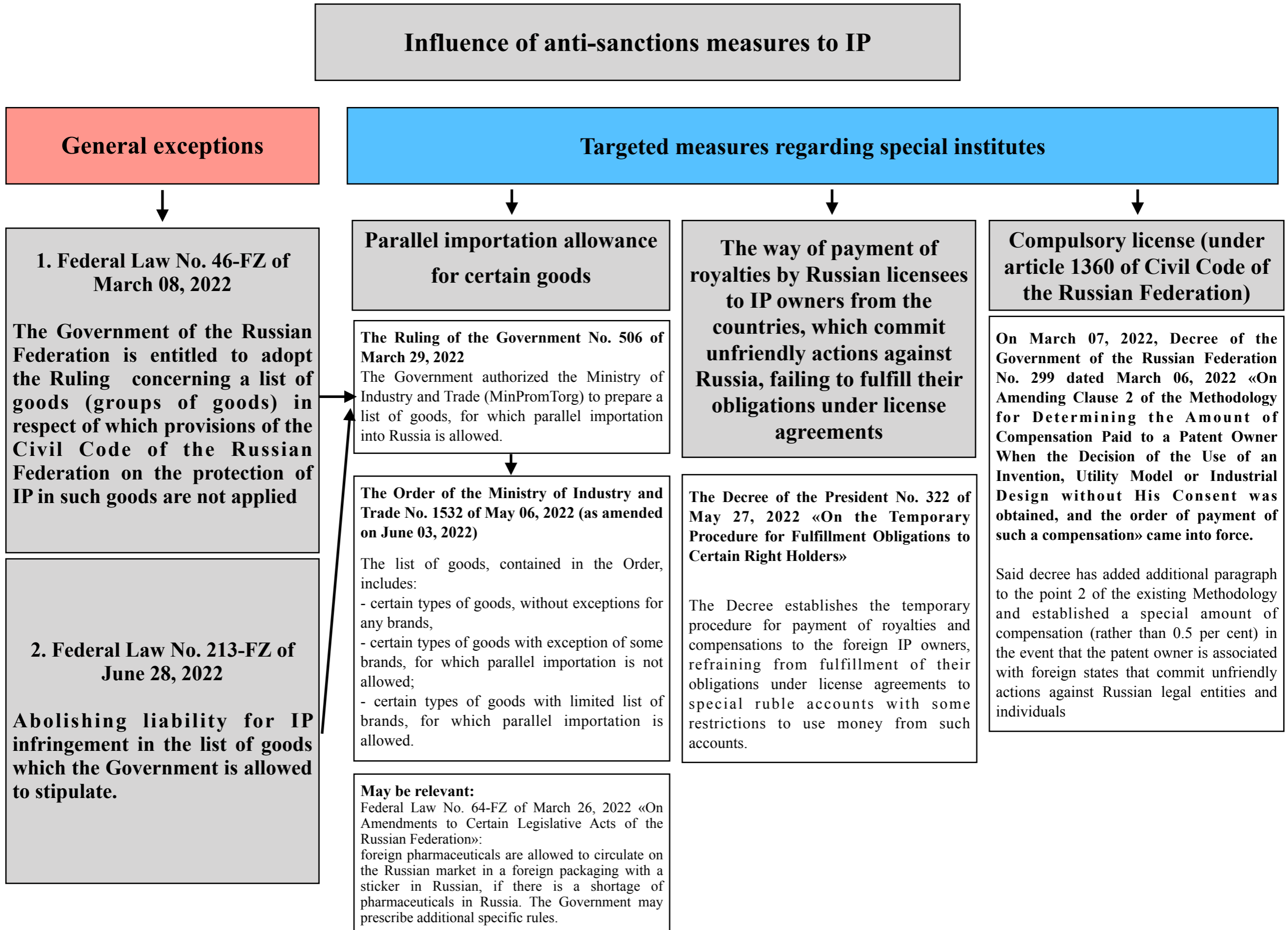


Influence of anti-sanctions measures to IP in Russia



Influence of anti-sanctions measures to IP

General exceptions

Targeted measures regarding special institutes

1. Federal Law No. 46-FZ of March 08, 2022

The Government of the Russian Federation is entitled to adopt the Ruling concerning a list of goods (groups of goods) in respect of which provisions of the Civil Code of the Russian Federation on the protection of IP in such goods are not applied

2. Federal Law No. 213-FZ of June 28, 2022

Abolishing liability for IP infringement in the list of goods which the Government is allowed to stipulate.

Parallel importation allowance for certain goods

The Ruling of the Government No. 506 of March 29, 2022
The Government authorized the Ministry of Industry and Trade (MinPromTorg) to prepare a list of goods, for which parallel importation into Russia is allowed.

The Order of the Ministry of Industry and Trade No. 1532 of May 06, 2022 (as amended on June 03, 2022)
The list of goods, contained in the Order, includes:
- certain types of goods, without exceptions for any brands,
- certain types of goods with exception of some brands, for which parallel importation is not allowed;
- certain types of goods with limited list of brands, for which parallel importation is allowed.

May be relevant:
Federal Law No. 64-FZ of March 26, 2022 «On Amendments to Certain Legislative Acts of the Russian Federation»:
foreign pharmaceuticals are allowed to circulate on the Russian market in a foreign packaging with a sticker in Russian, if there is a shortage of pharmaceuticals in Russia. The Government may prescribe additional specific rules.

The way of payment of royalties by Russian licensees to IP owners from the countries, which commit unfriendly actions against Russia, failing to fulfill their obligations under license agreements

The Decree of the President No. 322 of May 27, 2022 «On the Temporary Procedure for Fulfillment Obligations to Certain Right Holders»
The Decree establishes the temporary procedure for payment of royalties and compensations to the foreign IP owners, refraining from fulfillment of their obligations under license agreements to special ruble accounts with some restrictions to use money from such accounts.

Compulsory license (under article 1360 of Civil Code of the Russian Federation)

On March 07, 2022, Decree of the Government of the Russian Federation No. 299 dated March 06, 2022 «On Amending Clause 2 of the Methodology for Determining the Amount of Compensation Paid to a Patent Owner When the Decision of the Use of an Invention, Utility Model or Industrial Design without His Consent was obtained, and the order of payment of such a compensation» came into force.
Said decree has added additional paragraph to the point 2 of the existing Methodology and established a special amount of compensation (rather than 0.5 per cent) in the event that the patent owner is associated with foreign states that commit unfriendly actions against Russian legal entities and individuals

General exceptions

1. Federal Law No. 46-FZ of March 08, 2022

The Government of the Russian Federation is entitled to adopt the Ruling concerning a list of goods (groups of goods) in respect of which provisions of the Civil Code of the Russian Federation on the protection of IP in such goods are not applied

On March 08, 2022, Federal Law No. 46-FZ «On Amendments to Certain Legislative Acts of the Russian Federation» entered into force. In the notice provided to the Government with a draft of the law in question it was indicated that it had been developed to protect the national interests of the Russian Federation in relation to the unfriendly actions of foreign states and international organizations. The preparation of said law was due to the need to implement a set of measures of a socio-economic nature in relation to citizens of the Russian Federation and Russian legal entities.

2. Federal Law No. 213-FZ of June 28, 2022

Abolishing liability for IP infringement in the list of goods which the Government is allowed to stipulate.

Article 18 of said Federal Law empowers the Government of the Russian Federation in 2022 to accept decisions concerning (point 13 of the corresponding article) a list of goods (groups of goods) in respect of which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to the results of intellectual activity expressed in such goods, and the means of individualization with which such goods are marked can not be applied.

These provisions of the Civil Code of the Russian Federation relate to the methods of protection of the trademark and patent rights.

On June 28, 2022, the Federal Law No. 213-FZ was signed which stipulates a provision abolishing for 2022 liability for IP infringement in the goods listed by the Ministry of Industry and Trade that may be imported into Russia without the permission of the right holder.

	Wrong understanding	Due to the adopted laws
When?	Always	Only in 2022
What is the legal ground?	The Federal Law No. 46-FZ of March 8, 2022 only	The Federal Law No. 46-FZ of March 08, 2022 as amended by Federal Law No. 213-FZ of June 28, 2022; Special Ruling of the Government of the Russian Federation; Special Order of the Ministry of Trade and Industry regarding the certain list of goods (groups of goods)
What goods?	All goods (groups of goods)	Exact goods (groups of goods) the list of which is established by the Ministry of Trade and Industry of the Russian Federation, imported into Russia without permission of IP owners (parallel importation)

Targeted measures regarding special institutes

Parallel importation allowance for certain goods

The Ruling of the Government No. 506 of March 29, 2022

The Government authorized the Ministry of Industry and Trade (MinPromTorg) to prepare a list of goods for which parallel importation into Russia is allowed.

The Order of the Ministry of Industry and Trade No. 1532 of May 06, 2022 (as amended on June 03, 2022)

The list of goods includes:

- certain types of goods, without exceptions for any brands;
- certain types of goods with exception of some brands, for which parallel importation is not allowed;
- certain types of goods with limited list of brands, for which parallel importation is allowed.

The Order includes a requirement that the products to be imported must have been legitimately introduced into circulation by the IP rights owners somewhere else before import into Russia.

NB!

- The list does not clearly differentiate goods from «countries committing unfriendly actions» and from all other countries;
- trademark owners who did not cease supplies into Russia can file an application to be excluded from the list.

Targeted measures regarding special institutes

The Decree of the President No. 322 of May 27, 2022 «On the Temporary Procedure for Fulfillment Obligations to Certain Right Holders»

establishing the temporary procedure for payment of royalties and compensations to the foreign IP owners refraining from fulfillment of their obligations under license agreements to special ruble accounts with some restrictions to use money from such accounts

1. The Decree shall not apply:

(1) to contracts/agreements with IP owners listed in sub-clause (a) of the clause (1), which subject matter is:

- IP rights necessary to import and/or production in the territory of the Russian Federation of *medicines, medical devices, industrial and agricultural products, food products*;
- IP rights necessary to the provision of *communications services*;
- IP rights necessary to creation and/or use on the territory of the Russian Federation of *computer programs, databases, information systems and data processing centers*;

(2) to *payments not exceeding 100,000 RUR* or an amount in foreign currency equivalent to 100,000 RUR *made by a resident individual* in connection with his use of intellectual property and/or means of individualization *for needs not related to entrepreneurial activities*;

(3) to **right holders referred to in sub-clause (a) of the clause (1) and duly performing their obligations under contracts/agreements concluded with debtors.**

2. Licensors (IP owners) affected by this Decree:

(1) foreign entities *associated with the countries providing unfriendly actions to Russia* or entities that are *under the control of said foreign entities*, regardless of where they are registered or where they predominantly conduct their business activities, except for the entities that simultaneously meet the following conditions:

- those who are *controlled by Russian legal entities or individuals*, including where this control is exercised through foreign legal entities associated with the countries unfriendly to Russia;
- *information on their control has been disclosed* by such Russian legal entities or individuals to Russian tax authorities in accordance with the requirements of Russian legislation;

(2) those who *publicly supported the imposition of restrictive measures* (imposing or extending political or economic sanctions against the Russian Federation, Russian citizens or Russian legal entities) or *publicly called for the imposition* of such measures; or

(3) those who *have banned, terminated, suspended or substantially restricted the use of intellectual property and/or means of individualisation* in the Russian Federation after February 23, 2022, if these actions were *due to reasons not related to economic feasibility*; or

(4) those who *have publicly discredited* the use of the Armed Forces of the Russian Federation and/or the performance by Russian state bodies of their powers outside the Russian Federation, or those who *have publicly disseminated false information on this as facts*; or

(5) those who disseminated information online that expresses a clear *disrespect for society, the state, official state symbols of the Russian Federation, the Constitution of the Russian Federation or Russian state bodies* in an offensive manner that attacks human dignity and public morals.

Targeted measures regarding special institutes

The Decree of the President No. 322 of May 27, 2022 «On the Temporary Procedure for Fulfillment Obligations to Certain Right Holders»

establishing the temporary procedure for payment of royalties and compensations to the foreign IP owners refraining from fulfillment of their obligations under license agreements to special ruble accounts with some restrictions to use money from such accounts

3. Licensees affected by the Decree:

- (1) the Russian Federation;
- (2) its constituent entities;
- (3) Russian municipalities;
- (4) Russian residents.

4. Payment obligations arising from the use of IP rights affected by the Decree:

- (1) remunerations;
- (2) payments related to the use and enforcement of IP rights;
- (3) other payments, including penalties and other financial sanctions.

5. The following procedure for the debtors' performance shall apply to the named IP owners (paragraphs 1-5 of clause 3).

(1) The Government of the Russian Federation shall determine the authorized bank(s) where the debtor shall open a *special ruble account* in the name of the right holder and where they shall transfer various types of payments including penalties.

The IP owner or his representative is not required to appear in person to open a special bank account.

(2) The bank *notifies* the IP owner or his/her representative of the opening of the special bank account and *provides its details*.

(3) Execution of the debtor's obligations without the use of the special bank account is not allowed. At the same time, the IP owner, the debtor or their representatives *have the right to apply* to the Government Commission for authorization *to transfer* to the bank account of the IP owner (including the one opened not in the Russian Federation) the amounts transferred by the debtor to the special account.

(4) IP owner **on its discretion provides or refuses to provide a written consent** for payment of the obligation to this special ruble account. If the IP owner does not provide such a consent, the debtor is not considered to breach his obligation to pay and does not bear penalties and other consequences of non-payment.

(5) Provided that the debtor fulfills all the requirements for payment of his debt to this special account, he keeps the right to use the IP right on the same terms and conditions as were earlier applied.

Targeted measures regarding special institutes

1. Compulsory license (under article 1360 of Civil Code of the Russian Federation)

- exception, when the patent may be used without the consent of the patent holder, namely use of an invention, utility model or industrial design in the interests of national security

Compulsory license

When?

In case of emergency, related to ensuring the defense and security of the state, protecting the life and health of citizens.

Who decides?

The Government of the Russian Federation

What is type of decision?

An Order by the Government of the Russian Federation

What is the object?

Exact patent an invention, utility model or industrial design and for the exact person/entity

What is time period?

The limited period of time indicated in the Order of the Government

Procedure for use of an invention, utility model or industrial design without the consent of the patent owner:

- the Government of the Russian Federation in case of emergency, related to ensuring the defense and security of the state, protecting the life and health of citizens decides on the use of an invention, utility model or industrial design without the consent of the patent owner;
- the Government of the Russian Federation notifies the patent owner concerning this decision as soon as possible;
- Payment of a proportionate compensation to the patent owner by each person who has exercised the right to use the relevant invention, utility model or industrial design without the consent of the patent owner for the production of goods, performance of work and provision of services (the amount of Compensation shall be determined in accordance with the rules and conditions laid down by the indicated Methodology). *The Order (compulsory license) issued by Government may be also appealed to the Supreme Court and the Defendant would be the Russian Government.

The amount of Compensation in case the patent holders associated with foreign states List of foreign states who are afforded by the anti-sanction measures

(including if such patent holders have citizenship of these states, their place of registration, the place of their primary business activities or the place of their primary profit from the activity are these states) - **0 percent of the actual proceeds** of the person who exercised the right to use an invention, utility model or industrial design without the consent of the patent owner, from the production and sale of goods, performance of work and provision of services, for the production, implementation and provision of which the relevant invention, utility model or industrial design has been used.

The amount of Compensation in other cases - is 0.5 percent of the actual proceeds of a person who has exercised the right to use an invention, utility model or industrial design without the consent of the patent holder, from the production and sale of goods, performance of work and provision of services for the production, implementation and provision of which the relevant invention, utility model or industrial design were used.

We kindly note that existence of compulsory licensing does not exclude paragraph 1 of Article 1229 of the Civil Code of the Russian Federation, wherein a citizen or legal entity that has the exclusive right to the result of intellectual activity or to means of individualization (right holder) has the right to use such a result or such means at its own discretion in any way that does not contradict the law. The right holder may, at its discretion, allow or prohibit other persons from using the result of intellectual activity or means of individualization. The absence of a prohibition is not considered consent (permission). Other persons may not use the corresponding result of intellectual activity or means of individualization without the consent of the right holder, except as provided for by the Civil Code of the Russian Federation (i.e. compulsory licensing).

We have always been living with such an exception in the legislation and similar exception have other countries.

So, introduction of the amendments to the calculation of the compensation in relation to the compulsory licensing would not affect the evaluation of the infringement of the intellectual property rights of all entities, that have valid patents on the territory of the Russian Federation. In case of proven infringement by one legal entity or physical person of the patent holder's rights the court has to issue an injunctive relief.

There are cases, wherein said article was actually used, concerning Remdesivir (antiviral agent), patent holder - Gilead Sciences

1. Order of the Government of the Russian Federation of December 31, 2020 N 3718-r:

Permitting **Pharmasyntez** Joint Stock Company to use inventions protected by Eurasian patents No EA025252, EA025311 and EA029712, owned by GILEAD SCIENCES, INC. (US), Eurasian Patent Nos. EA020659 and EA032239, held by GILEAD SCIENCE, INC. (US), as well as Eurasian patent N EA028742, owned by GILEAD PHARMASSET, LLC (US) (hereinafter referred to as the patent owners), for 1 year (**prolongated by the Order as of December 28, 2021 No 3915-p for one year more**) without the consent of the patent owners in order to provide the population of the Russian Federation with drugs with the international generic name "Remdesivir".

GILEAD PHARMASSET, LLC and GILEAD SCIENCES, INC. filed an administrative claim with the Supreme Court of the Russian Federation challenging the Order (it was before addition to article 1360 of the Civil Code of the reference to protection of the life and health of citizens) based on the grounds that it was adopted not in the interests specified in Article 1360 of the Civil Code of the Russian Federation (as amended at the time of the adoption of the Order), but in the absence of conditions of extreme necessity, for purposes that did not correspond to the goals of ensuring the security of the state, and therefore unreasonably violated their rights and legitimate interests, in particular, caused losses in the form of lost profits associated with the production and supply of the drug without the consent of the patent holders.

Still the administrative claim was not satisfied and the Order was kept in force.

When refusing in satisfaction of the mentioned claim the Supreme Court indicated that contrary to the arguments of the administrative plaintiffs about the violation of their rights and freedoms, the Order was issued in connection with the current unfavorable epidemiological situation in foreign countries, characterized by the rapid spread of COVID-19, taking into account the official recognition by the World Health Organization of the spread of COVID-19 as a public health emergency, of international importance, in order to ensure the national security of the Russian Federation, part of which is the protection of human life and health.

That is why Supreme Court concluded that the Order was adopted by the authorized body of state power in accordance with the requirements of the legislation of the Russian Federation, did not contradict to regulatory legal acts of greater legal force, was of an exclusively temporary nature, was aimed at providing the population of the Russian Federation with medicines, did not violate the rights and legitimate interests of administrative plaintiffs in aspects indicated by them thus the administrative claim was not subject to satisfaction.

2. Order of the Government of the Russian Federation of March 5, 2022 N 429-r:

Permitting R-Pharm Joint Stock Company to use inventions protected by Eurasian patents No EA025252, EA025311 and EA029712, owned by GILEAD SCIENCES, INC. (US), Eurasian Patent Nos. EA020659 and EA032239, held by GILEAD SCIENCE, INC. (US), as well as Eurasian patent N EA028742, owned by GILEAD PHARMASSET, LLC (US) (hereinafter referred to as the patent owners), till December 31, 2022 without the consent of the patent owners in order to provide the population of the Russian Federation with drugs with the international generic name "Remdesivir".

List of foreign states who are afforded by the anti-sanction

Currently (on July 29, 2022), such list of foreign states is approved by Decree of the Government of the Russian Federation No. 430-r dated March 05, 2022 pursuant to Decree of the President of the Russian Federation No. 95 dated March 05, 2022 «On the temporary procedure for the fulfillment of obligations to certain foreign creditors», namely:

- Australia
- Albania
- Andorra
- Bahama Islands
- the United Kingdom (including the island of Guernsey, the island of Jersey and the island of Man (Crown Dependencies of the British Crown) and controlled overseas territories - the island of Anguilla, the British Virgin Islands, Gibraltar)
- the European Union states
- Iceland
- Canada
- Lichtenstein
- Micronesia
- Monaco
- New Zealand
- Norway
- Republic of Korea
- San-Marino
- North Macedonia
- Singapore
- the United States of America
- Taiwan (China)
- the Ukraine
- Montenegro
- Switzerland
- Japan
- Greece
- Denmark
- Slovenia
- Croatia

National security



National security includes **both the defense of the country and other types of security provided for by the Constitution of the Russian Federation and the legislation of the Russian Federation, including personal security**. In accordance with the Federal Law of the Russian Federation "On Defense", defense is understood as a system of political, economic, military, social, legal and other measures to prepare for armed defense and the armed defense of the Russian Federation, the integrity and inviolability of its territory.

Protecting the health of citizens



In accordance with paragraph 72 of the National Security Strategy of the Russian Federation, subparagraphs 6 and 7 of paragraph 23 of the Strategy for the Development of Healthcare in the Russian Federation for the period up to 2025, threats to **national security in the field of protecting the health of citizens include, among other things: the occurrence of epidemics and pandemics; the risk of complication of the epidemiological situation against the background of an unfavorable situation in foreign countries for a number of new and dangerous infectious diseases; the risk of new infections caused by unknown pathogens, the introduction of rare or previously unknown infectious and parasitic diseases in the territory of the Russian Federation.**