

УДК 347.78

***ПРАВОВАЯ ЗАЩИТА ИННОВАЦИОННОЙ ДЕЯТЕЛЬНОСТИ В
ОБОРОННОЙ ПРОМЫШЛЕННОСТИ В РОССИИ***

Мирских И.Ю.

к.ю.н, доцент

*Пермский государственный национальный исследовательский университет,
Россия, Пермь*

Аннотация

Внедрение инноваций в различные сферы экономики играет огромную роль. Однако правовое регулирование инновационной деятельности в некоторых случаях достаточно несовершенно и требует изменений с учетом современных тенденций в области использования и защиты инноваций в различных секторах экономики. Правовые нормы ограничивают экономическую и инновационную деятельность в сфере оборонной промышленности в целях обеспечения защиты интересов государства. В ходе исследования было выявлено противоречие между секретным характером изобретений и необходимостью получения патента. В основе правового конфликта лежит противоречие между публичными и частными интересами. Для решения проблемы было предложено создать новую модель регулирования, которая закрепляет за изобретателем личные неимущественные права и некоторые привилегии, тогда как исключительные права передаются государству.

Ключевые слова: инновации, результаты интеллектуальной деятельности, государственная тайна, патенты.

***THE LEGAL PROTECTION OF INNOVATION ACTIVITIES IN
DEFENSE INDUSTRY IN RUSSIA***

Mirskikh I.Yu,

PhD, docent

Вектор экономики | www.vectoreconomy.ru | СМЭЛ № ФС 77-66790, ISSN 2500-3666

*Perm State National Research University,
Russia, Perm*

Abstract:

The implementation of innovations in different spheres of economic activities is very important. But sometimes the legal regulation of creative and innovative activities is rather weak and deserves to be improved taking into account modern tendencies in use and protection of innovations in different spheres of economy. To provide state interests the legislative acts include norms, which limit economic and innovation activities in the sphere of military industry. A contradiction between the secret nature of the invention installed by the legislation on state secrets and the requirement to patent invention was revealed. The essence of the legal conflict is the confrontation of private and public interest. To solve the problem the new model is suggested to confirm the rights of the inventor and ensure exclusive rights of the state.

Key words: intellectual property, innovation activities, state secrets, patents.

Implementation of innovations in military and defense industry is rather complicated. It is caused by the limitations in use of innovations and inventions if it refers to the sphere of state secrets. The protection of innovations in defense industry requires creating new methods of legal regulation concerning intellectual property rights.

State secrets can be defined as information protected by the state in the field of its military, foreign policy, economic, intelligence, counterintelligence and operational activities, the dissemination of which may harm the security of the Russian Federation [2].

State secrets differ from official, commercial and other secrets because such kind of information is directly related to the state interests of the Russian Federation (not a specific enterprise or organization) and disclosure may harm the security of the entire state, and not of a single legal entity. That is why in any country of the world

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state secrets are protected at all levels. The possession of information about state secrets gives rise to certain duties and restrictions related to safety use and disposal of such information.

The types of the information referring to state secrets are defined in the Law On state secrets. According to article 5 of the Law «On State Secrets» [2] the following categories of information refer to state secrets: information in the military field; information in the field of economics, science and technology; information in the field of foreign policy and economy; information in the field of intelligence, counterintelligence and operational search activities. So if invention is made in the field of defense industry and refers to the mentioned above categories of information it is regarded as state secret or secret invention.

The rights for a secret invention are protected by the legislation of the Russian Federation by issuing a patent that is valid for 20 years from the date of registration of the application, and which confirms the exclusive rights of the inventor. Generally it is considered that the exclusive rights of the inventor allow him to use the results of his intellectual activity at his discretion and receive remuneration.

The recognition of exclusive rights for a secret invention contradicts the principles of protection of state secrets. The patent owner does not have the opportunity to inform other persons about his rights including those persons who violate his exclusive rights. Such problems occur because he signs documents on non-disclosure of state secrets and is responsible for it.

Even if a patent for a secret invention is issued, the inventor does not have the opportunity to use his exclusive rights on the invention, because the patent is suspended until it is declassified. The monopoly to use such kind of secret inventions belongs to the state. Exclusive rights of the inventor do not give him the opportunity to use or dispose the invention [3, 309].

It is important to point down that some problems and collusions of legal regulation can be caused by the confidentiality of the patent on secret invention itself and application for the patent. Legislation does not regulate the process of

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acceptance, as well as the examination of an application for a secret invention or this information is not available.

A special status of secret inventions can cause a lot of problems. Thus, it is possible that a person who did not know, and could not legally know about the existence of a patent for this invention can use a patented secret invention unintentionally. In addition, information about such inventions remains secret and is not taken into account to determine the degree of novelty of the technical idea. In case of information leakage, it is possible that any persons can patent and use the secret invention abroad. This can cause losses for both the Russian Federation and the original inventor. Moreover it will be very difficult to prove the authorship for the invention. As information about applications and patents on secret inventions is not published, it is possible that a third party can register an application with a similar technical decision on legal grounds. In this case, it is even possible to import goods created by using a secret invention. But the inventor will no longer receive remuneration for the use of his invention. This gap in the legislation does not stimulate the inventive interest in the country.

At the same time if the person does not know about the existence of the patent, but use secret invention he does not bear any responsibility under the law [4, 453]. Such uncontrolled use violate the legislation on state secrets, but the person is not responsible for the violation of patent rights.

Another problem is that while patenting a lot of people receive access to secret information and this is contrary to the protection of secret information as it makes the protection of secret information rather difficult. The protection of state independence and security is one of the most important functions of any state. It is important to take into account state interests and state duty to provide safe and secure life of the citizens. In fact, it is one of the main functions of the state. That is why any spread of information about innovations in military industry, about new kinds of weapons can create problems for defensibility of the state.

The article 1405 of the Civil Code of Russia [1] regulates the use of secret inventions in accordance with the law "On State Secrets" [2]. Any inventions and utility models in defense sphere immediately obtain the status of state secrets, the use of which is strictly limited. The patent confirms exclusive right to use this invention. But the inventor, in fact, does not have the opportunity to use this secret invention, he cannot dispose it [5, 486].

The solution to this problem should take into account the interests of the state and the inventor, whose work ensures the intellectual potential of Russia. It is necessary to work out a different approach to solve the conflict between private and public interest.

To improve the legal structure, it is proposed not to grant the inventor a patent for a secret invention until the secret information is declassified, and thus not to confirm exclusive rights to the author until the invention is declassified.

This construction declares the state exclusive right on secret inventions and, at the same time, helps to preserve state secrets. The State, having exclusive rights to a secret invention, will be able to dispose the invention more reasonably by transferring it to the competent authority at its discretion.

To solve the problem it is possible to create a new model. To ensure the interests of the author it is suggested to register inventor's rights. This will confirm the authorship on this invention. The registration of the inventor's rights will secure the author's personal non-property rights, and the exclusive right to the invention will belong to the state.

In order to encourage innovation activities in the country, the author must be compensated for the creation of the invention. Thus, in the proposed legal structure, the inventor must have not only non-property rights, he will be rewarded by the state by paying compensation. There can be two types of compensation, the first to be paid for the creation of the invention, it should be performed immediately after the registration of the inventor's non-property rights. Another payment for the use of a secret invention will be made by the enterprise that uses secret inventions.

The expected results from the application of this legal structure should be positive, because the balance of private and public interests is established.

The state becomes the sole owner of the exclusive right to a secret invention, and therefore can effectively use it in the interests of the society. In this model the interests of the inventor, his non-property and exclusive rights are protected.

The main direction of the proposed solution is to prevent the confrontation of the rights to a secret invention on the part of the state for the preservation of secret information and the author, the owner of the exclusive rights to the invention.

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Оригинальность 94%