Volume 3, Issue 1,2024

SELECTION ACHIEVEMENTS

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Annotation: The article analyzes the features of such a result of intellectual activity as a selection achievement from the point of view of distinguishing an object of wildlife and an object of law, methods of certifying rights, features of objects of intellectual rights to selection achievements. The author considers various definitions of the plant variety, the peculiarities of the legal regulation of animal breeds at the national and international levels.

Keywords: Breeding achievement, plant variety, animal breed, result of intellectual activity, patent, copyright certificate,ways to protect the rights of breeders

Introduction

Currently, reducing the dependence of the national market on foreign breeding material and related agrotechnological solutions is included in the list of tasks of the National Competition Development Plan. Breeding activity is one of the most important factors in the innovative development of scientific potential in the agricultural sector. Forming the primary link of crop production and animal husbandry, breeding activity determines the prospects for the development of the entire agro-industrial complex of the country.

In this regard, the formation of an effective legal framework that ensures a high level of legal protection of breeding achievements as results of intellectual activity (hereinafter — RID) and protection of intellectual rights to them not only stimulates the development of breeding activities, seed production and animal husbandry, but also contributes to the implementation of global national goals in the field of agricultural development and food security.

The solution of these tasks is inextricably linked with the creation of a single agricultural market and the development of a coordinated policy of the EAEU in the field of agriculture, which are classified as priority areas of international integration of the Member States.The EAEU and are reflected in the Main Activities of the Government of the Russian Federation for the period up to 2024. Efforts are being made at the regional level to unify and harmonize regulation of seed and livestock production. Within the framework of relevant industry agreements, approaches have been defined to unify the requirements for the circulation of seeds of agricultural plants and conducting breeding work in the EAEU space.

However, despite the efforts made, differences remain at the national level of the EAEU member states in the conditions for granting legal protection of breeding achievements, the content, conditions for the implementation and protection of intellectual rights to them,due to the territoriality of intellectual rights, which,in turn, is a deterrent to the development of the single agricultural market of the EAEU. For example, the Treaty on the Union lays down minimum standards for the protection of intellectual property rights for breeding achievements. However, there is an urgent need to increase The volume of agricultural production dictates the need for a more detailed regulation of the rights of intellectual property subjects in the agricultural sector. Legal certainty, uniform and predictable interpretation of legal concepts that ensure the stability of civil turnover are essential for increasing the production of agricultural products by domestic producers, maintaining the functionality of the agricultural market, and the effective functioning of the entire system of legal protection of intellectual property. However, Russian legislation does not contain a definition of the term "breeding activity", nor does it offer a detailed definitions of the term "selection achievement" as an object of intellectual property rights. These gaps, combined with the lack of clarity regarding the legal nature of the results of genetic engineering as objects of intellectual property rights and methods used in breeding activities, give rise to legal problems.

In this article, the author examines the main approaches to defining the key concepts of "breeding achievement" and "breeding activity", taking into account national and international legal regulation.
Currently, in the Russian Federation, the legal protection of breeding achievements is regulated at the national and international level.7The main national regulator is a special Chapter 73 "The right to a selection achievement" of the Civil Code of the Russian Federation, which provides for the provision of legal protection to two types of objects — animal breeds and plant varieties.
Since 1998, Russia has been a party to the International Convention for the Protection of New Plant Varieties of 1961 (hereinafter referred to as the UPOV Convention),which regulates the recognition of the breeder of a new plant variety or his legal successor of the rights to a new plant variety, the content and procedure for their implementation, ensuring compliance with these rights. It should be emphasized that the UPOV Convention does not cover the legal protection of animal breeds. Adoption of the Convention UPOV served as an impulse to increase the level of protection of breeders' rights in all participating countries, taking into account their interests along with with the interests of the state and agricultural producers.
According to the UPOV Convention, by the end of the 1970s, a competitive market was formed in Europe aimed at commercializing the rights to breeding achievements. The provisions of this Convention were also taken into account when developing domestic legislation, as the Soviet Union was preparing to join the International Union for the Protection of New Plant Varieties.
Unlike new plant varieties, the legal protection of which is provided on the territory of the Russian Federation both on the basis of the Civil Code of the Russian Federation and on the basis of the UPOV Convention, for new animal breeds such a system of legal protection at the international level has not yet been created. In addition, legal protection of animal breeds is not provided in all States. Many 10 states are following the path allocation of plant variety protection into a separate block of legal regulation. The complex concept of a breeding achievement, which includes both plant varieties and animal breeds, and the corresponding criteria for their protection, is not introduced. A number of countries declare the fundamental non-patentability of animal breeds for ethical reasons, due to the importance of preserving existing biological diversity within a certain territory. Nevertheless, not only in Russia, but also in some other countries, such as Bulgaria,11 the legal regulation of breeding achievements covers both types of breeding achievements —plant varieties and animal breeds.
Selection of breeding achievements into an independent species The RID is due to their specificity, namely, the fact that the breeding achievement is an object of wildlife, requiring the allocation of independent criteria for protection. Because of this, the criteria for the protection of the foundation, the procedure and scope of legal protection of breeding achievements, the civil turnover of intellectual property rights to them take into account not only legal aspects, but also the biological characteristics of the object.
The peculiarity of breeding achievements as a type of REED is that the object itself (a breeding achievement expressed in the form of a plant variety or animal breed) combines tangible and intangible elements. The intangible element of breeding achievements is inextricably linked with the material element, in which it can only manifest itself within the framework of a set of individuals of the same species created by man as a result of creative activity.Unlike most other REED species, a breeding achievement cannot exist without its material carrier — a plant or animal. A selection achievement protected on the basis of the provisions of Part four of the Civil Code of the Russian Federation is "not an ideal, but a material object"17. However, this does not mean that a plant variety or animal breed as an object of protection is directly related to a specific plant or animal and cannot be represented as an intangible object, a property inherent in all results of intellectual activity.
Before turning to the concepts of breeding achievement existing in the doctrine, let us consider the concept of breeding activity, the content of which is significant for the qualification of a plant variety or animal breed as potentially protected species.As follows from Article 1410 of the Civil Code of

the Russian Federation, the author of a selection achievement is recognized as a citizen whose creative work created, bred or revealed a selection achievement, therefore, not any plant or animal breed is eligible,but only that which is the result of a special kind of intellectual creative activity — breeding activity.There is no single concept of "breeding activity" in the legal scientific an educational literature. It is also absent in the current national legislation, which only establishes the procedure and conditions for the use of breeding achievements, as well as the procedure for protecting the copyright of breeders.

In legal science, different positions are expressed regarding the understanding of this term. Professor S.A. Bogolyubov offers the following definition: "Breeding activity is a complex object of legal regulation, including not only the creation of breeding achievements, but also their introduction into production through elite seed production, livestock breeding, genetic engineering, which are inextricably linked."This definition is formulated from the point of view of agrarian law, covers the creation and commercialization of breeding achievements. However, it is too broad for the purposes of intellectual property law, since it does not identify the qualifying features of breeding activities for the creation of a breeding achievement that are significant for granting it legal protection.

For example, in their definition of a breeding achievement, V.N. Sinelnikova and R.M. Dudurgov propose to distinguish breeding achievements into randomly identified and resulting from purposeful human activity: "New plant varieties or animal breeds created or bred as a result of purposeful intellectual activity of a breeder, possessing unique genetic characteristics, meeting the criteria of protection established by law and included in the The State Register of protected breeding achievements".Thus, the authors have taken the process of identifying plant varieties and animal breeds beyond the scope of the breeder's creative activity.

The question of whether a plant or animal breed identified in nature is the result of breeding activities that can be granted legal protection as a REED remains debatable. Proponents of recognition believe that without special knowledge and skills in the field of breeding, it is impossible to accidentally identify an already existing, but previously unknown plant variety or animal breed. 20 Previously, the opposite opinion was expressed, according to which, in the natural environment, selection as a result of natural selection is carried out without human participation.21 The UPOV Convention unambiguously refers to the creative breeding activity, along with the creation and breeding, the identification of a plant variety (art. 1 (i)). A similar provision was previously borrowed into the Law of the Russian Federation "On Breeding Achievements", and now in the Civil Code of the Russian Federation (Article 1410).

Guided by Article 1410 of the Civil Code of the Russian Federation, Article 1 (i) of the UPOV Convention, it can be concluded that breeding activity in Russian intellectual property law refers to the creative activity of a citizen to create, breed or identify a plant variety or animal breed. If we consider creative activity as a form of human activity aimed at creating a qualitatively new product (which is quite applicable to objects of copyright and patent law), then identifying a previously unknown plant variety is more technical than creative activity,however, we can qualify the result itself as a breeding achievement, since it meets all the criteria of a breeding achievement. In other words, in our opinion, any activity that results in a plant variety or animal breed that meets the criteria for protection established in the law is recognized as breeding. In addition, at the moment, if the identified breeding achievements are excluded from the number of protected objects, they will find themselves in a legal vacuum.

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