

INTELLECTUAL PROPERTY LAW IN RUSSIA

ANDREY V. KASHANIN



Wolters Kluwer
Law & Business

Intellectual Property Law in Russia

Andrey V. Kashanin

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Intellectual Property Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editor: Hendrik Vanhees



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenspublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-5890-1

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Dr Jur. Andrey V. Kashanin (born 18 June 1976) graduated from Lomonosov Moscow State University in 1998 with a qualification in civil law and received a Doctor of Jurisprudence degree in civil law at the same university in 2002.

Dr Kashanin is Deputy Director of the Institute of Legal Research at National Research University Higher School of Economics in Moscow.

His principal specialist fields are intellectual property law in Russia and abroad and comparative law.

Dr Kashanin is the author of more than 40 research papers in

these fields.

Email: kashanin@mail.ru.

Website: <http://www.hse.ru/org/persons/1230371>

Table of Contents

The Author	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. GENERAL BACKGROUND	15
I. Geography	15
II. Cultural Compositions	15
III. Political System	16
IV. Population Statistics	17
§2. HISTORICAL BACKGROUND	17
Intellectual Property Law	21
Chapter 1. Copyright and Neighbouring Rights	21
§1. SOURCES: LEGISLATION	21
§2. SUBJECT MATTER OF PROTECTION	26
I. Different Categories of Protected Works	26
II. Works Excluded of Protection	30
III. Special Categories of Works	32
A. Computer Software	32
B. Databases	36
C. Others	37
§3. CONDITIONS OF PROTECTION	38
I. Formal Requirements	38
II. Substantive Requirements	39
§4. OWNERSHIP	52
I. The Author (Initial Authorship)	52
	5

Table of Contents

II. Joint Works/Works Created by Several Persons	54
III. Works Made for Hire	56
§5. TRANSFER OF RIGHTS	58
I. Assignment of Copyright	58
II. Licenses	60
§6. SCOPE OF EXCLUSIVE RIGHTS	64
I. Moral Rights	64
II. Exploitation Rights	68
A. Reproduction Rights	68
B. Performing Rights	69
C. Adaptation Right	71
D. Translation Rights	71
E. Other Rights	71
1. Droit de Suite	71
2. Public Lending Right	72
3. Other Forms of Use of a Work	73
§7. LIMITATIONS OR EXEMPTIONS TO THE SCOPE OF COPYRIGHT PROTECTION	73
§8. DURATION OF PROTECTION	78
§9. NEIGHBOURING RIGHTS	79
§10. INFRINGEMENT AND REMEDIES	85
§11. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	90
Chapter 2. Patents	91
§1. SOURCES: LEGISLATION	91
§2. PATENTABLE SUBJECT MATTER	94
§3. CONDITIONS OF PATENTABILITY	97
§4. FORMALITIES (PROCEDURE FOR GRANT OF PATENT AND OBTAINING PATENT PROTECTION)	100
§5. OWNERSHIP AND TRANSFER	106
§6. SCOPE OF EXCLUSIVE RIGHTS	109

Table of Contents

§7. LIMITATIONS AND EXCEPTIONS TO THE SCOPE OF PATENT PROTECTION; COMPULSORY LICENSES	111
§8. DURATION OF PROTECTION; MAINTENANCE AND TERMINATION OF PATENT PROTECTION	115
§9. INFRINGEMENT AND REMEDIES	117
§10. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	119
Chapter 3. Utility Models	120
§1. SOURCES: LEGISLATION	120
§2. PROTECTION OF UTILITY MODELS	121
Chapter 4. Trademarks	124
§1. SOURCES: LEGISLATION	124
§2. SUBJECT MATTER OF PROTECTION	126
I. Signs Which May Serve as Trademarks	126
II. Different Categories of Marks	130
§3. CONDITIONS OF PROTECTION	134
§4. FORMALITIES; PROCEDURE FOR OBTAINING PROTECTION, ESTABLISHING AND MAINTAINING TRADEMARKS	138
§5. OWNERSHIP AND TRANSFER	140
§6. SCOPE OF EXCLUSIVE RIGHTS	142
§7. LIMITATIONS OF THE SCOPE OF TRADEMARK PROTECTION	142
§8. USE REQUIREMENTS	143
§9. DURATION OF PROTECTION; RENEWAL; TERMINATION	144
§10. INFRINGEMENT AND REMEDIES	147
§11. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	148

Table of Contents

Chapter 5. Trade Names and Commercial Names	150
§1. SOURCES: LEGISLATION	150
§2. PROTECTION OF TRADE NAMES	151
§3. PROTECTION OF COMMERCIAL NAMES	154
Chapter 6. Industrial Designs	157
§1. SOURCES: LEGISLATION	157
§2. SUBJECT MATTER OF PROTECTION	158
§3. CONDITIONS OF PROTECTION	160
§4. FORMALITIES; PROCEDURE FOR GRANT AND OBTAINING PATENT PROTECTION	161
§5. OWNERSHIP AND TRANSFER	162
§6. SCOPE OF EXCLUSIVE RIGHTS	163
§7. LIMITATIONS ON THE SCOPE OF PROTECTION	163
§8. DURATION OF PROTECTION; MAINTENANCE AND TERMINATION OF PROTECTION	163
§9. INFRINGEMENT AND REMEDIES	164
§10. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	164
Chapter 7. Protection of Selection Achievements	166
§1. SOURCES: LEGISLATION	166
§2. SUBJECT MATTER OF PROTECTION	167
§3. CONDITIONS OF PROTECTION	167
§4. FORMALITIES (PATENT GRANTING PROCEDURE)	168
§5. OWNERSHIP AND TRANSFER	169

Table of Contents

§6. SCOPE OF EXCLUSIVE RIGHT	170
§7. LIMITATIONS ON THE SCOPE OF PROTECTION; COMPULSORY LICENSES	171
§8. DURATION OF PROTECTION	172
§9. INFRINGEMENT AND REMEDIES	172
§10. OVERLAPPING WITH, AND RELATION TO, OTHER INTELLECTUAL PROPERTY LEGISLATION	172
Chapter 8. Protection of Layout Designs (Topographies) of Integrated Circuits	173
§1. SOURCES: LEGISLATION	173
§2. SUBJECT MATTER OF PROTECTION	174
§3. CONDITIONS OF PROTECTION	174
§4. FORMALITIES (PROCEDURE FOR GRANTING AND OBTAINING PROTECTION)	175
§5. OWNERSHIP AND TRANSFER	176
§6. SCOPE OF EXCLUSIVE RIGHTS	176
§7. LIMITATIONS OF THE SCOPE OF PROTECTION	177
§8. DURATION OF PROTECTION	177
§9. INFRINGEMENT AND REMEDIES	177
§10. OVERLAPS WITH, AND RELATION TO, OTHER INTELLECTUAL PROPERTY LAWS	178
Chapter 9. Knowhow and Trade Secrets	179
§1. SOURCES: LEGISLATION	179
§2. PROTECTION OF KNOWHOW AND TRADE SECRETS	180
Chapter 10. Geographical Indications	185

Table of Contents

§1. SOURCES: LEGISLATION	185
§2. PROTECTION OF GEOGRAPHICAL INDICATIONS	185
Selected Bibliography	191
Index	193

Intellectual Property Law in Russia

Andrey V. Kashanin

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Intellectual Property Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editor: Hendrik Vanhees



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenspublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-5890-1

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Dr Jur. Andrey V. Kashanin (born 18 June 1976) graduated from Lomonosov Moscow State University in 1998 with a qualification in civil law and received a Doctor of Jurisprudence degree in civil law at the same university in 2002.

Dr Kashanin is Deputy Director of the Institute of Legal Research at National Research University Higher School of Economics in Moscow.

His principal specialist fields are intellectual property law in Russia and abroad and comparative law.

Dr Kashanin is the author of more than 40 research papers in

these fields.

Email: kashanin@mail.ru.

Website: <http://www.hse.ru/org/persons/1230371>

The Author

Table of Contents

The Author	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. GENERAL BACKGROUND	15
I. Geography	15
II. Cultural Compositions	15
III. Political System	16
IV. Population Statistics	17
§2. HISTORICAL BACKGROUND	17
Intellectual Property Law	21
Chapter 1. Copyright and Neighbouring Rights	21
§1. SOURCES: LEGISLATION	21
§2. SUBJECT MATTER OF PROTECTION	26
I. Different Categories of Protected Works	26
II. Works Excluded of Protection	30
III. Special Categories of Works	32
A. Computer Software	32
B. Databases	36
C. Others	37
§3. CONDITIONS OF PROTECTION	38
I. Formal Requirements	38
II. Substantive Requirements	39
§4. OWNERSHIP	52
I. The Author (Initial Authorship)	52

Table of Contents

II. Joint Works/Works Created by Several Persons	54
III. Works Made for Hire	56
§5. TRANSFER OF RIGHTS	58
I. Assignment of Copyright	58
II. Licenses	60
§6. SCOPE OF EXCLUSIVE RIGHTS	64
I. Moral Rights	64
II. Exploitation Rights	68
A. Reproduction Rights	68
B. Performing Rights	69
C. Adaptation Right	71
D. Translation Rights	71
E. Other Rights	71
1. Droit de Suite	71
2. Public Lending Right	72
3. Other Forms of Use of a Work	73
§7. LIMITATIONS OR EXEMPTIONS TO THE SCOPE OF COPYRIGHT PROTECTION	73
§8. DURATION OF PROTECTION	78
§9. NEIGHBOURING RIGHTS	79
§10. INFRINGEMENT AND REMEDIES	85
§11. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	90
Chapter 2. Patents	91
§1. SOURCES: LEGISLATION	91
§2. PATENTABLE SUBJECT MATTER	94
§3. CONDITIONS OF PATENTABILITY	97
§4. FORMALITIES (PROCEDURE FOR GRANT OF PATENT AND OBTAINING PATENT PROTECTION)	100
§5. OWNERSHIP AND TRANSFER	106
§6. SCOPE OF EXCLUSIVE RIGHTS	109

§7. LIMITATIONS AND EXCEPTIONS TO THE SCOPE OF PATENT PROTECTION; COMPULSORY LICENSES	111
§8. DURATION OF PROTECTION; MAINTENANCE AND TERMINATION OF PATENT PROTECTION	115
§9. INFRINGEMENT AND REMEDIES	117
§10. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	119
Chapter 3. Utility Models	120
§1. SOURCES: LEGISLATION	120
§2. PROTECTION OF UTILITY MODELS	121
Chapter 4. Trademarks	124
§1. SOURCES: LEGISLATION	124
§2. SUBJECT MATTER OF PROTECTION	126
I. Signs Which May Serve as Trademarks	126
II. Different Categories of Marks	130
§3. CONDITIONS OF PROTECTION	134
§4. FORMALITIES; PROCEDURE FOR OBTAINING PROTECTION, ESTABLISHING AND MAINTAINING TRADEMARKS	138
§5. OWNERSHIP AND TRANSFER	140
§6. SCOPE OF EXCLUSIVE RIGHTS	142
§7. LIMITATIONS OF THE SCOPE OF TRADEMARK PROTECTION	142
§8. USE REQUIREMENTS	143
§9. DURATION OF PROTECTION; RENEWAL; TERMINATION	144
§10. INFRINGEMENT AND REMEDIES	147
§11. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	148