exclusive right that is owned by another person whose exclusive right had come into being earlier.

3. A person that has violated the rules of **Item 2** of the present article shall terminate use of the commercial name and reimburse the right holder for the damages caused at the right holder's demand.

4. An exclusive right to a commercial name may pass to another person (for instance, under a contract, in line of universal succession or on other grounds established by law) only within the enterprise for whose individualisation it is being used.

If a right holder uses a commercial name to individualise several enterprises, the transfer to another person of the exclusive right to the commercial name within one of the enterprises shall deprive the right holder of the use of this commercial name to individualise the rest of his/its enterprises.

5. A right holder may grant to another person a right to use his/its commercial name in the procedure and on the terms set out in a contract of lease of an enterprise (**Article 656**) or a contract of franchise (**Article 1027**).

#### **Article 1540.** The Effect of the Exclusive Right to a Commercial Name

1. An exclusive right to a commercial name used to individualise an enterprise located on the territory of the Russian Federation is effective on the territory of the Russian Federation.

2. The exclusive right to a commercial name shall be terminated if the right holder has not been using it continuously for one year.

#### **Article 1541.** The Relationship of the Right to a Commercial Name with the Rights to a Company Name and to a Trademark

1. The exclusive right to a commercial name including the company name of the right holder or specific elements thereof comes into being and is effective irrespective of the exclusive right to the company name.

2. A commercial name or specific elements thereof may be used by the right holder in his/its trademark. A commercial name included in a trademark is protected irrespective of the protection of the trademark.

### **Chapter 77. The Right to Use the Results of Intellectual Activity within a Unified Technology**

Invalid from January 1, 2022 - **Federal Law** No. 456-FZ of December 22, 2020

President of the Russian Federation

V. Putin

The Kremlin, Moscow