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## New rules for the patenting of “Use” Inventions in Russia

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**The Russian Patent Office (Rospatent) has introduced new provisions relating to the assessment of patentability of “use” inventions.**

### Background

On September 27, 2024, the Russian Ministry of Economic Development issued Order No. 610, which came into effect on November 10, 2024 (hereinafter – the Order). The Order supplemented provisions on analyzing the patentability of inventions relating to such a subject matter as “use”.

### A new language of a “use” claim

Russian patent legislation requires a claim directed to the subject matter “use” to contain a purpose for which a product/method indicated in the claim shall be used.

Applicants, especially ones who enter their international applications to the Russian national phase, have tended to draft “use” claims to be provided with additional features defining the claimed inventions. Such features can represent, for example, doses and regimes of administration in case of pharmaceutical inventions. That makes a claim directed to “use” close to the one relating to a method of treatment. As a result, the difference between said two types of the inventions was not entirely clear.

The Order amended the provision set down in clause 62(22) of the Russian Patent Requirements as follows:

*“In case of inventions relating to the use of a product or method for a certain purpose, a claim shall include only indication on the use of the product or method for the certain purpose”.*

Thus, the new provision prohibits a “use” claim to contain features other than those defining the product or method to be used and the purpose for which the product or method shall be used. That is, the language of such claim shall be, for example, “*Use of a product* [features of the product shall be listed here] *for* [a purpose to be indicated]”.

### Novelty of “use” inventions

The Russian Patent Rules provide that to discover a new purpose of a known product does not render the product itself novel. In this case, a patentable invention shall be defined in an

independent claim to represent the use of the product for said new purpose.

When the definition of a purpose was not sufficient to render the claimed use novel, applicants included additional features to distinguish the claimed invention from the prior art.

The Order has brought an end to this practice. As noted above, a claim directed to the subject matter “use” shall not contain features other than those defining the product or method to be used and the purpose for which the product or method shall be used. Moreover, even if such additional features are present in a claim, the Order stipulates that they shall be ignored because only features defining a purpose shall be taken into account when assessing novelty of the “use” invention.

Thus, when a purpose *per se* cannot provide the invention with novelty, it seems reasonable to make a claim to be directed to the subject matter “process” or “method”.

### **Inventive step of “use” inventions**

The Russian Patent Rules provide for the following algorithm of assessing inventive step of an invention:

- determining the closest prior art of the invention;
- revealing the features distinguishing the invention from said prior art;
- revealing the prior art technical solutions having the features coinciding with the distinguishing features of the invention;
- analyzing the prior art to confirm that influence of the features coinciding with the distinguishing features of the invention on the technical result of the invention is known.

Should the technical solutions having the features coinciding with the distinguishing features of the invention are not revealed or should influence of said features on the technical result is not proved to be known, the invention shall be recognized as inventive.

Before the Order, all features that distinguish a claimed use from the prior art would be taken into account when checking the invention to meet said patentability criterion. The Order changed the approach. According to the new rules, only features defining a purpose shall be taken into account. Thus, in accordance with the Order for the “use” invention only a purpose shall be considered a distinguishing feature in the above-mentioned scheme of inventive step to be analyzed. As a result, if a purpose is obviously realized by a product or method, an invention relating to use of said product or method does not involve inventive step.

### **An additional aspect**

Although the Order does not mention a PTE (patent term extension) issue explicitly, it seems to be touched upon by the Order as well.

The Russian patent legislation provides for a PTE to be granted for an invention relating to a medicament or pesticide or agricultural chemicals. At the same time, only claims directed to a subject matter “product”, namely to a compound (including those defined by a Markush structure) and a composition, are eligible for PTE. Claims of “process” or “method” may not be subject to a PTE. As for the subject matter “use”, the Rospatent’s practice is contradictory because such claims can be interpreted to relate to a product or to a method.

The Order seems to be able to make the Rospatent's approach to the rightfulness of a PTE to be granted in respect of "use" inventions clearer and more consistent. As noted above, the Order prohibits a "use" claim to contain features other than those defining the product to be used and the purpose for which the product shall be used. Thus, such claim shall inevitably be interpreted to be directed to a product restricted with its purpose, which, as a consequence, shall be eligible for PTE.

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