



Contractual ensuring innovative process in the Russian Federation

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The occupation of ascendent position in the market was a main objective of managing subjects in all countries which have chosen a capitalist way of economy development at all times. The introduction of goods in production and rendering services of scientific and technical results progress, using of innovations are the integral condition of achievement of competitive situation in separately taken segment of the market that attracts bigger profit by the commercial enterprises in modern conditions of society development.

The mechanism of contractual regulation of this activity plays the defining role in development of innovative process in the Russian Federation. Main regulators at various stages of this process are contracts on project and prospecting works performance, contracts for research works performance, and also developmental and technological works, contracts for scientific and technical products or know-how creation and transfer, license contracts, and also contracts of commercial concession despite innovative process can't being reduced to a certain look named in the Civil code of the Russian Federation contracts, proceeding from a sets of a set of rather independent stages mediating transformation of abstract knowledge in the final product¹.

So, the relations developing at a stage of carrying out basic and applied research are regulated by contracts for performance research, and also developmental and technological works.



In the first case the performer undertakes to conduct all scientific researches caused by the specification of the customer, in the second he is to develop a sample of a new product and the corresponding design of documentation or new technology. The most widespread directions of carrying out research works are justification of the directions of development of technological system, a choice of technical solutions when developing new alternative production and new technologies, justification of the directions of conversion of activity of the enterprise, formation of strategy of scientific and technical development and enterprise expansion, a choice of strategic positions in the competition, justification of the program of development and technical requirements to innovations. Thus, the main differences of these contracts are the subject and character carried out by the contractor. These contracts do not have any differences concerning onerousness, reciprocity and consensual.

It's a very interesting fact that today there's no consensus concerning a subject of considered contracts in the civil doctrine. In one case it can be defined as «a result which has to be received by the performer during the creative solution of put customer scientific, technical, technological or other similar task»², in the other it is «the scientific researches directed on receiving new knowledge and (or) their application for achievement of the practical purposes and the solution of specific objectives»³.

In most cases carrying out research works is the precondition of carrying out developmental and technological works as the last, proceeding from the purpose of modernization of the mastered equipment or technology, can repeatedly be carried out for receiving final and always material result. The first in quality of result have non-material object as are based on search of the new fundamental data which aren't demanding check within carrying out other research works.



Besides all differences in a subject and nature of performed works in these contracts the Civil code of the Russian Federation differently defines also conditions of confidentiality of the received data, the rights of all sides to results of the carried-out works. In particular the customer in this contract separate demands can be made to the equipment by technical means of protection, to ensuring sound insulation, storage conditions and uses of documents and products. Rooms have to be certified taking into account recommendations about counteraction to foreign intelligence technical services and industrial espionage. The customer determines the list of data by a subject which can't be published in the press, and also those which publication is possible according to its written permission. Requirements which need to be observed during the processing, storage and information transfer with computer use are specified.

The contract for creation and scientific and technical products transfer is closely connected with the above-considered legal designs. It agrees to the last, that the performer undertakes to create scientific and technical products on in advance determined parameters with performance of work on production, test, and also delivery of parties of skilled products or samples. Besides, the form of the contract is approved legislatively in 1996 though in practice wide use of such contracts was since the end of the 80th years. Thus, its orientation acts as difference besides creation of scientific and technical products and on its direct transfer and if it is provided by the contract, its introduction in production and further service during defined by the agreement of the parties of time.

For commercial use of results of scientific and technical activity their sale by means of the conclusion of contracts of a purchase-prodazhi⁴, exchange and the delivery, a little different the contents from mainly used in the sphere of business of contracts is possible. The civil legislation provided need of existence of the license providing the right to certain persons or the organizations to use intellectual property. In this case the so-called license



contract acts as a legal form of regulation of these relations. According to its provisions the person owning object of intellectual property, provides to the contractor called by the licensee, a right to use own rights to these objects. Definition of the legal nature of this contract is complicated by that circumstance owing to which the license contract can combine elements of the contract of purchase and sale, rent, the contract and even an assignment.

Depending on the volume of the rights of the parties of the license contract non-exclusive (simple), exclusive and full licenses are allocated. According to the first look the licensee is limited in use of the provided license by the coordinated parties of the contract by borders, besides the licensor keeps the right to use this license, including providing it to the third parties. At the conclusion of the contract of the exclusive license the licensee gets an exclusive right of using the license, the licensor loses the right of its independent use. In our country of the right to intellectual products of the innovative enterprises belong to their founders (to higher educational institutions, universities, research institutes). Abroad universities transfer patents to developers. Possibility of granting to the Russian innovators (authors) of the exclusive license for result of intellectual activity was discussed. In the latter case the contract to the licensee provides an exclusive right of use of object of intellectual property without any restrictive conditions.

During innovative process possibly situation existence when for production and the subsequent sale of result of scientific and technical activity subjects of economic activity, previously stipulating distribution of profit and possible risks, create joint venture for conducting this activity. As legal form of regulation of these relations contracts on joint activity, in particular a form of creation of various laboratories or scientific centers will act in this case. This contract is rather often used in the Russian business practice. The purpose of the



conclusion of such contract in addition is association of the capital of businessmen, and also taxation optimization.

The civil legislation of the Russian Federation also provided possibility of the contracts conclusion of commercial concession. According to it the owner has the right of use in business activity of a complex of exclusive rights which are surely include the right to the trademark and a service mark, and also if it is provided by the contract, the rights to commercial designation and know-how is provided to the user. The difficult education includes both obligatory and facultative element acts as subject of the contract of commercial concession⁵.

Besides the called contractual designs of innovative regulation activity in Russia the conclusion of information contracts (consulting) character is possible. It is possible to carry there all contracts for rendering marketing services, services in training (retraining). The conclusion of contracts for rendering the engineering services is also widespread on practice, providing technical ensuring process of production and transfer of the corresponding production to the customer.

As it was told above, the separate type and a type of contracts which would mediate introduction of innovations in the Russian legislation aren't present, but nevertheless any innovation demands the civil registration. Proceeding from these purposes, subjects of economic activity, as a rule, use the circle of contractual designs outlined above.

It should be also noted that during an implementation of innovative activity using of all contractual tools existing in our legislation in compliance with specific goals and stages of innovative process is supposed expedient.

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