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Inventions in Russia: From Public Good to Private Property

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Inventions in Russia: From Public Good to Private Property

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This article covers the evolution of the law relating to inventions in the Soviet Union and its successor State, the Russian Federation. First, I sketch the law relating to industrial property, concentrating on inventions, as it stood until 1991, when Marxist principles were reflected in State ownership of all industrial property. Then I turn to the economic situation and the state of technological development in the USSR from 1970 to 1991, which ultimately led to a period of transition to market economics. During that period reform of the law reflected the struggles between socialist principles and private property interests. I will end by describing the new patent law (which includes protection for industrial designs) now in force in the Russian Federation, which confirms the ascendancy of private ownership over State control of industrial property in the successor state to the USSR.

1. The Law of Inventions in the Soviet Union

Basic Legal Principles and General Characteristics

Soon after the Revolution of 1917 the new authorities in the RSFSR turned their attention to scientific and technological development. V I Lenin believed strongly in the value of science and technology in accelerating the transformation of the Soviet Union into an industrialised nation.

On 30 June 1919 the first Soviet industrial property legislation, the Decree on Inventions, was signed by Lenin as President of the Council of People's Commissars. This decree abolished all pre-revolutionary legislation and, in only 10 sections, provided a rudimentary introduction

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1. I use the term here in a wide sense, including "lesser" forms of invention like petty patents or utility models, but excluding non-statutory protection for inventions.
3. Decree of the People's Commissars on Inventions, SU RSFSR 1919, N 34 Pos 341.
4. Since 1870 it has been possible to obtain under the title "Privilege" a type of patent. See A Dietz, "Ubergang zum ausschliesslichen Patentrecht in den sozialistischen Landem", [1917] GRUR 311. In 1812 a Manifesto on Privileges to various inventions and discoveries in the Arts and Crafts had been introduced, remaining virtually unchanged until 1870, and until 1883 patents were granted without preliminary examination. See L Seplaki, "Innovations and patenting in the Soviet Union: a case of imposed eco-legal monopsony" (1978) 9 (No 4) IIC 320.
to the new concept of inventors' certificates, which would dominate the Soviet industrial property scene for much of this century. All pre-revolutionary patents lost legal force, although they were not formally expropriated because the revolutionaries did not consider them to be "property" in the first place.

The new inventor's certificate was seen as the most important expression of the "principles of the development of socialist inventive activity". Its main themes were that, on the one hand, all certified inventions were freely available for use by anyone throughout the economy, but that, on the other hand, the true inventor should still be legally recognised and compensated as such. The State, not the individual inventor, had to take the initiative to transfer certified inventions to enterprises within the planned economy, and was therefore ultimately responsible for their exploitation and for innovation levels in industry. The individual inventor thus lost control over an invention the moment it was certified.

In 1931, the "Statute on Inventions and Technical Improvements" gave more detailed shape to these principles. This single statute did provide for patents as protection for private ownership of an invention as well as for inventors' certificates, thus theoretically offering inventors the choice to retain control and exploit their inventions by obtaining a patent in the traditional sense. Such dual protection remained available without basic changes until 1991. The reappearance of patents had been foreshadowed by the "Decree about Patents for Inventions" of 1924, which reflected the liberalisation and return to limited private ownership of the NEP (New Economic Policy), later portrayed as a tactical step back in the context of post-civil war reconstruction.

However, even after 1931, a Soviet citizen could only in theory choose to apply for a patent rather than an inventor's certificate. The "institution" of the inventor's certificate reflected general State control and central planning; patents, regulated along private property lines - indeed the USSR joined the Paris Convention in 1965 - obviously did not. Therefore, the following figures are telling: between 1965 and 1968, of 80,000 rights granted to Soviet residents, three only were for patents. The main reasons, apart from "socialist morality", were that patents were not available for a host of subject-matters, and only

5. Only to be abolished in 1991.
7. See Inventor's Certificate as a Form of Legal Protection of Inventions, State Committee of the USSR for Inventions and Discoveries, Moscow, 1978.
9. Decree of the Central Executive Committee and Council of People's Commissars of 12 September 1924. SSSR 1924, N 9 Pos 97. Private enterprises, which had been allowed again, as well as State enterprises, had exclusive rights.
10. See Dietz, op cit n 4, at 312.
11. See Balz, op cit n 6, p 9.
inventors' certificates were available for employee inventions, which in 1985 constituted 80 per cent of all inventions. Patents were also little used by foreigners, as their effectiveness, enforceability and relevance were doubtful. It has been suggested that even those patents acquired by foreign firms were largely ignored by the important but secretive military sector.13

In 1959 a new statute14 superseded a legislative reform dating from 1941,15 and in 1973 the law was again changed. The Statute on Discoveries, Inventions and Rationalisation Proposals of 21 August 197316 stayed in force from 1 January 1974 until swept away by the radical and wide reform movement at the end of the 1980s. All revisions between 1919 and 1991 merely tinkered with the original statutory approach, aiming to perfect the existing structures without upsetting in any way the political applecart and the rigid Marxist underpinnings of the system.

A striking feature of Soviet legislation was its highly organised, structured and interdependent nature. Thus the Statute of 1973 did not stand alone. The USSR Constitution of 1977, although of a later date, confirmed the rights of scientific and technical creation of citizens, and the duty of the State to protect those rights,17 In time honoured socialist fashion, it also imposed a duty to provide the means to allow such "creative activity" to take place and its results to be made useful. Whether it succeeded in doing so I will consider further.

Furthermore, in the tiered way of the Soviet legislative approach, general principles relating to the law of inventions could also be found in the "Fundamentals" of Civil Law of the USSR and Union Republics",18 civil law being the body of rules regulating property and personal non-property relationships. As well as being recognised and defined in the Fundamentals themselves,19 the same general principles were reiterated in the corresponding civil codes of the RSFSR and of the other Union Republics. But the power to regulate the detail of relations concerning inventions lay with the Federal (All-Union) legislature of the USSR, not with the republics and, therefore, the 1973 Statute, which is the detailed legislative elaboration of the few short statements of principle contained in the Fundamentals, was a Federal (All-Union) statute.

15. Decree of the Council of People's Commissars of 5 March 1941, confirming the Decree on Inventions and Technical Improvements, SP SSSR 1941, N 9 Pos 150.
17. See M Fincke, Handbuch der Sovjerverfassung, Band I, p 554 and following; the relevant section of the Soviet Constitution is s 47, although this section does omit to mention discoveries. However, it must be pointed out that s 47 of the USSR Constitution of 1977 had no predecessors in Soviet constitutional law; thus the Statute on Discoveries, Inventions and Rationalisation Proposals of 1973 predates its express Constitutional underpinnings.
18. le, general principles within which more detailed statutes either on the Federal (All Union) level or the level of the Republics may be elaborated.
Characteristics of the Statute on Discoveries, Inventions and Rationalisation Proposals

Taking the 1973 Statute as the most representative and "refined" example, Soviet legislation on inventions, apart from the basic differences discussed above, displayed certain structural traits that distinguished it from "capitalist" legislation. First, it was comprehensive, covering inventions, but also discoveries and rationalisation proposals; secondly, a large part of it was dedicated to the role of the State in both generation and application of inventions, and thirdly, instead of private property, it provided an alternative statutory incentive system.

The protection of scientific discoveries was first introduced in 1947. A few other countries also had, or have, such protection. In essence, discoveries of laws of nature that radically changed the level of knowledge, and which were considered sufficiently important, could, through a formal procedure, be recognised and "certified" as such. Apart from recognition, all discoverers received was a once only monetary reward and some practical benefits.

Rationalisation proposals concerned processes and methods of manufacture and construction of manufactured goods and materials. Rewards and recognition were provided for new technical solutions. The process of application and grant was handled by the enterprise itself where the rationalisation proposal originated, on the basis of a limited test of novelty only. The rewards were based on savings due to implementation, with a lower limit than that for inventors' certificates.

An invention, protected in theory by either a patent or an inventor's certificate was defined as a "new technical solution to a problem", which showed "essential distinguishing features" and was novel, that is, a similar solution had not been disclosed in the USSR or abroad in a way which made its reduction to practice possible. The term of validity was 15 years for patents, but inventors' certificates were of permanent validity.

The "State Committee for Inventions and Discoveries of the Council of Ministers of the USSR" examined applications to verify whether all requirements were fulfilled, and issued the relevant document. This State Committee, in effect the Soviet Patent Office, also fulfilled a broader role, and had a degree of responsibility for the implementation of inventions. For instance, it was obliged to inform relevant bodies concerning new inventions and discoveries, so they could be imple-
mented in the economy, and in collaboration with academics and committees, provided further recommendations as to their use. A large proportion of the Statute of 1973 was devoted to the organisation and planning of both the generation and implementation of inventions in the economy. For example, Pt VI related to "Organisation of inventive activity. . ." and included sections on its direction, planning and financing. This clearly reflected the legislation's aim of setting a comprehensive framework for every aspect of both development and use of technology in the economy. In that framework the State played the key role as a central distribution hub for inventions.

In the absence of private ownership, the law attempted to provide an alternative incentive system aiming to promote a spontaneous creative upwelling from the factory floor and the masses in general. Incentives provided for certified inventions were: limited monetary gain, based on cost savings due to implementation, some work and living condition improvements, titles like "Meritorious Innovator of the Republic", and a general emphasis on the recognition and protection of individual authorship. But no licensing relationship between inventor and user existed and, given the strict and low limits on rewards and the free use of all inventions, material incentives provided by the law itself were not great. This does not mean that there were not other non-statutory rewards available to successful inventors in certain circumstances.

Conclusion

Although the rights of creativity and technological innovation and invention were theoretically secured on many levels, there was no notion of private ownership to promote the individual pursuit of appropriate rewards by actual application of inventions. The law provided no incentive system to encourage individuals or corporations to implement inventions in the form of innovations in industry, and it was left entirely up to the State to provide the planning, the capital, the energy and the risk management required.

2. The State of the Economy and of Technology from the 1970s Onwards

The system described above may well have been effective in the initial fases of post-revolutionary and post-war industrialisation. However, the failure of the law, together with many other factors, to encourage high levels of technological change in industry, at a time when such change was extremely rapid in the West, led to a perception of failure in the area of technology (the Race with the West syndrome, a repetitive theme

26. According to s 148 of the Statute on Discoveries, Inventions and Rationalisation Proposals of 1973, objections to decisions of the Committee concerning refusal to grant were to be heard by an (independent) Board of Appeal for Scientific and Technical Examination of the Committee.

27. According to s 26 of the Statute on Discoveries, Inventions and Rationalisation Proposals of 1973, the certificate is issued in the name of the inventor and, according to s 44, mention is made of the inventor's employer and the enterprise's name, as well as where the invention was made (s 62).
throughout Russian history). The state of technological development undoubtedly contributed to slow economic decline and then to the sudden and rapid demise of the USSR and the emergence of the Russian Federation as an independent State, with an incipient market economy. This transition has entailed an acceptance of property rights not only as the guarantee of individual inventor's rights, but also as the more effective way to encourage the actual implementation of inventions, that is, greater innovation levels.

Before I come to the period of fundamental economic change at the end of the 1980s, I will describe some of the difficulties the USSR faced, both on the general economic level and on the level of technological innovation, as it moved into the post-industrial era.

**Broad Economic Conditions**

The Soviet economy expanded rapidly in the post-World War II era. An emphasis on output growth through increased inputs, mainly in heavy industry and farming, contributed to this steady upward trend. But at the end of the sixties and the beginning of the seventies worrying trends started to manifest themselves. The steady growth of output levels of industry, kicked along at various intervals by radical policies of industrialisation and collectivisation of land, started to falter and decline. Whether the Soviet system of managing technological growth could be made to function more effectively became an acute question at that time.

Falling growth rates were to a significant extent due to scarcity of labour and the greater difficulties experienced in extraction and transportation of raw materials. No longer could output levels be increased so easily by simply augmenting input levels of labour, land and raw materials. The reliance on technological progress to improve Soviet economic performance, always present to some degree, therefore grew stronger at that time. One obvious need was to increase output levels by improving productivity that is, the more efficient use of all resources, inter alia, through improved and less wasteful technologies.

But several factors militated against this being achieved. Despite tinkering with the system, the economy remained largely supply based, and general scarcity coupled with price restraints led to inherent disincentives to innovation on the product or process level remaining strong. Improving the incentive system within the parameters of State ownership, control and price fixing proved very difficult and a measurably sufficient shift from emphasis on quantity (output levels) to productivity was not achieved. The basic instincts and rationales for managers in industry remained the same. As a reaction the Soviets increased their


29. The legislative reform in the area of the law of inventions obviously attempted to respond to this trend.

purchasing of foreign technology. However, the integration of foreign technology ran into the same difficulties as that of indigenous technology, as the problem in the first place was not so much the creation but the effective use of technology.

Within enterprises, the process of introducing production or process innovations entailed risks of loss of output levels (and subsequent loss of bonuses) coupled with an inability to adjust price levels to recoup such losses; on the whole the system made process innovations an unpleasantly risky undertaking for factory managers. As for product innovations, on top of the lack of incentives provided by the law on inventions, the system as a whole provided little encouragement, as demand for existing products was consistently high and proven. Many product innovations thus never made it to the production stage. A geographic and organisational separation between designers and manufacturers did not help either.

Insufficient levels of funding were available for investment in capital goods producing sectors and new factories in which new technologies could be integrated: turnover rates were not fast enough to integrate rapidly changing technologies and achieve full diffusion of efficient technologies. Thus the general economic parameters were neither adapted to improving productivity through the use of new technology, nor to supplying consumer goods of steadily improving quality.

Other Factors: Bureaucracy and Central Planning

The growth and maintenance of a vast and unproductive bureaucracy which was needed to plan and run the economy in every detail was itself wasteful and counterproductive as far as technological innovation went: central planning and heavy bureaucratic involvement are often anathema to innovation. The nature of both product and process innovation entails a considerable element of risk and uncertainty, incompatible with detailed planning.

Also, rivalries between ministries, bureaucratic inefficiency and so on encouraged the growth of patterns of supply and communication outside bureaucratic control. This duality between official and unofficial economy led, in conjunction with the growth of a separate military complex, to fragmentation of economic guidance and decision-making, duplication, and communication breakdowns. The economy by no means presented a monolithic picture, strictly controlled from one unified centre.

The military sector (space and aviation included) was able to marshal greater resources and absorb greater risks of innovation. The arms race was a compelling reason to grant the military sector vast resources and a fuller reward system. Secrecy allowed a degree of autonomy from the political/economic strictures of the rest of the economy. Many of the best brains and other resources were diverted to the military sector away from civilian uses. All this caused a shortage of capital available for

investment in the civilian capital goods producing sector, where old production facilities were not replaced but continued alongside more modern ones. Secrecy and lack of incentives restricted diffusion rates of new technology from the military to the civilian sector.

The Administration of Innovation

On the level of direct government encouragement and administration of innovation, that is, the production, testing and implementation of new ideas, the Soviet system seemed to suffer from crippling, institutionalised drawbacks. One of the main problems of technology policy is how to overcome the dichotomy between scientific research and the implementation of its results in the economy. Unlike in the West, where the right mix of State and private input is possibly the key question, in the Soviet Union nearly all stages of innovation were planned by State agencies and dependent enterprises. But, contrary to the advantages one might expect this to bring, a gaping chasm appeared between scientific research and practical development work.

It is commonly thought that large or targeted industry-based research and development laboratories form an important link between science and production in market economies. This was precisely the link which was missing in the Soviet chain. Although there was a vast and impressive scientific research effort, it seemed to be cut off from development and commercialisation. Prestige and rewards were very heavily weighted in favour of theoretical rather than practical work. The Soviet Union developed a system of great independent research laboratories and institutes, not connected to factories or production facilities. Through inadequate planning there were often great gaps, both geographically and on the level of communication, between scientists, the developers of prototypes and industrial production facilities. Fragmentation and rivalries between ministers and bureaucracies on the level of research and development led to the wasting of time and faltering diffusion levels. Industry-based ministries were often badly co-ordinated, resulting in inadequate data flows.

Awareness of these problems led to regular efforts to reform and restructure science and technological development administration. But the independence of the research efforts of the Academy of Sciences, low levels of research at education establishments (and the consequent lack of graduates with the right training in industry), and the low prestige attached to research posts in factories, coupled with higher rewards offered in the military sector, remained problems well into the

34. On the importance to innovation of academic research, see, eg, E Mansfield, "Academic Research and Industrial Innovation" (1991) 20 Research Policy 1.
36. Directorships of research institutes, regarded as plum jobs, were often awarded to people with strong party connections, rather than the most brilliant academics.
In the eighties, in spite of reform efforts, levels of innovation remained inadequate. Great revolutions in technology, like microcomputers, personal computers, robotisation, computer-controlled production, sophisticated telephone and electronic communication systems, genetic engineering and so on all seemed largely to pass the Soviets by, at least in the civilian sector.

The Results of Political Strictures

The fact that the Soviet Union only tolerated circumscribed levels of political dissent led to problems on the level of information exchange and data flows in science as well. Because of politically motivated restrictions on the free flow of information, there was faltering communication both within the Soviet Union and with the West. Increasing isolation meant the Soviet Union, in spite of very high education levels, missed out on the invaluable cross-fertilisation technology ventures the different Western countries enjoyed. Simple communication tools like photocopiers, access to foreign scientific journals and adequate modem communication facilities were denied Soviet scholars and technologists.

General Reform Efforts

The effect of all this was nefarious; even the military sector was seen to suffer from ever increasing technological lag behind the West and attempted to compensate with quantity for lack of quality. Increasingly, the technology gap with the West, always something of an obsession with Soviet planners, became seen as unsurmountable without more radical change. At the same time, the ideological commitment to Marxism had faltered, in the face of a slowing economy, corruption by the bureaucracy and the Communist Party, emphasis on maintaining the status quo, and cynical deception of the greater part of the population. After the brief period of flowering of "radical" reform under Kruschev, the era of Brezhnev, Andropov and Chernenko was one of increasing frustration with stagnation at the top.

Under Gorbachov then, and illustrated by such events as Chernobyl, KL-007, and the Matias Rust affair, as well as environmental degradation and the developments in Poland and Afghanistan, an era of political reform and rebuilding in the economy dawned against the backdrop of severe economic difficulties and technological stagnation, in a nation which many felt could do better. The twin slogans of reform, glasnost and perestroika, aimed at more

37. The 1987 Decree on the USSR State Committee on Science and Technology, SP SSSR 1987, N 34 Pos 116 aimed to address those failings by bringing co-ordination of research largely within its scope. See P Maggs, "The 1987 Decree on the USSR State Committee on Science and Technology" in A Schmidt (Ed), The Impact of Perestroika on Soviet Law (Martinus Nijhoff, 1990).
open and effective discussion of the country's woes, and on the basis of conclusions drawn, honest reforms in many areas of society and economy. However, these reforms, threatening as they were to many vested interests, and initially only seen within the strictures of a one-party system and largely structurally unchanged economy, only led to further declines.\textsuperscript{39} What was needed was a wholesale rethinking of the fundamentals of the Soviet economy, of State planning and control (including of inventions) itself. These kinds of reforms were not possible without radical political change, which in the end came more suddenly than expected with the coup against Gorbachov in August 1991.

But in the meantime, from about 1988 onwards, a reform of the old system of patents and inventors' certificates was undertaken, against the backdrop of power struggles between radical reformers and reactionaries. In the next section I will look at this period of transformation of the law on inventions in the context of rapid political reform.


Essentially, the problem during this period was one of adapting the law to rapidly changing economic parameters, or at least to other legislation aimed at modifying them. Not only was there a lack of consensus regarding political and economic reform, there was also a vast chasm between policy-and legislation passed to enforce it-and the continuing realities of the system. This could only really be overcome by gradual evolution, and in the meantime legislators faced the theoretical and practical challenge of keeping legislative reform synchronised with real change, without making the law too unpredictable, or too far ahead of reality.

Within the broader context of the reform of the internal economy two important tendencies during the second half of the eighties had a considerable influence on the development of industrial property law: towards greater autonomy of enterprises (greater freedom from central planning and control) and towards recognition of private property and ownership. The first expressed itself in greater financial accounting independence (khозраzezhet) and self-sufficiency. The Law on Co-operative Societies in the USSR,\textsuperscript{40} the Law on State Enterprises,\textsuperscript{41} the Fundamental Principles of Legislation on Lease of the USSR\textsuperscript{42} and the later Law on Ownership (sometimes called "on Property", which first mentioned property rights in intellectual property) in the USSR,\textsuperscript{43} all reflect this attitude, and the necessary complementary move away from collective

\textsuperscript{39} See G V Litman, "Reinventing a Law on Inventions: International Aspects of the New Russian Patent Law" (1991) 25 Geo Wash Int Law & Econ 171 at 217, where he points out that in 1988 there was a 39% drop in the introduction of new automated devices from the average from 1976 to 1980.

\textsuperscript{40} VVS SSSR 1988, N 22 Pos 355 (subsequently amended).
\textsuperscript{41} VVS SSSR 1987, N 26 Pos 385.
\textsuperscript{42} VSND SSSR 1989, N 25 Pos 481.
\textsuperscript{43} VSND SSSR 1990, N 11 Pos 164.
ownership to co-operative, collective enterprise and individual ownership.

In this context the call went out to put relationships between providers and users of industrial property on an economic footing, in line with the new self-sufficiency and autonomy-of-enterprise principles, by allowing enterprises to capitalise on their inventions through licensing, thus taking the State out of the equation. On a doctrinal plain, the traditional view, that industrial property was a social good, the result of labour, with an emphasis on co-ordinated effort rather than individual genius, came into conflict with Western individualistic, property-based attitudes. These attitudes were partially projected onto the Soviet scene through American trade pressures, and were mixed up in the traditional Marxist debate over industrial property as a "commodity" or "value". Hereafter I will describe how this debate or, in cruder terms, the struggle between private and State control of industrial property, was reflected in several consecutive proposals for new patent laws.

**Different Transitional Proposals**

At a Central Committee meeting of the CPSU in October 1988 the Council of Ministers of the USSR was instructed to prepare a new law on inventions, incorporating the new emphasis on profitability, and the promotion of development and implementation of new technologies.

When finalised, the project of law was transmitted to the President of the Supreme Soviet, and was then published as a draft on 23 December 1988, with a period of discussion until 5 March 1989. This draft, which not surprisingly caused much controversy overall, eliminated inventors' certificates, and put the whole system on a private property (or "private commodities") footing. Inventions were to be protected by patents only (s 8) and the patentee was to have exclusive rights over inventions (ss 9 and 30(2)). Companies could also be patentees, whereas before they could only hold inventors' certificates. The draft put an end to free use of inventions and imported capitalist monopoly structures and licensing conditions into the law.

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44. Joint Decree of the Central Committee of the CPSU and the Council of Ministers of the USSR concerning the greater role of the State Committee of the USSR for Science and Technology in leading the scientific and technological progress of the country, No 817 of 17 July 1987, SP SSSR 1987, N 34 Pos 116.

45. See Balz, op cit n 6, pp 25-27.

46. See Litman, op cit n 39, where it is emphasised that there was a strong body of opinion in favor of reforms within the existing system up until the very last moment, and the abandonment in favor of Western-style legislation was sudden and unexpected, but explainable in terms of American trade pressure.


However, the draft did show signs of compromise. In effect it left open the possibility of continuing with a system much like the previous one, with considerable State influence and control, mainly through the provisions relating to the "State Patent Fund" and certain licensing arrangements.

According to s 12(1) of the draft, citizens, enterprises and social organisations could opt to assign their patents to a "State Patent Fund". They would then (s 30(4)), as of old, be freely available for use by all Soviet citizens and enterprises. The incentives to transfer patents to the Fund were waiver of issuing and maintenance fees, and the assignors' retaining a right to remuneration, to be agreed with users of the patents, but within certain limits (s 46(2)(3)). Alternatively, an inventor could retain the patent, but declare an open licence (s 32), which resulted in a 50 per cent reduction of fees, and allowed anyone, for payment of an agreed licence fee, to use the patent. Certain commentators point out that these were strong incentives within the economic conditions prevailing in the Soviet Union at that time.

The draft also offered an opportunity to retain old methods in the area of licensing, through the system of compulsory licences (s 33(4)), which provided that the State Committee for Science and Technology could grant a compulsory licence to any enterprise needing to use a patent for the purpose of fulfilling a State order. Critical to the effect of this section, would have been the size of the State sector in the Soviet economy, and the extent to which enterprises, collectives and so on would develop outside the influence of State planning and orders, in other words, the relative size of State and private sectors.

But as well as retaining options to retain the status quo ante in the above sense, the draft conserved other peculiarly socialist traits. It provided for housing and pension rewards for inventors (ss 51, 52) and contained sections concerning financing of development (ss 42, 43, 44) and use (ss 39, 41, 48) of inventions. Part I consisted of a general analysis of the role of inventive activity in a socialist economy, and the position of various organisations and institutions.

The draft provided for a new definition of invention (s 6), a system of deferred examination (s 19) and the creation of a patent court (s 56). There were also changes concerning patentability of chemicals.

Overall, the draft law allowed, in spite of its fundamental shift from collective to private property of inventions, that is, from inventor's certificate to patent, scope for reversion to State control of innovation. The way the law is set in the overall context of State administration and regulation of inventive activity illustrates this uneasy conjunction. Apart from this fundamental breakline, the solution the draft offered concerning employer-employee rights to inventions, with the possibility of joint patent ownership, and other technical deficiencies were also severely criticised. The whole draft had the air of an uneasy and disjointed compromise.

50. See, inter alia, Maggs, op cit n 13 and n 48.
51. Ibid.
In fact, there was so much controversy that promulgation was greatly delayed. The draft was not debated in the 1989 summer session of the Supreme Soviet. A second draft was then presented in April 1990. The meantime, there had also been discussion concerning a suggestion integrating all industrial property, including trade marks, designs and patents, in one law, a proposal that did not win through at this stage, but which did have some effect on later proposals, as we shall see.

The Result: A New Soviet Patent Law

But finally, the Law on inventions in the USSR of 31 May 1991 did come into operation on 1 July 1991, nearly three years after the reform process was initiated. In general it was very similar to the first draft; inventors' certificates, rights to discoveries and rationalisation proposals were all abolished. Patents were the only means of legal protection of inventions. But the socialist influence was scaled down even more, the law retaining only residues of compromise with socialist elements: the political context at that time was still that of a one party system and planned economy. However, State dominance no longer loomed as large as in the first draft. I will mention some of the main differences between the Law and the first draft here; in other respects the Law reflected that first draft.

The State Patent Fund was retained. However, the remuneration of the author who "transfers" a patent to the Fund was no longer based on an agreement with the eventual user, but on a percentage of the price of the sale of the licence to a user by the Fund, with a minimum of 20 per cent (s 32(2)). The system of open licences was also maintained as outlined in the first draft, but the compulsory licence system (in cases where it was required to fulfil a State order) disappeared. Only for non-use or in the interest of defence or public order could a patent now become the subject of a compulsory licence (s 25). Some of the scope for reversion to the old system was thus eliminated, but with the retention of the State Fund, some still remained.

Although the five introductory sections of the first draft, concerning the place of inventive activity in a socialist economy, no longer figured in the Law, it did still provide for some mechanisms for financing such "inventive activity". Here it reflected the then relevant distinction between financially fully independent "enterprises"-which could obtain finance from banks, innovation funds and even the State budget if their own funds were insufficient-and "organisations funded by the State budget", which could put money, saved through implementation

52. See N Belova-Springstubbe, "Das neue Sowjetische Patentrecht" (1992) 1 Mitteilungen der deutschen Patentanwaelte 6. For a German translation, see (1990) GRUR 587. This draft was published in Izvestija N 98 of 7 April 1990 in accordance with a Decree of the President of the Supreme Soviet of 3 April 1990.


54. The patent is in fact granted to the Fund by the Patent Office, if the author of the invention transfers the exclusive right to use it to that Fund (s 4).

55. There is also the possibility of a tax free "Enterprise Fund" for inventive activity, see s30.
of innovations, into a fund, which could then be used to support "inventive activity", together with bank credits, centralised funds and State budgetary means. "Socialist ownership" was out, but the law did reflect a system yet fully to accept a concept of private property and which, instead of a unitary concept of ownership, had a trinity: property of citizens (not "private property", as those terms were not yet considered ideologically acceptable, even in 1990), of collectives or of the State. As well, it left a role for State involvement in the overall finance and planning of innovation. Another leftover was s 36, which provided for privileges concerning living space and housing. The Law also provided tax incentives for the use and implementation of inventions (s 28).

The way the Law finally resolved the employee inventions issue was also interesting. The patent was to be awarded to the employee, if an agreement so provided. Such an agreement could be concerned with an existing invention, but also with future inventions, as long as they were employment-related (s 4(2)). In the absence of an agreement, the patent was to be awarded to the employer. The Law did retain the distinction between the "author" of an invention and the patentee, and if the enterprise was awarded the patent, the employee-author was entitled to a minimum of 15 per cent of the benefits from the use of the invention, or 20 per cent of the sales price of a licence (s 32), as well as a premium.

The Law provided that most courts within the USSR were competent to deal with disputes concerning patents (s 48). In the same section, it created a new patent court, to be set up by an anticipated Law Concerning the Patent Court of the USSR. Presumably, this court was to deal with conflicts concerning the grant of patents (formal and material criteria), a subject for which ordinary courts were not competent, but the Law envisaged was never passed. In any case, the Constitution would have had to be amended to accommodate a new court, and it never was. Such a patent court was therefore never established. However, the Law did establish certain new internal appeal structures.

Short Life of the Last Soviet Patent Law

The Law was thus a further step towards, but not a complete adoption of "Western" patent law. But it was stillborn and, after a short but eventful life quickly became irrelevant, because soon after its promul-


57. According to s 12 of the draft of 27 December 1988, the patent was either awarded to employer and employee jointly, or if an agreement to that effect was concluded, to the employer.

58. During that period the courts and the Ministry of Finance refused to consider claims related to infringements of patent rights, although patents apparently continued to be issued. See V Rassokhin, "Information emanant du Comite pour les brevets et les Marques de la Federation de Russie, Propriete Industrielle, 15 April 1992, 520, 2, as referred to in K Malfliet, "Towards a CIS Protection System for Inventions", working paper, ICEES, Leuven, Belgium, 1992/6.
gation the Soviet Union ceased to exist. However, as we shall see, the patent law did continue its brief existence within its successor State, the Russian Federation, until a Russian patent law came into operation on 14 October 1992. 59

Its short lifespan did not protect the Law on inventions in the USSR from criticism, mainly because it seemed ill adapted to the prevailing economic reality. It was pointed out that in the still strongly monopolistic Soviet and Russian economies, private ownership was unlikely to provide much incentive for further technological indigenous development. It left an overall much reduced role for the State compared to the first draft, and was therefore not well co-ordinated with an economy in effect still dominated by State-owned industries. Indeed, due to a lack of legal support mechanisms (for example, independent patent attorneys) even foreign owners of intellectual property were likely to benefit little in the short term. 60 So, unless economic reforms were drastic and immediate, leading to genuinely independent companies or enterprises (with the unavoidable consequences of receivership and unemployment) operating in a climate of price freedom, rouble convertibility, a reformed banking sector and so on, the law, largely premised on a fully operative market economy, was to be at best an irrelevance, at worst an obstacle to improvement.

Such an acceleration of the economic reform movement and radical privatisation did occur with the advent of Boris Yeltsin and his reformist team at the head of the Russian Federation. The Russian Patent Law of 23 September 1992, which is now in force, reflects this radical commitment to market reform even more comprehensively. But before this state of affairs was attained, many other relevant developments occurred. In the next section I will describe the transition from USSR to Russian Federation and the significance of the emerging CIS to industrial property.

4. The Period of Constitutional Change: USSR, CIS and Russian Federation

On 8 December 1991, the Minsk Accord on the Establishment of the CIS was signed by Russia, Belarus and the Ukraine. 61 The USSR thus fell apart in independent republics, loosely tied on the basis of the Accord. On 21 December 1991 eight further republics signed the Accord at Alma Ata. 62

Section 11 of the Minsk Accord of 8 December 1991 states: "From the date of signing of this agreement no legal rules of other states including

60. See, inter alia, Litman, op cit n 39 and Maggs, op cit n 48. For another example of the inability of law and economic reality to match in the Soviet Union, see K Malflilet, "The Contract of Independent Work at the State Enterprise", in FJM Feldbrugge (ed), The Emancipation of Soviet Law (1992), pp 75-105.
62. Armenia, Kazakhstan, Uzbekistan, Turkmenistan, Kyrgyzstan, Tadjikistan and Moldova. Azerbaidjan also joined but has since withdrawn from the CIS. For the text of the Minsk Accord of 27 December 1991, see [1992] GRUR 382.
those of the former USSR may be applied in the territories of the states signatories to the agreement." Although the republics had their own laws covering most subject-matters, this was not the case for industrial property. Only some very general principles were contained in the Civil Codes of each republic based on the fundamentals of civil law of the USSR, but for the rest, intellectual property law was regulated by Federal (All-Union) legislation. So in the area of patent law, dependent on detailed material and procedural regulation, § 11 of the Minsk Accord theoretically resulted in a legal vacuum.

However, the ratification by the Russian Federation of the Minsk accord of 8 December 1991, expressly upheld the validity of old USSR legislation in areas where no Russian legislation existed. This meant that until Russia could come up with new patent laws, the Šovjet law of 31 May 1991 continued to apply in the Russian Federation. The position in the other republics was less clear. On 31 January 1992, the USSR State Patent Office ceased to operate as such, but effectively continued as the Russian Patent Office (changing its name from Gosпатент to Роспатент).

While continued patent protection in Russia was thus largely secured, steps were underway to maintain uniform patent laws and administration on the territory of the CIS, in line with the declared intention to maintain an integrated economy in the territory of the ex-USSR. Work on an interstate patent system started towards the end of 1991 and, at Minsk, on 27 December 1991, a Temporary Accord on the protection of industrial property was signed by Armenia, Belarus, Moldova, Russia, Tadjikistan and the Ukraine and paraphed by Kazakhstan. The Accord was of a temporary nature, until a new comprehensive convention concerning the protection of industrial property could be signed. All States on whose territories patents of the previous USSR had been valid could join.

The main aim was to create a unified patent area, with patent offices in Moscow and in other States, and continuing validity of existing USSR patents on the whole territory, on the basis of the most recent USSR laws. The States would retain the right to issue their own national patents as well, so in principle interstate (CIS) and national patents could validly coexist. States would also retain the right

64. How effective this law would or could ever be is another question; for instance, no legislation concerning establishment of the patent court (s 43) was ever passed.
65. See (1992) 6 WIPR 103. 66. The Baltic republics were not signatories to the Minsk Accord and thus continued as fully independent States. Moves are evolving for each State to set up its own patent system. For Latvia see AVon Fuener, "Latvia, Council of Ministers adopts IP Rules" (1992) 6 WIPR 96.
68. For the text of the Accord in German, see [1992] GRUR 382.
69. Concerning the efforts to establish a CIS-wide system of patent protection, see Malfliet, op cit n 58.
to become independent members of international IP organisations and Conventions, and also to have their own patent offices.

However, the Accord required implementation of a number of measures by at least three of the signatory States. This has not yet occurred to date. Meanwhile individual States have continued to elaborate their own structures and laws for the protection of industrial property.70

It is unfortunate for the less developed republics that the efforts to establish interstate patent structures have faltered. Presumably these States do not have the means or the expertise to set up fully blown patent offices, with examination procedures, experts and so on of their own. But not only has the temporary Minsk Accord failed to come into operation, the permanent Convention that would replace it seems even further from reality.70a

The lead will have to come from Russia. As well as being by far the largest and economically most powerful of the ex-USSR republics, it is its successor State in international organisations and as relates to treaties.70b Uninterrupted protection of existing patents, maintenance of filing and examination procedures and comprehensive transition arrangements in the Russian Federation are therefore of the utmost importance. Formally at least, this process has recently come to fruition in the new Russian Patent Law which seems to herald the end of a turbulent transition phase, at least in Russia itself. The effect this and other political and economic factors will have on its possible future coexistence with an interstate patent system will have to be awaited. In the meantime, I will comment on the generation and contents of the Russian Patent Law in the next section.

5. The Emergence of Patent Law in the Russian Federation

A Bill concerning a new patent law for the Russian Federation, then still a Soviet republic, was introduced in the Russian Supreme Soviet even before the August 1991 coup in the USSR and subsequent events.71 Afterwards, and with Russia now an independent, not just sovereign (Declaration of Sovereignty actually occurred on 12 June 1990) nation, the Bill was given its first reading in the Supreme Soviet of the Russian Federation on 12 February 1992.72 This Bill differed little from the pre--independence one.

70. Some legislative steps towards establishing comprehensive patent structures have been taken, mostly without effective patent offices yet in place. This seems to be the case in Kazakhstan and Uzbekistan, whereas in the Ukraine and Belarus, things have progressed further. See Intellektualnaia Sobstvennost 1992, 3-6, 42; also B Hansen, “Erlangung von Patentschutz in der GUS-Staaten” (1992) 10 Mittellungen der deutschen Patentanwäräte 270.

70a. However, at a recent heads of government meeting in Minsk, the decision to adopt a convention for the protection of intellectual property was reiterated. See (1993) Vol XLV, No 11 The Current Digest of the Post-Soviet Press 18.

70b. See Letter of the Minister of Foreign Affairs of the Russian Federation of 26 December 1991 to the effect that Russia succeeds the USSR in all WIPO Conventions: LA Propriete Industrielle, February 1992, p 52.


Some Striking Features

Certain aspects of that first post-independence Bill gave rise to controversy, and it was not passed in that form by the Supreme Soviet of the Russian Federation. Above all, employee patents, and also constitutional matters were keenly disputed. Certain amendments were made and a second Bill introduced in August 1992. More controversy about the constitutional division of powers between the Russian Federation and its constituent republics further delayed passage of the Bill even then, so the law was only finally approved by the Supreme Soviet on 23 September and signed by the President. The constitutional dispute centred around s 81(1) of the Constitution which divides powers over intellectual property between the legislatures of the Federation (All-Union) and those of the constituent republics. The section envisages that the Federal legislature should enact general legislative principles, leaving it to the legislatures of the different republics to do the rest for their own territories. The President of the Russian Federation, Boris Yeltsin, refused to sign the Patent Law, arguing that it was unconstitutional in that it comprehensively covered the area of patents, making no provision for the role of the Republics. The problem was finally resolved by the inclusion in the Law of a short sentence in s I, which clarifies that not only the Patent Law of the Russian Federation, but also the laws of the republics promulgated on the basis of it, regulate inventions, industrial designs and utility models. However, this was really a cosmetic solution, as it is very unlikely that the republics will wish to legislate in this area. In reality of course the Federal Law does cover the area comprehensively and adequately, under the umbrella of one Patent Office in Moscow. There is no need for the republics to legislate.

The Patent Law came into operation on 14 October 1992. At the same time a trade mark law, circuit layouts law and software and computer data law were passed. More recently, a new Copyright Act and a new law concerning Plant Varieties have been enacted as well.

The new Russian Law continues, not surprisingly, down the private property path already chosen during the reform of Soviet patent law started four years earlier. It is largely "orthodox" and based on Western models, and the same can be said for other industrial property legislation that has been passed.

The Patent Law has shed nearly all traces of the traditional Soviet law on inventions, but does retain some interesting features. Foremost amongst these is that, as well as providing for patents for inventions and certificates for utility models (not to be confused with inventors' certificates), it covers industrial designs, for which patents can thus also be obtained. Maybe this is not so surprising, as under USSR law, industrial

74. The Soviet Constitution of 1936 was replaced in 1977 and every republic then received its own constitution. The constitution referred to here is that of the RSFSR of 1978, as amended.
75a. For the Copyright Act, see VSNOi VSRF, 12 August 1993, N32, Pos 1242. The Law on Plant Varieties was published in Rossiiskaia Gazeta, 3 September 1993.
designs were also protected by patents, and there was traditional support for the idea of an all-encompassing industrial property statute.

However, the Law does also provide some scope for a continuing State role in promoting and sustaining innovation in industry through the use of patents, through a "Federal Fund for Inventions of Russia" (s 9) which can acquire patents on the basis of agreements, and promote their realisation. Section 34 stipulates that the State provides incentives, in the form of tax-concessions and credit advantages, to the creators and users of intellectual property. Interestingly enough, this provision only appeared in the last version of the Bill. Advantages seem only to be due to authors, not patentees, something that seems to contradict the apparent purpose of encouraging actual innovation. Under s 13(3), a patentee can declare an "open licence", much along the lines of the final USSR Law, on a patent; the patentee's maintenance fees will then be reduced by half. The declaration is irrevocable.

These elements of the Law reflect Russian determination to promote the use of indigenous technology as well as the transfer of foreign technology by, at least theoretically, adequate patent protection. But if the Russian statutory standard should prove insufficient to foreigners, it is of interest that international agreements to which Russia is a party will override the Russian legislation in the case of a discrepancy (s 37). However, it is clear that this optional "direct effect" is strictly theoretical! The USSR was a signatory to, inter alia, the Treaty establishing WIPO (1967), the Paris Convention on the Protection of Industrial Property (1967), the PCT (1970), the Budapest Treaty concerning the Deposit of Micro-organisms (1977) and several bilateral agreements containing industrial property provisions, most importantly with the United States and the EC.

Rules for the transition from and maintenance of existing USSR patents are also provided. As pointed out previously, the Russian Patent Office, Rospatent, had already taken over the activities of the USSR Patent Office, Gospatent, and its Patent Examining Institute.


In this section I will conclude by giving a more detailed overview of the actual Patent Law as it is now in force in the Russian Federation, evidencing the thorough reversal of years of collective ownership in the area of the Law relating to inventions. It is the final stage of a transition period that started five years ago, and the total acceptance of private property in inventions.

77. See above, text accompanying n 50.
78. Compare also with the German Patent Law of 1981 which provides for open licences
79. Eg, with the US: USSR-US Agreement on Trade Relations, Washington, 1 June 1990 (1990) 29
ILM 946; with the EC, Decision of the Council of 26 February 1990, confirming the Agreement
between the EC and Euratom and the USSR concerning commerce and commercial and
economic co-operation, Pub Ec No L, 15 March 1990, 68/1.
80. Decree of the Supreme Soviet of the Russian Federation concerning the coming into force of the
As already stated, the Law covers both inventions, utility models\(^{31}\) and industrial designs. However, the Act itself is not divided into separate parts for inventions, utility models and industrial designs, but rather treats all three under different material headings, specifying differences between requirements and rules for each where appropriate. Thus the Act consists of eight parts: I General; II Requirements for Patentability; III Authors, Patentees and the Federal Fund for Inventions; IV Rights of the Patentee; V Procedure; VI Loss of Validity; VII Remedies; VIII Concluding Sections.

**Inventions and Utility Models**

The material requirements for patentability of an invention are novelty, inventive step and industrial applicability (s 4). Utility models require no inventive step (s 5). An invention is novel if it does not form part of the prior art (s 4.1). The prior art base for novelty purposes includes "any information" which has become "generally accessible (available)" anywhere in the world before the priority date. Further included are all earlier applications and patents granted in the Russian Federation before the priority date.\(^{82}\) No specific distinction is made between use and publication, for the purpose of explaining what "generally accessible" means; the terms are not further defined in the Law. However, in the final analysis it does seem to cover published information concerning the invention itself or its use, public use itself and public display. For utility models the prior art base for novelty examination expressly excludes foreign use (s 5.1).

Inventions have sufficient inventive level if to a specialist they do not follow in an obvious manner from the prior art base (s 4.1). There is a period of grace of six months for prior publication (s 4.1). The prior art base for inventiveness does not explicitly include applications and patents of the Russian Federation and therefore the prior art base here consists only of "generally accessible" information anywhere in the world. As inventiveness is now judged through the eyes of the specialist (person skilled in the art), and no longer on the basis of an objective test as was previously the case, the information will be limited to what a specialist would be aware of, and therefore no information, for example, patents or applications, can be a priori included.

Inventions and utility models must be industrially applicable, meaning that they can be used in industry, agriculture, public health "or other fields of activity" (ss 4.1, 5.1).

Patents will be granted for devices, processes, substances, strains of micro-organisms, cell cultures of plants and animals, as well as their application for a new purpose (s 4.2). Expressly excluded from patentability as inventions are, apart from the traditional exclusions like scientific theories and methods, inter alia, mathematical algorithms and

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81. There are obviously considerable differences between the Australian system of petty patents and the system of protection for utility models as provided in some European countries and now also in Russia.

82. Soviet patents can be transformed into Russian patents in conformity with certain conditions; see Decree concerning the coming into force of the Patent Law of the Russian Federation, above, n 80.
computer programs, topologies of circuit layouts, as well as plant varieties and animal races (s 4.3). For utility models, processes, substances, strains of micro-organisms, cell cultures of plants and animals and their applications for a new purpose are furthermore also excluded, restricting patentability to machinery or tools and consumer goods (s 5). Any "solutions that are against the public interest, the principles of humanity and morality" are not patentable, an exclusion which also applies to industrial designs (ss 4.3, 5.2, 6.2).

**Industrial Designs**

An industrial design is defined as "an artistic-design solution which determines the external appearance of the product" (s 6.1). It must be novel, original and industrially applicable to attract patent protection. An industrial design is novel if all its essential aesthetic characteristics are not known from the prior art base, which is defined in the same terms as for inventions (s 6.1). Again there is a six-month grace period for prior disclosure (s 6.1). The definition of originality requires that the essential aesthetic characteristics show a certain level of creativity (s 6.1). Industrially applicable is a design of which a series of corresponding copies can be manufactured (s 6.1). The Law does not contain any restrictions on the overlap between industrial designs and copyright protection. Architectural structures, as well as objects whose appearance is determined purely by function and those whose form is unstable are excluded, as well as printed matter as such (s 6.2).

**Author and Patentee**

The Patent Law distinguishes between author and patentee. A person whose creative work contributed to the invention, utility model or industrial design, retains certain inalienable and indefinite rights as author even if the patent is granted to another or assigned (s 7). Thus the actual creator(s) will always be identified within the application. The rights of authorship are protected by criminal sanctions (s 32).

**Employee Inventions**

In statutorily defining a framework for the division of rights between employer and employee, the Russian legislator has chosen to follow the German example, rather than leaving this issue to contractual or equitable assignment. However, only the basic structure is contained within the Patent Law, which provides that "other relationships arising in connection with the creation of an invention, utility model... by an employee are regulated by legislation of the Russian Federation concerning employee inventions, utility models" (s 8.2). To date there is no such further legislation, so whether this refers to sectorial regulation or to further elaboration and clarification of the Patent Law sections is as yet unclear. The transition regulations also provide for further legislation specifically covering the rights of State employees. Given the vast State sector (universities, State research institutes, State-owned enterprises) the

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83. See the German law on inventions of employees, 25 July 1957.
latter would be of great importance to a majority of employees engaged in research and development.\textsuperscript{84}

The Act gives the right to obtain a patent to the employer in the case of inventions made by the employee, first, "in connection with the execution of his work obligations" (literal translation), in other words, in the line of duty, and secondly, when performing a specific task received from the employer\textsuperscript{85} (s 8.2). However, the Law does not specify whether "in connection with" means where the employees' duties consist of or include inventive activity or where inventions are made by the employees during or in connection with their work, whether inventive activity belongs to their duties or not. The scope of the terms is ill-defined, but tends towards a broader interpretation. However, in any case, the Law allows the employer and employee to vary the statutory arrangement by agreement, opening the way for distinct individual or collective agreements (s 8.2).

Where the employee makes an invention to which the employer is entitled, the employee does retain a right to remuneration, commensurate with the benefit derived by the employer from use of the patented invention. The employee derives this right, not only if the patent is actually obtained, but also where the employer decides to keep the invention secret, or fails to secure a patent due to reasons attributable to itself. The level of remuneration is determined by mutual agreement; failing agreement, the courts decide (s 8.2). Compensation in a case where no benefit is derived is not provided for, nor is the duration of the right.

However, if the employer does not file for a patent within four months from receiving the employee's notification about the invention, and also if it fails to inform the employee of its decision to keep the invention secret, or fails to assign the right to apply to another, the employee may apply for a patent in his or her own right. If the employee does so, the employer retains a statutory right to use the patented invention in its own production, subject to payment of commensurate compensation. Again the courts decide if the parties fail to reach agreement (s 8.2).

\textbf{Legal Rights}

A patent may be granted to the author, the author's nominee(s) as identified in the application, their successor(s) in law, or the author's employer (s 8.1). A patent for an invention is valid for 20 years from the date of receipt of the application. A utility model is valid for five years with a possible extension of three, and an industrial design patent for 10 with a possible extension of five (s 3.3). Temporary legal protection is granted from the date of application to the date of grant of a patent (s 22) for an invention, and from the date of notification for a utility model.

The patentee has the exclusive right to the invention, utility model or industrial design (s 10). This includes the right of importation, and introduction into the economy, or the possession with this aim of patented products or products which result from the application of a patented

\textsuperscript{84} See s 11 of the Decree cited above, n 80.
\textsuperscript{85} The rules described below also apply to industrial designs and utility models.
process (s 10.3). No provisions concerning indirect infringement are included. The patentee is under an obligation of use within four years for inventions and industrial designs and three years for utility models. Failing adequate use\textsuperscript{86} a third party can apply for the granting of a compulsory licence. Assignment and licence agreements must be registered with the Patent Office to be valid (ss 10.6, 13.2).

The Law also establishes a Federal Fund for Inventions which can acquire inventions, utility models or industrial designs, not compulsorily but on the basis of an agreement, with an eye to their realisation in the economy (s 9).

As well as the normal exceptions to the exclusive user rights of the patentee for use on international ships and aircraft, the "conducting of scientific research or experiments on means containing an invention, utility model or industrial design" is not an infringement, as well as the use of patents in natural disasters, catastrophes and major accidents (subject to subsequent compensation), private use without profit and the making of single preparations of medicines in pharmacies in accordance with a doctor's certificate. The rights of the patentee are exhausted after legal introduction into the economy of patented products, or patents containing patented inventions, utility models or industrial designs (s 11).

A person who, in good faith, used an "identical solution" on the territory of the Russian Federation before the granting of a patent retains a right of prior use, which is restricted to the existing volume of use and can only be transferred with the relevant plant (s 12).

**Priority**

The priority date is normally the date of filing of the application (s 19.1). Convention priority applies for six months from the original filing date for industrial designs, and for 12 months for inventions and utility models, with a possible extension of two months in certain circumstances (s 19.2). Corrections and amplifications can be made for a period of two months from filing and, upon payment of a fee, for a further period of 10 months for inventions (s 20).

There is no provision for provisional applications, but a system of internal priority is used. It is possible to lodge several applications for the same subject-matter within 12 months (for inventions) or six months (for utility models and industrial designs) of each other while retaining the priority date of the first (s 19.4).

**From Application to Grant**

Foreign nationals are obliged to use a Russian patent agent, registered with the Patent Office, to file a patent\textsuperscript{87} (s 15.2, 15.3). The application itself must be filed in Russian, and a Russian translation of supporting documents must be provided within two months (s 15.2). A condition of unity (or a "single invention") attaches to the application: it may contain

\textsuperscript{86} The Law refers to non-use or insufficient use, without defining the latter term further.

\textsuperscript{87} For rules applying to registration as a patent agent (ie, Patent Attorney) see the Decree of the Council of Ministers, concerning the confirmation of the Charter of patent attorneys, "Sobranie aktov prezidenta" 1993, N 7, 573.
one invention or a group of inventions that are so closely related that they form one inventive idea, or one utility model together with additions which cannot be used without the basic solution, or one industrial design and variants of this design (ss 16, 17, 18).

The documents which should be filed with the application are fairly standard. For industrial designs, a complete set of photographs as well as a description and a list of essential distinguishing features is required plus ergonomic diagrams or patterns for clothes if relevant (s 18). For an invention, an enabling description is required as well as a list of claims expressing its essence and a synopsis, as well as other materials, if they are required to understand the essence of the invention (s 16). The requirements for utility models are little different: an enabling description, claims which express the essence and drawings as well as a synopsis (s 17).

The Patent Office Regulations provide interesting details concerning the documents of the application. The description starts with a title. It must then contain information about the prior art, in the form of analogues (subject-matter with the closest possible resemblance to the applied for invention or utility model) known to the applicant, and including bibliographical details of its publication. This only applies where there are analogues available, and not for certain subject-matter.

The description section of the application includes a description of the "essence of the invention": here the applicant describes the relevant technical problem and the way he or she has overcome it. Special characteristics distinguishing the invention from its nearest equivalent must be detailed; different provisions cover different subject-matter. Drawings and, if appropriate, other materials, as well as information supporting the feasibility of the invention, describing how the essence of the invention is achieved, must be provided.

The claims have the specific purpose of defining the scope of the patent, and can be single or multiple. Single claim inventions may not include development or perfection characteristics for particular uses or processes; multiple claim inventions include several claims relating to particular circumstances of use or obtaining of the result sought by the invention. Where there is an analogue to the invention, this will be reflected in the claims, as these should then consist of two parts, one consisting of the purpose and distinguishing elements, the other disclosing the essential features which differ from the closest analogue.

As far as the single invention requirement is concerned, a single invention may consist of a group of inventions if they are so closely related that they form one inventive concept. The Regulations specify the following cases: one invention with a number of improvement and/or development characteristics; several inventions, one of which is to be used in or for the other; variants of one invention; inventions, one of which is used for the making of or the implementation of the other.


89. See s 10.4 of the Regulations cited above, n 88.

90. See s 4 of the Regulations cited above, n 88.
Examination

Two months after filing a formal examination takes place, but if the applicant does not wish to make corrections and/or amplifications, he or she can request an earlier formal examination (s 21.1). At this stage the question whether the application is concerned with subject-matter for which legal protection is granted is examined, as well as conformity of documentation (s 21.1). In the event of a negative result, various terms apply for reply to the Appeal Chamber. A further appeal lies to the Supreme Patent Chamber, whose decision is final (s 21.3).

Eighteen months after filing, but earlier on request, claims which have passed the formal examination stage are published (s 21.6). If material examination is not requested within three years from the filing date the application is revoked, unless serious reasons for the delay can be demonstrated (s 21.7). Additional materials can be requested by the Patent Office (s 21.8). If the patent is refused, the applicant can appeal to the Appeal Chamber, and further to the Supreme Patent Chamber. In general, various terms provided by the Law may be extended for serious reasons by request to the Patent Office.

As already indicated, there is no material examination for utility models, but as far as formal examination is concerned, the same rules apply as for inventions (s 23). Applications for utility models may be changed to inventions and vice versa (s 28). For industrial designs there is a formal as well as a material examination. The rules applicable to industrial designs applications are mostly the same as for inventions (s 24). The granted patent or certificate is published and entered in a State register (ss 25, 26).

Opposition, Revocation, Infringement, Courts and Remedies

The rights of the patentee are infringed if the patented invention is used without the patentee's agreement. Damages may be granted in accordance with the civil law of the Russian Federation. An exclusive licensee may also bring infringement actions (s 14).

The validity of a patent may be contested during the full period of its validity for non-conformity, incompatibility between claims and the initial application and incorrect nomination of the author or patentee (ss 29, 30). There appears to be no scope for third party opposition before grant, or even during a specific period after grant. There is also no scope for involvement of third parties by way of an informer procedure, and although a third party can initiate the material examination of the application, he or she can not be involved in the subsequent process. Disputes concerning validity after grant on all three abovementioned grounds are also heard by the Appeal Chamber and the Supreme Patent Chamber. Most other disputes may be examined by the ordinary courts of the Russian Federation as well as arbitration courts and panels (s 31). There is scope for either partial or total revocation of the patent or certificate.

91. But at different stages, see s 28.
General Conclusion

Although the Law is similar to most "Western" legislation, it is surprisingly short: only 37 sections, although further legislation is adumbrated in areas such as employees' rights, State secrets. This contributes to uncertainty in some areas: for example, employee inventions, definition of prior art, opposition procedures. There is no interpretation section, so many general terms are not defined. Infringement and enforcement provisions leave the patent owner with only limited means of enforcement.

Of interest in this country is the provision of utility models as a subject of patent protection. In contrast with petty patents, utility models are not simply cheap standard patents with a shorter duration: they are only available for a limited subject-matter (devices, whether of a consumer or production nature), and are not subject to inventive step requirements. In that way they are a more real, if more restricted alternative to standard patents for inventions.

The transition arrangements\textsuperscript{92} are complex, but mostly aimed at maintaining in force existing patents and inventors' certificates. However, for applications lodged but not yet processed at the time of the entering into force of this Act, both dating from before and after the dissolution of the USSR, in certain cases a new application must be lodged.

7. Overall Conclusion

As one can judge from the overview given above, the law has now come full circle and has definitely been re-established on a private property footing. Little within the Patent Law itself will allow a reversion to the old system of State control of all aspects of industrial property, both in the stimulation of invention and in its implementation. However, the Federal Fund for Inventions is in theory at least a way in which the State can take the initiative and spur implementation of inventions where private capital or motivation may be lacking. This may be a useful tool, as the State sector in reality still dominates within the Russian economy, and therefore State institutions may have to play an important role through the acquisition and implementation of inventions in its own infrastructure as well as elsewhere.

However, as is well known, it is not so much the production of inventions, as the modernisation of products and processes which needs stimulating in the Russian Federation. For this, adequate capital and price formation and definite moves away from a monopolistic, planned market structure are necessary. This will not be fully achieved in the short term, so it will be a while before this new Patent Law will have any of the effects Western market theorists believe patent laws of this nature can generate. But private ownership does provide the individual or private corporation with the motivation to strive for the actual implementation of inventions (innovations), rather than merely stimulating the production of inventions and leaving their implementation to a not always

\textsuperscript{92} The transition rules are to be found in the Decree of the Supreme Soviet concerning the coming into force of the Patent Act, 23 September 1992, above, n 80.
adequately motivated, in economic terms, State sector. Russia is at the moment in the throes of deep depression and attempts to turn around the economy which are meeting with substantial resistance. Nobody can predict precisely what the economy will look like once these upheavals are over, and therefore it is hard to say what the effectiveness of this Patent Law will eventually be, and whether it will be of any importance, even if only to foreigners. However, it is probably a positive step that it has been passed now, being one more reform which is now more difficult to turn back or prevent, and providing the necessary potential for a system that protects the rights and interests of Russian and foreign inventors and innovators alike.