Intellectual Property Protection in Mobile Applications for Dietary Supplement Intake Control: Legal Aspects and Strategies

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Abstract: Intellectual work is one of the hardest. From a legal point of view, the results of creative, scientific, research or industrial activities are objects of intellectual property. Despite the fact that a number of problems remain in Russian legislation in the field of intellectual property protection, the unresolved nature of which in modern conditions harms Russia as a whole, as well as its citizens and entrepreneurs. At the same time, modern technologies are developing, which affects both the ways of creating the results of intellectual activity and their use, as well as the methods of legal protection of its results. The Russian state protects the results of intellectual labor from illegal use by individuals and legal entities (Part four, Section VII of the Civil Code). Violators of the law are brought to administrative and criminal responsibility.

1 INTRODUCTION

Intellectual property is the results of intellectual activity and equated means of individualization of entrepreneurs and legal entities, goods, works, services and enterprises that are protected by law.

It can be perceived as a set of rights of the author or other copyright holder, allowing them to dispose of these intangible objects, prohibit and allow their use by third parties.

A mobile application is the result of intellectual activity, as well as an invention or an author's work.

Development rights can be protected in several ways:

– Register the name and logo of the application as a trademark. Other developers will not be entitled to use this mark without written consent (in the form of a license agreement or an alienation agreement). You can also not use someone else's registered logo in advertising or on a website or on social networks to attract users. In case of violation of trademark rights, you can go to court and collect compensation up to 5 million rubles or more.

– Register the program code with Rospatent. Registration is made in the form of deposit, since the listing of computer programs is protected by copyright as a literary work. This practice has been adopted in all States that support the International Berne Convention (more than 170 participating countries). You can attach audio-visual displays (videos, drawn images) to the listing, which arise as a result of executing program commands.

– Register a device with embedded software as an invention or utility model.

The unique design of the mobile application can be registered as an industrial design. At the same time, a state patent is also issued.

Trademark registration for a mobile application is carried out in several stages:

1) Checking the name or logo for the absence of matches with previously registered marks. We check not only a complete match, but also a partial one. The two designations may differ in detail, but if they give the consumer the same overall impression, then they become competing. The mark that was registered earlier has the advantage.

2) We issue an application on Rospatent letterheads. We specify information about the copyright holder of the trademark, the priority of the designation, the classes according to the international

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classifier of the International Standard for which this mark will be used, unprotected elements of the designation and other information. There can be only one image in the application, color or black and white.

3) We pay state fees for the examination. The amount of state duties directly depends on how many classes of the MCTU are assigned in the application.

4) Sending a set of documents to Rospatent.

After registration of the application, its two-level verification is carried out:

Formal examination is the verification of compliance with the rules of registration of documents.

Substantive examination is the verification of a trademark for compliance with the requirements of Rospatent regulations. There are more than two dozen reasons for refusal of registration, so it is recommended to always make a preliminary check of the designation before submitting an application.

We present to your attention the ICTU class for the project "mobile application for the control of dietary supplements and FDI "IRecipe"

Class No.9 – Scientific, research, navigation, geodetic, photographic, cinematographic, audiovisual, optical, weighing, measuring, signaling, detection, testing, rescue and training devices and instruments; devices and instruments for transmission, distribution, transformation, accumulation, regulation or control of distribution or consumption of electricity; apparatus and tools for recording, transmitting, reproducing, or processing sound, images, or data; recorded or downloadable media, software, clean media for recording and storing digital or analog information; mechanisms for prepaid devices; cash registers, counting devices; computers and computer peripherals; diving suits, masks, earplugs, gloves for divers, nose clips for divers and swimmers, breathing apparatus for underwater diving swimming; fire extinguishing equipment.

Class No. 44 - Medical services; veterinary services; hygiene and cosmetics services for humans and animals; services in the field of agriculture, aquaculture, horticulture and forestry.

The original name of the project, as well as the intended trademark name, was "MyDoctor". However, in the course of the analysis, already registered in the open databases of FIPS and Linmark, already registered data were found (Figures 1 and 2).

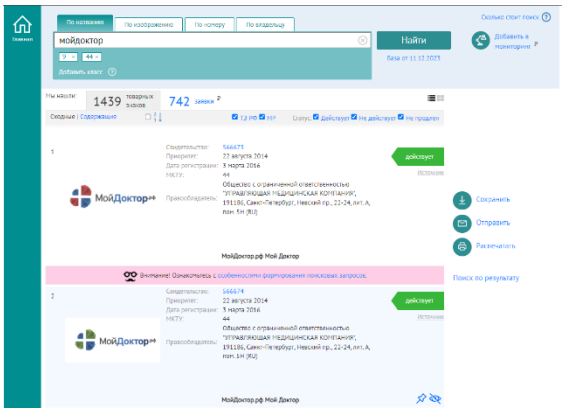

Figure 1: Open database of registered trademarks of Linmark MyDoctor.

Based on the data obtained, we see that in the open database there is already a registered trademark, which belongs to an organization located in St. Petersburg, LLC «Managing Medical Organization».

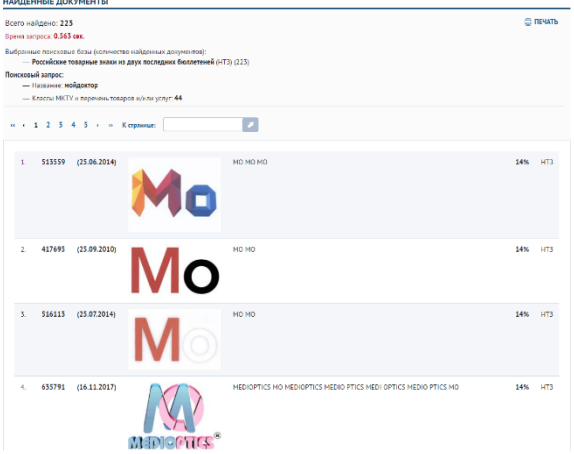

Figure 2: Open database of registered trademarks of FIPS «MyDoctor».

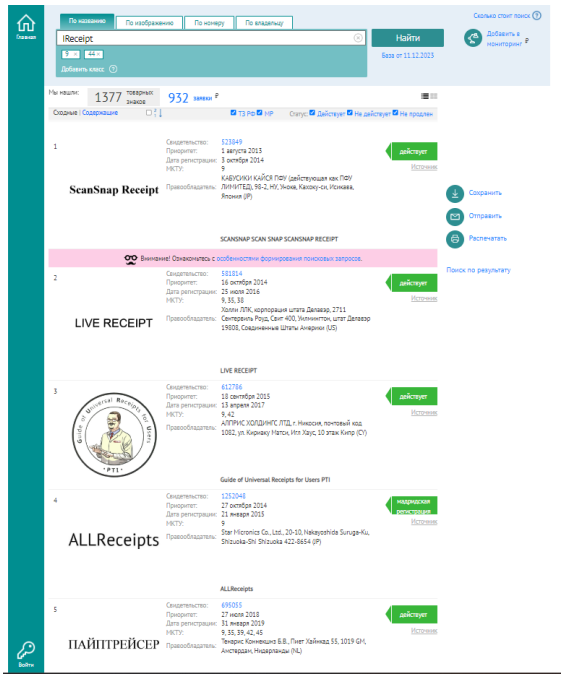

Figure 3: Open database of registration data about the Linmark « IRecipe ».

Having analyzed the open database of FIPS registered trademarks from the last two bulletins, unfortunately, no registered trademarks were found that have the status of valid or discontinued. In this regard, it was decided to rename the mobile application – «IRecipe» (Fig. 3).

Note that the main difference between a trademark is its validity period. The certificate is issued for 10 years, but it can be extended an unlimited number of times for the same period (clause 2 of Article 1491 of the Civil Code of the Russian Federation). It is recommended to apply for an extension one year before the expiration of the designation.

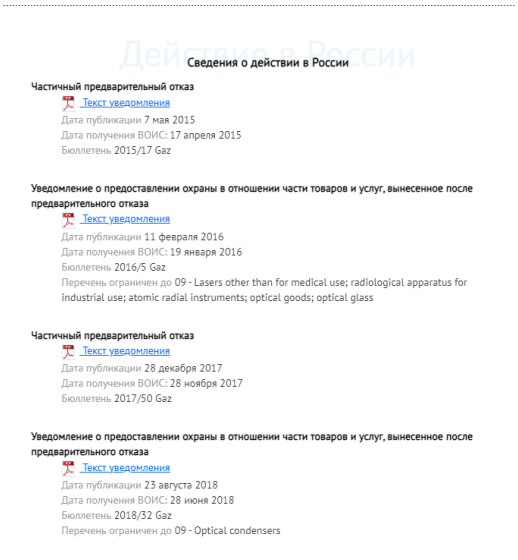

Figure 4: List of registration «recipe», «rept», «recipe».

We analyze other useful information (Fig. 4), for example, «recipe», «rept», «recipe». Lasers not intended for medical purposes; radiological equipment for industrial purposes; atomic beam device; optical products; optical glass; optical capacitors.

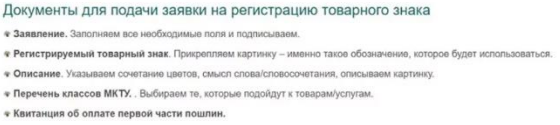

Figure 5: List of documents for filing for trademark registration.

So far, only individual entrepreneurs or legal entities can register a trademark (Article 1478 of the Civil Code of the Russian Federation). But since June 28, 2023, this opportunity has also appeared for individuals. The necessary documents for filing for trademark registration are shown in Figure 4.

Considering the protection of image components from copying, it is worth noting that this is quite natural, and the registration of application icons (pictograms) as trademarks is a trend phenomenon and is often used for umbrella brand protection.

In the context of software, an icon is an element of the graphical user interface; a small image, an icon that serves to identify a file, program, application, and serves to launch/activate it.

It should be noted that in order to obtain registration as a trademark, the pictogram should not fall under the scope of Article 1483 of the Civil Code, which contains a list of grounds for refusal of state registration of a trademark. The most common

refusals are with references to paragraphs 1 and 3 of this article — we will study them in more detail.

As a rule, pictograms do not contain verbal elements. In a general sense, a pictogram is a stylized and easily recognizable graphic image of an object, simplified in order to facilitate visual perception. The pictogram enhances the characteristic features of the depicted object, «cutting off» excess and conveying its very essence. Examples of such pictograms are icons indicating a medical facility (a bowl with a snake), a hospital (a red cross), a taxi (checkers), an entrance to the parking lot (the letter P), a toilet (a pair of schematic men or letters WC), an indication that the product does not contain sugar (crossed out cubes in a circle).

Such pictograms cannot be registered as trademarks on the basis of clause 1 of Article 1483 of the Civil Code, as they do not have a distinctive ability. If the icon consists only of elements:

1) entered into general use to designate goods of a certain type;

2) being generally accepted symbols and terms;

3) characterizing goods, including indicating their type, quality, quantity, property, purpose, value, as well as the time, place and method of their production or sale;

4) representing a form of goods that is determined solely or mainly by the property or purpose of the goods, then it falls under paragraph 1 of Article 1483 of the Civil Code of the Russian Federation and cannot be registered as a trademark. Based on the above, the icon of the mobile application for searching nearby pharmacies, which depicts, for example, a green cross or a bowl with a snake, cannot be registered as a trademark — you need to be creative.

The lack of distinguishing ability can also be said in the case when the icon is a simple geometric shape: a circle, a polygon, an oval.

Based on the identified features during development, we will create our own icon for the project mobile application for the control of dietary supplements and food intake «IRecipe» (Figure 6).

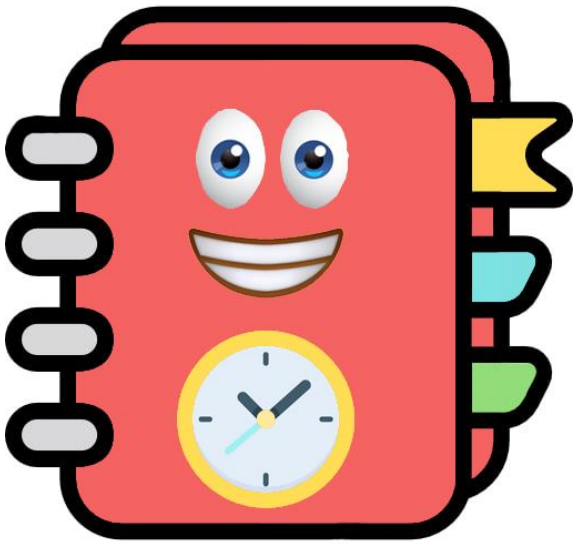

Figure 6: Icon for the mobile application « IRecipe ».

Another way to protect the right to develop is to deposit the program code – transfer a copy of it to Rospatent for storage. Registration takes place in a simple application procedure – the examination of the department checks only the correctness of filling out documents, the analysis of the software's operability is not performed. The applicant is issued a state certificate of deposit confirming the fact that the rights to the program have arisen at this point in time. It can be used as a confirmation of rights in controversial situations.

Examples of deposit items are:

A customer base for cross-promotions between business owners. A single discount card for consumers;

News feed, reading news on source sites, news announcements;

Control of the schedule of admission of users (patients of doctors), a database of prescriptions and the well-being of patients of a medical organization.

An entry about the software will be entered into the open state register only in the volume of the abstract. The full set of documents is stored in the depository.

When depositing programs, it should be borne in mind that the law protects only the external expression of the author's work – the code itself, and not the functionality of the software, i.e. it is protection against direct copying. The certificate provides protection throughout the life of the author + 70 years after his death, as well as for other objects of copyright.

Protection of the mobile application design, interface, icons, fonts and other elements can also be protected by a patent. In this case, an application for registration of an industrial design is issued. This type of intellectual property exists for the legal protection of design solutions.

Next, let's look at protecting the design of a mobile application. This method applies to industrial designs, the procedure for processing documents to Rospatent is similar: to do this, you need to file an application, pay state fees and send a package of documents to the patent office. One of the advantages of such protection is that several design options or GUI windows can be specified in the application at once. Thus, you can save on fees without paying them for each design separately (Figure 7).

On the other hand, an industrial design, like an invention, must have global novelty, that is, it must be checked against all major databases of patent documentation. Otherwise, the examination will refuse registration.

The average duration of obtaining a design patent is 5-6 months (according to the regulations, the maximum examination period is 1 year. The patent is issued for a period of 5 years, but it can be extended by submitting an application to Rospatent and paying the fee. An extension is granted for another 5 years, but the total period of legal protection cannot exceed 25 years.

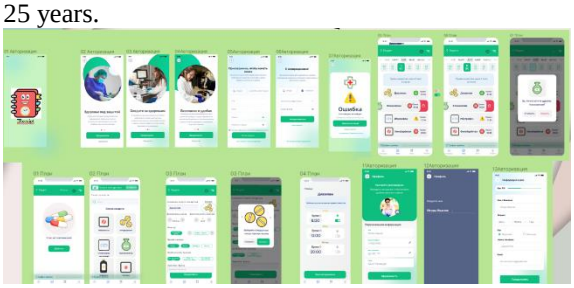

Figure 7: Protection of the design of a mobile application as an industrial design.

The patent law of a mobile application gives stronger legal protection to IT development, as it protects not only from direct copying, but also from imitation. If a competitor uses all the main features of the invention (or utility model) described in the patent, then he will violate the exclusive rights.

Another way to protect a mobile application may be to register a patent for an algorithm, that is, a way to solve a specific problem.

The scope of rights granted to the developer is determined by the content of the claims or utility model. Stricter requirements are imposed on the patent application, and the examination at Rospatent often lasts more than a year. The development itself must be new on a global scale, that is, verification is carried out against all publicly available sources published in any language.

The patent for the invention will be issued for a period of 20 years, and for a utility model – for 10 years, without the possibility of extension. Every year, state fees must be paid to Rospatent for maintaining the patent in force. Just as for trademarks, the right to a patent may be granted to other persons on the basis of a license agreement or an alienation agreement.

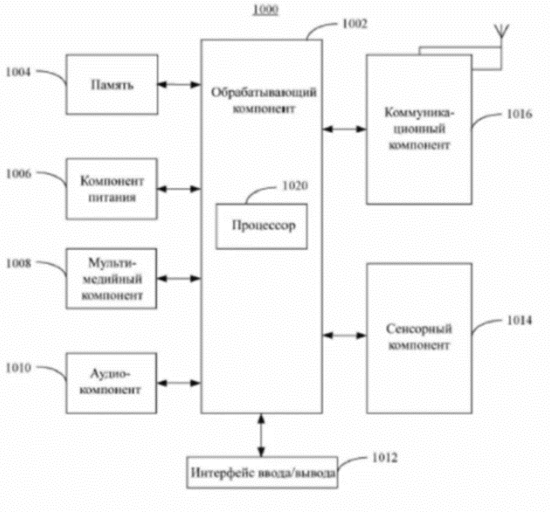

Figure 8: A fragment of the description of the patent of the mobile application.

2 RESULTS OF RESEARCH

Thus, obtaining security documents (certificates and patents) for individual elements of a mobile application gives the following advantages to its owner:

Legal protection against illegal copying.

Registration of the program in Rospatent makes it possible to include it in the unified register of the Ministry of Communications.

The opportunity to participate in tenders for the supply of software for government agencies, benefits for IT companies.

3 CONCLUSION

Thus, the mobile application «IRecipe» will have the following functionality: Android platform compatibility; scheduling of appointments taking into account: time of day, dosage, appointment plan,

reception features and the ability to download or share the received schedule; the ability to conduct online consultations and make an appointment with a specialist; the ability to add medical records; sending push and audio messages notifications; the ability to use educational materials: first aid; lessons on balanced nutrition; recipes; nutrition recommendations; analysis of physical activity and meal schedule.

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