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Abstract. Science and technology are developing faster than intellectual property legislation. As a result, previously unknown products of intellectual activity are regulated by general rules. These objects are BIM products. The use of BIM technology in the construction industry involves creation of a three-dimensional model filled with architectural, design, technological, economic and other data about a building considered as a single object. The BIM product may include several intellectual property objects regulated by different laws (e.g., databases and design inventions, know-how, etc.). The legislation of the Russian Federation does not define the concept “BIM products”. There are no integrated objects taking into account its features. It is not possible to apply Article 1240 of the Civil Code of the Russian Federation to the BIM products. The list of intellectual property objects is limited. It is necessary to include BIM products into Article 1240 of the Civil Code of the Russian Federation.

Article 44 of the Constitution of the Russian Federation [1] states that that everyone is guaranteed the freedom of literary, artistic, scientific, technical and other types of creative activity, and teaching. Intellectual property is protected by law. These relations are regulated by the civil legislation in accordance with paragraph 1 of Article 2 of the Civil Code of the Russian Federation [2]. The Civil Code determines the grounds for exercising rights to the results of intellectual activity and means of individualization (intellectual rights) [3]. Accordingly, intellectual property rights are protected by civil law. Violation of
intellectual property rights is regulated by the Criminal (Articles 146, 180 [4]) and Administrative (Article 7.12, Part 2 of Article 14.33, Article 14.10) Codes of the Russian Federation [5].

According to paragraph 1 of Article 1228 of the Civil Code of the Russian Federation, the individual who created an intellectual object is an author of the result of intellectual activity [6]. Obviously, the ability to protect intellectual property right depends on the legal status of an intellectual property object.

Development of science and technology contributes to creation of intellectual property objects that were not known several decades ago. For example, copyright objects include computer programs that are protected as literary works. Meanwhile, in the first half of the 20th century, the issues of copyright protection did not arise. Science and technology are developing faster than intellectual property legislation. As a result, previously unknown products of intellectual activity are regulated by general rules.

These objects are BIM products. The researchers say that BIM technology (information modeling of structures) involves collective construction of a facility and application of information about it to create a reliable basis for all decisions throughout the facility’s life cycle (designing, construction, maintenance, demolition). Development of these technologies is a result of digitization of the Russian economy which generates technical and legal problems.

The use of BIM technology for designing buildings involves creation of a three-dimensional model which is filled with architectural, design, technological, economic and other information about this building and considered as a single object. Changes in one parameter cause changes in other parameters and objects (drawing, visualization, specifications and schedules) [7, 5]. Legal protection of BIM products raises several problems. First, it is necessary to define the concept “BIM product”. Second, it is necessary to regulate the form of these products (e.g., BIM designing).

Solution of these issues is of legal and economic importance. For example, according to Russian and foreign experts, BIM design, BIM construction and BIM operation make it possible to reduce the duration and costs of construction up to 30% [8, 9].

Therefore, if BIM-technology is a basis for development of a new qualitative stage of project management [9], proper legal regulation of intellectual property objects is a guarantee of intellectual rights.

BIM technology can be regulated by copyright and patent legislation. They can be protected as production secrets (know-how) as well.

According to Article 1259 of the Civil Code of the Russian Federation, designs, drawings, images are copyright objects. Copyright extend both to promulgated and non-promulgated works expressed in any objective form. Databases are also copyright objects (Article). These are a set of independent
materials (articles, calculations, regulations, court decisions and other similar materials) systematized in such a way as to find and process these materials using electronic computing machines (computers). In respect of databases, registration is possible if the right holder wants to register the object.

The appearance of the structure may be protected as an industrial design. A design solution is patented if it has novel and original essential features. Essential features are signs that determine aesthetic features of the product, in particular its shape, configuration, ornament, color, lines, contours, texture of the material. The object is registered by the patent office which issues a patent. An invention is protected if it is novel, has an inventive step and is industrially exploitable (Article 1350 of the Civil Code of the Russian Federation). A utility model is protected if it is novel and industrially exploitable (Article 1351 of the Civil Code of the Russian Federation). To obtain a patent, state registration is required.

According to Article 1465 of the Civil Code, a production secret (know-how) is information of any nature (production, technological, economic, organizational and others), including information on the results of intellectual activities in the area of science and technology and information on the methods of carrying out professional activities that has a real or potential commercial value due to its not being known by third persons, which is not freely accessible to third persons on legal grounds, and which is covered by a commercial secret regime introduced by the owner of that information. A person that has become an owner of the information constituting the content of the protected production secret in a bona fide manner and independently of other owners of a production secret acquires an independent exclusive right to this production secret. No state registration is required.

Thus, the BIM product may contain several intellectual property objects regulated by different laws (e.g., databases, design solutions, know-how, etc.). In most cases, it is necessary to obtain several protection documents. The legislation of the Russian Federation does not define the term “BIM product” and does not specify its features. If several authors created a BIM object, the organizer will not have rights to the results of intellectual activity.

According to Article 1240 of the Civil Code of the Russian Federation uses the term “complex object”. The complex objects are films, other audiovisual works, theatrical and entertainment performances, multimedia products, and databases. According to N.A. Novikova, “the lack of a legal definition causes the need to characterize the complex object through its key (essential) features [10]. Various objects of intellectual activity can be combined in the structure of a complex object. However, not any combination can be considered as a complex object. According to the Research Center for Private Law under the President of the Russian Federation, only objects forming a complex structure of elements which
are in structural and functional relationships are complex [11]. According to A. Yumashev, "the results of intellectual activity as part of the complex object are not just combined with each other, but are included in the structure of the object which exists as a whole" [12]. According to V.O. Kalyatin and E.A. Pavlova, Article 1240 of the Civil Code of the Russian Federation creates a set of rights to a "frame" object whose main subject is an organizer [13]. The organizer ensures conditions for its creation and does not make a creative contribution to the novel object.

Categorization of the result of intellectual activity as a complex object enhances guarantees of the organizer acquiring rights to use the results of intellectual activity which are integral parts of this object [14].

The license contract granting the exclusive right to a computer program is concluded for the entire period. According to paragraph 2 of Article 1240 of the Civil Code of the Russian Federation, the terms of a license contract that impose limitations on the use of the result of intellectual activity within a complex object are invalid. The legislator aims to provide the organizer with the rights to use a complex object as a whole. According to paragraph 2 of the Review of the Supreme Court of the Russian Federation for the second quarter of 2012, the author of a work included into a complex object, does not have the right to recall it [15]. There is a presumption of alienation of the exclusive right in relation to the results of intellectual activity created as part of the complex object [16].

Thus, the organizer has a set of rights that allow him to enhance guarantees for the acquisition of rights to component parts and facilitate further use of the complex object as a whole.

Currently, it is impossible to apply Article 1240 of the Civil Code of the Russian Federation to BIM products, since the list of BIM products is limited. However, the courts apply paragraph 1 of Article 1240 to the objects which are absent in the list. In 2010, the Supreme Arbitration Court indicated that the list of complex objects is not subject to broad interpretation [17].

Thus, Article 1240 of the Civil Code of the Russian Federation should be amended to provide BIM products with a legal status. Paragraph 1 of Article 1240 of the Civil Code of the Russian Federation should state: “a person that has organized the creation of a complex object incorporating several protected results of intellectual activities (a film, another audiovisual work, theatre performance, multimedia product, comprehensive technology, database, BIM product) acquires the right to use these results under contracts of exclusive right alienation or license contracts concluded by the person with the holders of the exclusive rights to the relevant results of the intellectual activities”.

I.V. Nevzorov predicts that “there will be a gradual and systematic transition to the system of protection of a single intellectual property object instead of a set of objects [18]. At present, forms of legal protection of the results of intellectual
activity are often mixed. A computer program is protected as a know-how or as an object of patent rights (e.g., in the USA, computer programs are patentable) [19, 250]. According to O.V. Revinsky, “direct protection of computer programs is unlawful, since it would provide redundant protection (monopoly)... The use of programs can be considered as an invention or a utility model. It is necessary to describe the program through the actions the computer performs under its control. Then the program will be protected as part of the invention” [20, 9].

I.V. Nevzorov says that “in different legal systems, there is a mixture of various forms of legal protection to allow the right holder to achieve superiority over competitors. Intellectual rights are used as a tool of competition aimed at sweeping the market” [18].

With regard to BIM products, the idea of abandoning protection of all intellectual property objects by replacing them with a single object is rather efficient. However, these are revolutionary changes. The most realistic way is to include BIM products into Article 1240 of the Civil Code of the Russian Federation.

References


