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Russia: What Happened with Unity of Invention?

Kirill Osipov (ARS-Patent & Trademark) · Thursday, July 27th, 2023

Since 29.04.2023, new Russian Patent Requirements (the **Requirements**) have been in force. These include several amendments compared to the previous version of the requirements, including an amended provision on the rules for unity of invention.

Clause 2 of the previous requirements stipulated that the requirement of unity of invention in relation to a claimed group of inventions shall be considered satisfied if the group of inventions is characterized in the claims as follows:

- one of the inventions is intended for preparing (manufacturing) the other (for example, a device or substance and a method for preparing (manufacturing) a device or substance as a whole or part thereof);
- one of the inventions is intended for implementing the other (for example, a method and device for carrying out the method as a whole or one of operations thereof);
- one of the inventions is intended for use of the other (in the other) (for example, a method and a substance to be used in a method; a method or device and part thereof);
- inventions related to a subject matter of the same type (for example, several devices, several substances), having the same purpose and providing the same technical result (variants).

Previously, examination of Russian patent applications based on PCT applications involved first analyzing unity of invention in accordance with PCT requirements and then, if the PCT requirements were not met, checking the unity requirements under Russian national law. In some situations, the Russian provisions of the old legislation were more beneficial for applicants, who could then insist on the above-cited clause 2 being applied instead of the PCT provisions. For example, under the old Russian law it was allowable to claim, within one patent application, several compounds possessing the same activity but having different structures – such compounds could be considered variants. This would not be possible under the PCT rules.

However, the new version of the Requirements contains a provision on unity of invention which is closer to the PCT rules. Now, the Russian Patent Office will analyze unity of invention by identifying whether there is a technical relationship between all claimed inventions involving one or more of the same or corresponding special technical features.

The author observes that applicants for Russian patents have now lost an option for relying on the less stringent provisions on unity of invention. Having said that, it will be simpler to have Russian law further harmonized with Eurasian and European jurisdictions in this way, and especially when considering PCT applications which enter the Russian national phase, there is now no difference in

the unity requirements between Russia and the PCT. This is likely to make the Russian jurisdiction clearer for non-Russian applicants and IP specialists, even if some wish they still had a choice.

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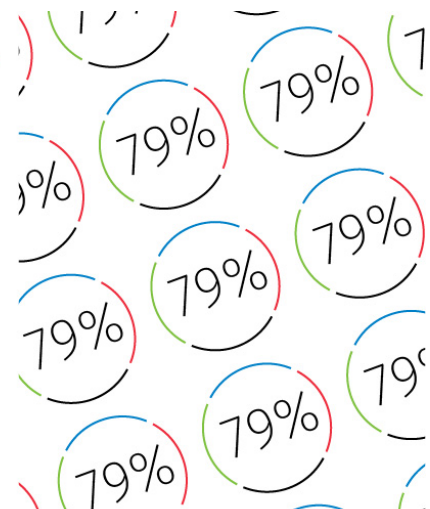
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