

ADVANT Beiten



**PROTECTION OF
BREEDING
ACHIEVEMENTS IN
RUSSIA**

The topic of protecting breeding achievements is assuming more and more importance for many Russian and foreign companies. This is demonstrated by the constant increase in the number of applications for the issue of a patent by the competent authority of the Russian Federation. This brochure presents an executive summary of the protection of breeding achievements in Russia as regulated in Part Four of the Civil Code of the Russian Federation.

Registration of breeding achievements in Russia

Plant varieties and animal breeds are both recognised as breeding achievements in Russia. This is the key difference from German legislation, which does not protect the selective breeding of animals.

The right to the breeding achievement only arises once it has been registered with Gossortcommissiya (the State Commission of the Russian Federation for Selection Achievements Test and Protection) – a Russian state institution that reports to the Ministry of Agriculture and maintains a respective register of breeding achievements in Russia.

Gossortcommissiya maintains two registers of breeding achievements in Russia:

(i) protected breeding achievements and (ii) breeds and varieties permitted for use. The first register determines the legal protection of a breeding achievement in Russia per se. The second register has a practical goal - the admission of breeds and varieties for use. Until a breed or variety has been registered in the second register, it cannot be imported into Russia and sold in Russia. Accordingly, we recommend registering the breeding achievement immediately in both registers. Registration of the breeding achievement in the second register is exempt from duty.

To be eligible for protection, a breeding achievement must “exceed” the quality of previously existing achievements, and meet criteria such as novelty, uniformity and stability. Consequently, the registration requirements on breeding achievements are comparable with the requirements of German legislation.

So-called distinguishability means that the breeding achievement must possess attributes absent from other well-known breeds or varieties.

Regarding novelty, it should be borne in mind, in particular, that this criterion is not required if the corresponding seeds were sold in Russia more than one year before the filing of the patent application with Gossortcommissiya. This timeframe is four years in case of the sale in a foreign state and six years in the case of certain crops such as grapes, ornamental trees, fruit trees and forest trees.

The effective term of the patent is 30 years.

The state duty for the issue of a patent totals approximately EUR 650 for a nonresident. In addition, the validity of the patent must be maintained each year. The duties broken down by each type of breeding achievement and by year of maintenance of the validity of the patent are established separately.

Registration is performed in two stages: first of all, a formal examination is conducted during one month (for example, whether the future right holder is indicated, whether duties have been paid), then a technical examination is conducted in respect of the substance of the breeding achievement.

The most significant feature of registration is that the protection of the right to selective breeding is provided in a specific (limited) scope already after formal registration: after the receipt of the patent, the right holder is entitled to demand compensation from the offender for the illegal use of the breed or variety in the period from the actual filing of the patent application until the receipt of the patent.

Right holders, authors and originators of breeding achievements

The individual whose creative work has created, derived or developed a breed or variety is considered the author of the breeding achievement. The person identified as the author in the patent application for a breeding achievement is considered the author of the breeding achievement, unless proven otherwise.

The originator has the right of authorship, i.e. the right to be recognised as the author of the breeding achievement. This right is inalienable and non-transferable, and cannot be refused. The author also has the right to name the breed or variety.

The right holder is the person to whom the patent has been issued, and has the right to dispose of the exclusive right to the breed or variety. This may be, but does not have to be, the originator. For example, an originator working at an agricultural enterprise may be recognised as the originator, but based on the employment contract the right holder is the agricultural enterprise. The right holder has an exclusive right to the breed or variety, i.e. the right to use the breed or variety in any way, including commercial sales.

The use of a breed or variety includes the following actions:

1. production and reproduction;
2. preparation for cultivation, for subsequent reproduction;
3. offer for sale;
4. sale and other introduction into civil turnover;

5. export from the Russian Federation;
6. import into the Russian Federation;
7. storage for the purposes listed in points 1-6.

The exclusive right also extends to plant material, i.e. to a plant used for purposes other than the reproduction of the variety, but only in those cases when this plant material was obtained from seeds that had been introduced into circulation without the permission of the patent holder.

If the plant material (marketable potatoes, marketable apples, etc.) was obtained from seeds that were purchased from the right holder or from a person authorised by the right holder to sell the seeds, the exclusive right of the right holder does not extend to the respective plant material.

The following actions do not constitute a violation of the exclusive right to a breed or variety:

1. satisfaction of personal, family, household or other needs unrelated to entrepreneurial activity, if the goal of these actions is not to generate profit or income;
2. actions performed for scientific research or experimental purposes;
3. use of a protected breed or variety as source material for the creation of other varieties of plants and breeds of animals;
4. use of household grown plant material over the course of two years as seeds for the cultivation of plant varieties on the territory of this farm (this rule is in effect for a specific list of plants, for example peas, potatoes, rye);
5. any actions with seeds, plant material, stock and marketable animals that were put into circulation by the patent holder or by another party with the permission of the patent holder (except for subsequent reproduction or export from the Russian Federation).

Use of a patent to a breed or variety

As is the case with other intellectual property, the right holder to a breed or variety is entitled to provide a license to the patent or to conclude an agreement to alienate the exclusive right to this breed or variety.

Any provision of the right to use a breed or variety is permitted exclusively in written form, and the corresponding agreement must be registered with Gossortcommissiya. Registration takes 20 business days from the date all necessary documents are submitted, with confirmation of payment of state duty, which is approximately EUR 140 for licenses, and approximately EUR 100 for a contract on the alienation of exclusive rights.

The law contains two special forms of licensing of breeding achievements: the mandatory license and the open license.

Mandatory license

On the expiration of three years from the date of issue of the patent to a breed or variety, any party that wishes and is prepared to use this breed or variety is entitled to demand the conclusion of an agreement with the right holder. If the right holder refuses, the party may file a claim in court to demand that the right holder provide a simple (non-exclusive) license on generally accepted terms.

The right holder is only entitled to refuse a licensing agreement with due cause

Open license

The right holder may submit a declaration to Gossortcommissiya that it is prepared to conclude a licensing agreement with any party on terms determined by the right holder itself. This declaration is published in the State Commission's official bulletin. The benefit to the right holder lies not only in the dissemination of this information, but also in the fact that the annual duty is reduced by 50 per cent.

Violation of the rights of right holders to breeding achievements

In practice disputes related to the violation of a patent to a breed or variety are rare. For this reason, there are only a few relevant court decisions in this area.

The right holder is entitled to file the following claims in the event of a violation of exclusive rights:

- recognition of its right;
- restoration of the status quo ante;
- interdiction of actions violating or threatening to violate its rights;
- recovery of damages;
- publication of the court decision on the violation

As regards the recovery of damages, under Russian legislation damages consist of real damages and lost profits. In theory, the violation of a patent to a breed or variety does not entail real damages to the right holder, and therefore as a rule damages consist only of lost profits. The amount of lost profits may be determined proceeding from the amount of licensing fees that would have been paid if the offending party had concluded a licensing agreement.

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