

THE RISE OF THE PRIVILEGE SYSTEM IN RUSSIA: FROM THE “SPECIAL FAVOUR” TO A “COMMON LEGAL ACT” (17th-19th CENTURY)

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Abstract/Resumen

The innovations in the field of privileges introduced during the 18th century in Russia are linked with the substantial changes occurred in the economic policy of the country which, since 1721, got the imperial status. The tremendous Europe-oriented reforming policy of Peter the Great inaugurated this century by laying the foundations of Russian absolutism. During the 19th century, four fundamental legal acts aiming to perform the regulation of privilege system in the Russian Empire have been promulgated and the development of patent legislation in Russia entered a new phase with the decree On the Changes in Processing of Privileges for new Inventions and Discoveries issued by the State Council in 1870. The harmonization of the Russian legislation in the field of patenting with that of its West-European and American counterparts shows a clear will to approach the international legal norms.

Keywords: privilege system, patent legislation, inventions, Russia, XVIII-XIX centuries

EL SURGIMIENTO DEL SISTEMA DE PRIVILEGIO EN RUSIA: DEL "FAVOR ESPECIAL" A UN "ACTO JURÍDICO COMÚN" (SIGLOS XVII-XIX)

Las innovaciones en el campo de los privilegios introducidas en Rusia durante el siglo XVIII están estrechamente vinculadas con los cambios sustanciales ocurridos en la política económica del país que, desde 1721, obtuvo el estatus imperial. La gran política reformadora de Pedro el Grande, orientada hacia Europa, inauguró este siglo sentando las bases del absolutismo ruso. Durante el siglo XIX, se promulgaron cuatro actos jurídicos fundamentales destinados a llevar a cabo la regulación del sistema de privilegios en el Imperio ruso y el desarrollo de la legislación sobre patentes en Rusia entró en una nueva fase con el decreto sobre los cambios en el procesamiento de privilegios para nuevas invenciones y Descubrimientos emitidos por el Consejo de Estado en 1870. La armonización de la legislación rusa en el campo de las patentes con sus homólogos de Europa Occidental y América muestra una clara voluntad de acercarse a las normas jurídicas internacionales.

Palabras clave: sistema de privilegios, legislación de patentes, invenciones, Rusia, siglos XVIII-XIX

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Introducción

In 2012, Russia will celebrate the two-hundredth anniversary of its first legislative act protecting the rights of inventor, the famous *Manifesto* of 1812. This event appears as highly emblematic because of a constantly growing role played in today's Russian economy by the private enterprising. In this new situation, a claim for an adequate and well elaborated legislation protecting the private property, including intellectual one, naturally stimulates the public interest toward the historical inheritance. A best testimony of it is an increasing number of historical overviews, published in hard version and/or on line during a few last years.³ At the same time, the academic works in this field are still not numerous⁴, and many aspects of the Russian patent law remain scarcely and insufficiently studied.⁵ In addition, even the existing historiography which includes, however, a series of important works⁶, is mainly in Russian, with the only exception of Anneli Aer's fundamental study *Patents in Imperial Russia* published in 1995 in Finland, in small number of exemplars, and thus, hardly accessible.⁷ As a result, the history of patent law in Russia still remains a kind of 'white spot' for the West-European readers. This particular condition incited the authors, who met this problematic while studying the inventive activity of foreign engineers on the Crown service during the 18th and 19th centuries, to tempt a short synthetic overview of the rise of privileges system in Russia, from its timid beginnings to the developed and highly regulated State legislation.⁸

Context and generalities

The main historical works dealing with the patent law in Russia are, in their mass, internally focused studies which investigate this domain without any, or very parsimonious, cross-cultural and transnational comparison. A. Aer's work is a rare exception of this rule. The Finnish scholar uses, indeed, to apply a

³ See, for example, the bibliography having as general title "On the history of invention in Russia" (Iz istorii izobretatel'stva v Rossii) published in the on-line review "Invention in Russia" (Izobretatel'stvo v Rossii) : <http://www.inventor.perm.ru/pages/history-invent-russia.htm> . It includes 49 items published mostly after 1998.

⁴ For their bibliography, see Annexe.

⁵ Among the latest works in which these lacuna are pointed out, see Revinskij ... 2003. The author, namely, stresses the absence of a complex approach to the study of patenting in Russia.

⁶ Such as, for example, the works of A. Pilenko, V. Katkov, A. Skorodinskij, A. Pluzhnik, and so on. For the full reference, see Annexe.

⁷ Aer, A. *Patents in Imperial Russia: A History of the Russian Institution of Invention Privileges under the Old Regime*, Helsinki: Suomalainen Tiedeakademia, 1995, 231 p.

⁸ This overview issued from an analytical and critical reading of a sum of historical works regularly referenced in the footnotes. It does not pretend to be an original study, although the authors used there their own materials, namely relative to the engineering inventive activity.

comparative approach in order to explain how specific political and economical conditions of the Moscow State had determined throughout centuries its specific attitude towards the ‘intellectual property’ and the ‘rights of inventor’. To remind here her main thesis regarding the initial and the most important further stages of this process will be, thus, a good way to get to the heart of the subject.⁹

Compared to the West-European countries, two main characteristics seem to be determinant to explain the peculiarity of Russian privilege system: its political system, that of patrimonial state, and its manorial economy. How could this particular conjunction influence the first Russian privileges which appeared in the 17th century?

In a patrimonial state, the very concept of power is identified with the ruler as individual national leader who controls the political and economic life of the country, with a government administration as his extension. In such a system, personal relationships with the leader play a crucial role in amassing personal wealth or in the rise and decline of members of the political elite. As typical rulers of this kind, the successive Russian sovereigns had a monopoly over trade and manufacture of certain goods, and they could relinquish a part of their property rights by deed or gifts; the private commercial activity depended entirely of their goodwill. As a result, a majority of privileges granted in Russia during the 17th century consisted of the exclusive right to carry on trade in a given area, conveyed by deed and gifts to the merchants, private commercial companies or to the whole towns.

Under conditions of the manorial economy, based upon a system of social relations between seigneurs, or lords, and their dependent farm laborers, or serfs, with its prevailing production for home consumption and a very limited internal market, the individual privileges, or monopoly rights, were then granted primarily to the manufacturers of weapons and iron who were essentially foreign craftsmen. During the 17th century, the foreigners were the most frequent founders of the early industrial plants in such fields as weapon, glass and woolen goods production, or mining activity. They also took a dominant position over the Russian foreign trade, this particular situation being made possible by the absence, in Muscovite Russia, of large trading companies and of native commercial fleet.

⁹ Aer, A., *Op. cit.*, p. 12-15. Among some other works which served to complete this part of the article, see: Pluzhnik A. *Iz istorii razvitiya patentnogo dela v Rossii // Voprosy izobretatel'stva*. 1966. № 9. P. 8-11.

The protection of the inventor's right is closely connected with the concept of 'intellectual property'. The former concept could, however, hardly be developed in Muscovite Russia due to a series of factors which made its organization of life and work, as well as their perception, fundamentally different from those of its West-European counter-parts. The first to be mentioned was a relative absence of industrial production and the weak growth of towns proper to the elementary level of technological development which did not require a large work force or complex tools. The low level of division of labor and the unclear differentiation of various crafts (a craftsman might, indeed, practice several different crafts simultaneously) also played an important role in this particular contingency. The concept of immaterial property rights as it developed in the Western guilds was lacking in Muscovy as well as the Western form of guild organization with written rules regulating guild activities. As a result, the master of the workshop did not have to satisfy corporate norms of professional competence, including in the way he trained apprentices whereas the craftsman's work was merely always anonymous. All these factors entailed the poor development of a sense of professional pride and of a work and business ethics. In consequence, the moral basis for authorship, which in the Western Europe had evolved within the guilds and was established as part of customary law, was nearly absent in Russia.

These specific conditions determined the main features of the early Russian privileges, and namely, their mostly prohibitive, restrictive character (they could be delivered for 10, 15 or 20 years term); their monopoly status (nobody else could practice such kind of manufacture or trade); an arbitrary, individual way of granting them; their intimate dependence upon the tsar's will and mood (possibility of revocation and confiscation).

The 18th century innovations

The innovations in the field of privileges introduced during the 18th century are closely linked with the substantial changes occurred in the economical policy of the country which, since 1721, got the imperial status. The tremendous Europe-oriented reforming policy of Peter the Great inaugurated this century by laying the foundations of Russian absolutism.¹⁰ In spite of the fact that the state control over the industry was maintained, the Russian government also took care to promote private initiative in some important branches of economy by leasing, since 1710, state enterprises to private individuals, as it was, for example,

¹⁰ Peter I (the Great) was born in 1672 and died in 1725. He became tsar in 1682, but his effective reign begun in 1695, whereas the most intense period of reforms lays the 1700s-1710s.

the case of the famous Demidov's metallurgic plants at the Ural.¹¹ The private initiative was rather limited, however, as it could develop and flourish only thanks to the State support. The State was, indeed, their main commander who assigned the manufacture of the goods needed to a particular company. The founding of a factory or company became even an obligation, and industrial activity took the character of a service to the State. In 1723, a special document titled 'Rules for the delivery of manufacturing privileges' was promoted with the aim to regulate this practice. However, in spite of its stimulating effect, this centralized imperial policy of encouraging industrial enterprise had an important reverse, because numerous special benefits and various exemptions it granted tended to reduce competition between manufacturers. At the same time, the rights of the entrepreneur as full master of his property were still insufficiently protected because a private individual could freely sell only those goods which the state did not want to buy.

Mirrors of this new economical reality, the innovations in the field of privilege system followed different trends in parallel. Thus, the privileges for duty-free trade progressively disappeared making the way to industrial ones granting the monopoly right to establish manufactures, to carry on trade of newly discovered goods, or to work a mine. In fact, since the early 18th century on, two types of privileges were to co-exist: ancient, or private monopoly which was nothing but exclusive rights to carry on a specific type of production for a specified period of time; and new, manufacturing privilege as a license allowing various benefits and special exemptions (similar to the 'privilèges ordinaires' in France). The manufacturing privilege was a kind of transitional stage between the private monopoly and the invention privilege: in case of exclusive rights, it meant a tightening of the ground on which a monopoly might be granted. However, no special law was promulgated during this period to protect the rights of inventor.

A series of restrictive anti-monopolist measures that the successive Russian governments tempted since the early 18th century onwards, was another important factor which intervened in the process of thinking privilege system. One of the earliest measures in this field was the introduction of the concept of 'newly discovered goods' restricting the monopoly on new kinds of things. Followed, widely adopted since the mid-18th century, the concept of 'new invention', which had a prohibitive function. The earliest quoted Russian invention privileges were of this kind: they were granted in 1748 and 1749 respectively to the

¹¹ About Demidov's clan and plants, see, p. ex.: Portal R. *L'Oural au XVIII^e siècle: Étude d'histoire économique et sociale*. Paris: Institut d'Études slaves, 1950. 434 p.

merchants: Anton Tavlev, Terentij Voloskov and Ivan Dedov in the first case, and Petr Suharev and Ivan Beljaev in the second, for the establishment of a manufacture of dyes according to the method they had invented. Another famous privilege was delivered in 1752 to the prominent Russian savant and inventor Mihail Lomonosov, for ‘making of multi-colored glasses, beads, bugles and other haberdasheries’.¹² These privileges contained another important feature as they had been an occasion, for the first time in Russia, of an expertise for novelty.¹³ The ‘new invention’ privileges combined old and new features: still depending of the state power and being a kind of deed or gift, they already possessed, however, some elements of the modern patent law, in the sense that the inventor, while cooperating with the State, considered himself to be entitled to compensation for his efforts.¹⁴

In 1762-1775, a series of anti-monopolist edicts of Catherine the Great (1762-1796) had for consequence to revoke a large number of monopolies and to abolish the College of Manufactures responsible for the supervision of industrial activities. Since now, no special license was needed for establishing a manufacturing plant, and everybody wishing to carry on trade or manufacture was free to do it, whereas the private factories were considered as their owner’s private property. However, it was in some extent rather a declaration than an acting law. All these changes were essentially profitable to the noble class which benefited of the Empress particular protection.

At the same time, the government seemed to be less interested in stimulating invention activity than in encouraging the importation of new production techniques and processes. In her famous ‘Nakaz’, or Instruction to the Legislative Commission of 1768-69, Catherine the Great expressed serious concern that in the country like Russia, with its large population, the mechanization of production would lead to unemployment. So, despite the desire to encourage the development of the new branches of manufacturing, no special law was enacted in Russia to protect the rights of inventor. Moreover, the backwardness of manufacturing activity and of the guilds prevented Russia from the development of a very concept of ‘patent’. This term was never officially adopted in Russia in its West-European sense. In the legislation, the exclusive inventor’s rights were referred to by the term of ‘invention privilege’. In spite

¹² Quoted after: Afanas’eva V. *Razvitie zakonodatel’sтва o privilegijah v Rossii: XVIII-XIX v.* 15 p. (here, p. 2). – Manuscript on-line: www.law-n-life.ru/arch/107_Afanasieva.doc.

¹³ For A. Pluzhnik, the privilege of 1748 can be considered as a starting point for such an innovative procedure Op. cit., p. 9. See also: Aer, *Op. cit.*, p. 22; Afanas’eva V., *Op.cit.*, p. 1.

¹⁴ Pluzhnik, *Op. cit.*, p. 9; Afanas’eva, *Op. cit.*

of its initial meaning of ‘special favour’, the term of privilege was maintained till 1896 in order to avoid confusion between the rights of inventor and the licensing of business activity. It was definitely abandoned after the October revolution 1917.

The Manifesto of 1812

During the 19th century, four fundamental legal acts aiming to perform the regulation of privilege system in the Russian Empire have been promulgated: the *Manifesto on Privileges for various Inventions and Discoveries in Crafts and Arts* (1812); the *Privilege Statute* (1833); the *Highly confirmed Opinion of the State Council concerning the Changes in the Granting of Privileges for new Inventions and Discoveries* (1870), and the *New Invention Privilege Statute* (1896). Although different in consistence and juridical significance, each of them marked an important stage in the evolution of the concept of property right. Together, they illustrate a difficult way of Russia’s legal thought towards the solidly established and elaborated patent law in the West-European sense.

The *Manifesto* of June 17, 1812, is the most prominent of these documents for it conferred to the privilege a formal status of legal act and regulated both its content and the procedure of its granting at the scale of the State. It crowned the early, liberal period of Alexander I’s reign and was prepared by a series of initiatives of the young emperor and his close associates.¹⁵ One of them, undertaken at the very beginning of the reign, dealt with a way of treating numerous projects and memoirs addressed to the emperor, including those of inventions and improvements. To solve this problem, on August 7, 1801, Alexander I charged the member of his Secret committee and his personal friend Nikolaj Novosil’cev to collect these documents and to make him a regular report about their content.¹⁶ By his nominal decree of August 27, 1801 ‘On the encouragement of those who made inventions and discoveries aiming to perform trade and handicrafts’, Novosil’cev’s desk was entrusted with the examination of these numerous and divers documents.¹⁷ Some of the invention proposals were presented to the Emperor and to the Senate, but no

¹⁵ Alexander I’s reign (1801-1825) is clearly divided into two periods, the first (1802-1812) being particularly dynamic and the second (1813-1825), dominated by the Napoleonic campaign in Russia (1812) and the following anti-Napoleonic wars in Europe (1813-1815), in which Russia took an active part, much more conservative.

¹⁶ The ‘secret committee’ (1801–1803) was an informal deliberative body which included the young emperor and four young noblemen, his close friends (N. Novosil’cev, A. Chartoryjskij, P. Stroganov, V. Kochubej), who prepared together the projects of State reorganization, and among other, the introduction of ministries, the reform of the Senate, and so on.

¹⁷ Among the documents presented then to the Novosil’cev’s desk there were some interesting inventions such as, for example, the memoir of B. Miller dealing with “The invention of a new wooden plough”, the projects of Ja. Marevich concerning “The means for the extermination of locusts” and “the fabrication of harvester and mower”, that of the Frenchman T. Mercé asking for privilege for the production of vinegar in Russia or that of I. Kulibin relative to ‘The ships with capstans for Volga’ (with

one received further encouragement. After 1806-07, the number of projects and memoirs presented to the Novosil'cev's desk obviously decreased, and no information about it is available by 1813.

One more event seems to be significant in the process which impulsed the elaboration of the *Manifesto*. It occurred in 1810 and dealt with an application of two foreigners, Geren and Äglung, for a monopoly on the exploitation of a new distilling apparatus based on the invention by Adam and Berar.¹⁸ Their petition having been satisfied, they first did not meet sufficient interest in the idea, however, but finally, they succeeded in creating a company to which, by the edict of 1811, issued by the Ministry of Finances, exclusive rights over the invention have been granted till May I, 1820.

This decision raised a new question about the very nature of privilege, because indeed, up to this moment, the monopoly had been generally asked (and granted) over the initiation of new production, not over the know-how as it was the case of Geren and Äglung. The affair was complicate, and even the Committee of Ministers, to which Alexander I delegated the problem, felt unable to cut short. As a result, the emperor charged the State Secretary Mihail Speranskij to submit him a special report on this subject. Two documents issued by Speranskij at this occasion, which resumed his considerations about a solid legal basis for the development of trade and manufacturing and included his own proposal for a system of privileges¹⁹, were approved by the Senate and laid the legal foundations of the *Manifesto* of June 1812.

The document stipulated that it was necessary 'to conform the private benefits and the encouragement of the inventors with public utility and to establish a regular procedure for such kinds of affairs'. It included six sections dealing respectively with: the substance of privileges for inventions and discoveries (I); the privilege processing (II); the form of privileges (III) and their terms (IV); the reasons of their ceasing (V); the proceeding order (VI).²⁰ According to the French model which served as reference at this point, the invention privilege was thought as a certificate attesting that it was submitted to the government as a property belonging to a given person.

an annexed list of his inventions in the field of mechanics, optics and physics). See: Eroshkina A. Patentnoe delo, *Ekonomicheskaja istorija Rossii s drevnejshih vremen do 1917 g.: Enciklopedija*. T. 2. M.: ROSSPÈN, 2009. P. 226-229 (here p. 226).

¹⁸ Aer, A. *Op. cit.*, p. 29-30.

¹⁹ The first document was titled 'Project about privileges for inventions and discoveries in arts and crafts', and the second 'Project of regulation of invention privileges'. Aer, A., *Op. cit.*, p. 31.

²⁰ Afanas'eva V. *Op. cit.*, p. 5-6.

The government gave to any person the right to challenge in court the origin of the invention. If it did not happen, the holder got an exclusive right to use it during a given term, to apply it or to sell both the invention and the privilege itself. He also could prosecute everybody infringing on his rights with the aim to obtain compensation of losses. As for the infringer, the law defined him as a person who counterfeited the invention.

The designed procedure did not provide a preliminary expertise. The applicant had to submit his demand, with the detailed description and drawings of the invention, to the Department of Manufactures and Internal Trade of the Ministry of Internal Affairs (since 1819, Ministry of Finances), and after a control of the adequate presentation, the minister, via the State Council, submitted it to the emperor's confirmation with the following publication of the privilege as a legal act. Demands and projects in the field of agriculture were submitted to the Department of State Economy of the Ministry of Internal Affairs and were, in their turn, reported by the minister to the emperor. The absence of the detailed description deprived of the granting of privilege. All the same, privileges on things estimated as being without no benefit to the State or to the private people were not delivered.

The privileges had a set form. They were written on parchment due to the brought in fees and contained the following information: the name of recipient, date of application, description of invention, term of action, tollage, signature and stamp of the Minister for Internal Affairs. The terms of its action and rates of fees were specified - 300, 500 and 1.500 rubles, depending on the terms which could be of 3, 5 or 10 years. By the Decree of the State Council promulgated on October 19, 1814, the Ministry of Internal Affairs had for obligation to publish the information about the invention in the "Gazettes" ("Vedomosti") of two capitals.

According to the *Code of privileges granted in Russia from 1814 to 1835* published by the Ministry of Finances in 1865, the first to benefit from this new law, on May 29, 1814, was the French mechanic J. B. Poidebard who got the invention privilege 'On a Machine for the handy driving of the heavily charged ships against the current' aiming to substitute the work of barge haulers by that of horses. Its description included 22 pages and 3 drawings. The *Full Code of Laws of the Russian Empire* (1830) includes,

however, an earlier invention privilege, that of December 10, 1813, delivered to the British inventor Robert Fulton ‘On the device and use of a vessel moved by the steam’.²¹

On July 11, 1828, a new Manufacture council has been established within the Ministry of Finances, with a branch in Moscow. Alongside with the general task, that of contributing to develop the national industry, the Council was charged to examine all questions linked with the invention privileges to be granted and to publish the information about new inventions and discoveries in the *Journal of manufactures and trade* (“Zhurnal manufactory i togovli”).

By the end of the 1820s, however, many clauses of the *Manifesto* became obviously insufficient. According to the State Council, it admitted ‘too much facilities to obtain the right on exclusive privileges’ and was no more in consistence with the state of Russian industry that did not need the former methods of encouragement.²²

The Privilege Statute of 1833

The document called to make up for the deficiencies in the existing law is known as *Privilege Statute (Polozhenie o privilegijah)*. Prepared by the Ministries of Finances and of Internal Affairs and approved by Nicolas I on November 22, 1833, it contained a series of changes and precisions to the *Manifesto* aiming at a clearer regulation of the privilege processing.

Like the *Manifesto*, the *Statute* of 1833 included six sections divided according to the similar principle. However, their content underwent some substantial changes. Thus, in the section I dealing with the definition of privileges, it was stipulated that they could be granted on any discovery or invention but also on their improvement. The protection of this last category has been introduced for the first time. Another pioneering definition concerned the nature of the objects to be protected: they were defined as ‘objects of general use, the methods of production in arts, manufactures and crafts’. It was also specified that only the author of discovery, invention or improvement could apply for an exclusive privilege. The rights of the privilege holder were extended: he could not only use, apply or sell his own invention or privilege, but

²¹ For the inventions privileges of Fulton and Poidebard, see : Gouzevitch D., Gouzevitch I. The History of the First Patents for Steam Vessels in Russia, *History of Technology*, Ed. Ian Inkster. Vol. 24. 2002. P. 81-94.

²² Quoted after: Afanas’eva V., Op. cit., p. 5.

also to offer or to bequeath it. The notion of ‘use’ became the main criterion for the privilege to be granted. It was also stressed that the privileges could be granted to both Russian subjects and foreigners authorized, by the Decree of December 27, 1827, to establish plants and factories in Russia.

The application processing was also performed. To obtain a privilege, it was since then necessary to produce a serious substantiation of the novelty. The Department of Manufactures and Trade, when it accepted the demand for privilege, gave the author a special safeguard, and the information about this was published in such newspapers as ‘Senatskie vedomosti’ “Sankt-Peterburgskie vedomosti”, “Moskovskie vedomosti” and “Varshavskij dnevnik”. As for the application itself, it was transmitted from the Department of Manufactures and Internal Trade to the other departments ‘for examination’, then passed ‘for discussion’ to the Manufacture council, and after that - to the Council of the Minister of Finances and the Department of State Economy of the State Council. After all these stages went successfully off, the dossier was submitted to the emperor for confirmation. In case of negative decision, the ministry informed the applicant and gave him back his money. During the first quarter of the privilege term, its holder had to present to the Department of Manufactures and Internal Trade a certificate of its application attested by a local authority. In case such a certificate was not be produced, the privilege could be revoked. During the accorded delay, the applicant could ask for an additional privilege dealing with some improvements of the already privileged invention. After the delay was ended, the ministry had to publish in press the information about it. Finally, no privileges were granted on the so called insignificant inventions ‘showing only the sharpness of mind’ or for those that could be ‘injurious to health, harmful to the society or to the State incomes’.

The rates of privilege fees were, in their turn, re-evaluated. Different tariffs were, namely, fixed for invention privileges and importation privileges (the former were less expensive) and 10 years’ tariff reduced compared to those of 3 and 5 years. Some legal decisions promoted during the following decades completed and/or modified the adopted regulations. By the law of October 23, 1840, for example, the privileges relative to the agriculture had to be delivered by the Ministry of State Property. The law of July 7, 1852 required that the application must be written only in Russian and obliged the holders of privileges to produce certificates of application in time.

The *Statute* of 1833 marked an important step in the development of the patent law in Russia. If in 1813-1833, only 74 privileges have been granted (less than 4 a year), during the period which followed, from 1834 to 1870, they were already 1316 (an average of 36 a year).²³ These statistics have to be nuanced, however, with regard to the origins of the applicants. Although the general number of privileges granted between 1813 and 1870 was constantly increasing²⁴, the foreign holders turned out to be dominant during the whole period: they got more than 1000 privileges compared to 269 privileges delivered to Russian applicants.²⁵ Since 1865, this tendency even strengthened.

As for the domains concerned by the applications, the privileges of this period dealt essentially with the agricultural machines and the textile industry. The industrial applications were rare, however. Noteworthy, the foreigners were more interested in the most rapidly developing and technically challenging areas such as the production of steam engines, transportation, electricity and telegraphy which prevailed in the crucial domains of Russian economy like the textile or military industry, while the Russian inventors applied for privileges in the more traditional areas: food, agriculture, furnaces, and so on.²⁶

Despite all the positive aspects of the new legislation, one of the most important basic principles of administrative practice remained then unchanged: an optional or discretionary way of granting the privilege. Indeed, nobody had the right to demand that the government granted him a privilege and it could only ask for favor. In fact, as A. Aer pointed it out, the privilege system, such as it was re-organized by the *Statute* of 1833, expressed the ‘economical’ approach of the State towards the invention activity. This latter still considered the privilege system as a measure aiming to encourage the entrepreneur in gaining potential income defended by a privilege and not to ensure the inventor’s human right.

²³ These statistics are quoted after: Revinskij D. Patentovanie izobretenij v Rossii (1812-1870) *Ekonomicheskaja istorija: Ezhegodnik*, 2001. Moskva, Rosspen, 2002. P. 339-376 (here: 347).

²⁴ During the 1860’s, an average of 57 invention privileges were granted annually, double compared to the previous decade. By the end of 1860s, for example, the number of applications submitted annually to the Ministry of Finances alone exceeded, at its highest 170. Aer, *Op. cit.*, p. 72.

²⁵ See: Afanas’eva V. Sovershenstvovanie patentnogo prava v Rossii: Vtoraja polovina XIX v. Manuscript published on-line: www.law-n-life.ru/arch/106_Afanasieva.doc, 9 p. (here, p. 2). According to Eroshkina, the foreigners were attracted by much more liberal procedure of applying for privilege compared to the other West-European countries, and also by the absence of the request for novelty. Eroshkina, *Op. cit.*, p. 226.

²⁶ Afanas’eva V. Sovershenstvovanie patentnogo prava..., p. 2.

The New Decree of 1870

The development of patent legislation in Russia entered a new phase with the decree *On the Changes in Processing of Privileges for new Inventions and Discoveries* issued by the State Council on March 30, 1870. Although the changes it brought to the privilege processing were interpreted in various ways, the historians generally agree that this document was in fact ‘the first general Russian patent law’.²⁷ Why? To resume it shortly, this decree, by simplifying considerably the procedure of patenting, transformed the basic sense of the privilege which ceased to be considered as a special act of favor bestowed upon the recipient (privilege-favor) to be conceived as a right to which the inventor was entitled (patent-right).

The analysis of the long and intense debates that preceded the elaboration of this document give evidence of the fact that the existing system of patenting, extremely heavy, complicate and bureaucratic, became insufficient to manage a constantly increasing number of applications. It is pertinent to remind at this occasion that, unlike the West-European countries (f. ex. Great Britain) the Russian Empire did not possess a special office empowered with invention privilege matters. Although the number of privileges in Russia was very small, compared to its West-European counter-parts, four State organizations, at least, were involved in this process between 1812 and 1870: the State Council and three ministries of Internal Affairs, of Finances and of State Property, with their numerous relevant departments (which changed from one decade to another) and external advisory experts, not to forget the emperor.²⁸ The privilege processing, too slow and rigid, often discouraging for the individual inventors, became with time a real hindrance to the industrial development. In the late 1860’s, while the anti-patent movement was in full force in Western Europe, the privilege system in Russia saw itself a target of severe criticism. It evidently needed to be reformed.

The decree of 1870, issued from these long debates, wanted itself an answer to this request. It was based upon the proposal of Minister of Finances Reutern discussed and approved by the State Council and confirmed by the Emperor. First of all, it fixed a new, reconsidered function of privilege, understood since then as ‘a document certifying that the invention therein described have been presented in due course to the government, and that its holder was legally entitled to make use of the invention, within the time

²⁷²⁷ For a detailed analysis of these various interpretations, as of the context in which this decree was prepared, debated and, finally, elaborated, see : Aer, Op. cit., p. 64-83.

²⁸ See, for the details: Revinskij, 2002..., p. 344; Aer, Op. cit., p. 72-73.

specified, *in the same way as of the other property*.²⁹ According to this formulation, the inventor's property right in his own invention was recognized as based on the general law and not on the particular favor granted for merit. Since now, the processing of invention privileges ceased to be an affair of the Supreme power to become a routine work of the relevant administrations –the Department of Trade and Manufactures of the Ministry of Finances (for the manufacturing and industrial privileges) and the Department of Agriculture of the State Property (for the agricultural privileges)- although the formula “according to the order of H.M.” was maintained in its title. Once submitted to one or the other of these departments, the application passed for expertise to the Council of Trade and Manufactures or to the Scientific Council of the Ministry of State Property. In case the application was approved, a privilege signed by a relevant minister was delivered to the applicant. If it was refused, the inventor could apply once again. The privilege contained, besides the name of the holder and the date of application, the description of invention or improvement, the privilege term, a certification of the duty payment, a State certificate attesting the privilege holder's right in the invention and a signature of the minister with the stamp of the department. Every privilege had to be published in the “Gazettes” of Moscow, Saint-Petersburg and Warsaw. Each concerned department took a register of privileges.

However, in spite of all its juridical breaks through, the decree of 1870 was only a provisional measure. If it formally shortened the privilege processing by suppressing some of its stages, it did not succeed in really speeding it. The effect was even opposite because from the decision to its application, the gap was still important.

Many reasons did not allow this decree to play an expected role. The fact that no special office dealing with privileges matters was still created is one of them. As for the different ministries entrusted with this task in addition to their multiple other functions, they rapidly felt overloaded. Besides the endless conflicts of competence –because it was indeed often difficult to make an accurate differentiation between the fields concerned by the applications– they simply could not process a constantly increasing number of applications; they neither have time nor enough available staff and sufficient expertise to manage this task.³⁰ As a result, -and in spite of the fact that the number of applications in Russia remained relatively

²⁹ Aer, Op. cit., p. 79.

³⁰ According to the Minister of Finances (1895), the Council of Trade and Manufacture which included 24 members (mostly fabricants and merchants) could hardly process 600 privilege applications during its 25 annual meetings, whereas 200 to 300

small compared to Western Europe- the privilege processing continued to be extremely slow, rigid and remained, finally, dissuasive. Numerous were the applicants (about 10%) who preferred to abandon the procedure and proceed to the secret exploitation of their inventions. In addition, the privilege fees were still too high and the privileging of foreign inventions very easy. But what seems yet more important was the mentality problem pointed out by A. Aer, who stipulated: ‘although invention privileges were no longer confirmed by the emperor, inventors continued, however, to feel they were applying for a special favor rather than for a safeguard of their natural property rights’.³¹ All these elements brought the Finnish scholar, who studied this episode in details, to consider the reform of 1870 as being ‘more in nature of a post-emancipation power straggles between Ministries, rather than the improvement of the system or a serious attempt to clarify its character’. And to conclude: “The partial reform gave the government more time, with the hope of seeing the resolution of the European debate and clarifying the role of invention privileges for Russia industry’.³²

The New Invention Privilege Regulations of 1896

The outcome of the anti-patent campaign which was raging in West-European press since the early 1860’s, was attentively followed in Russia. The main question under debate within this movement concerned the negative role played by the patent system in the development of free concurrence. In the changing climate of economic policy of the early 1870, while the free trade began to be perceived as one of the reasons of the crisis, this debate was about to collapse.³³ In 1873, this question became a central theme of the International Patent Congress held in Vienna on the occasion of the World Fair. In its final resolution, the majority of participants, representatives of 13 countries, took a stand in favor of the maintaining of patents, concluding that the protection of the invention must be guaranteed by the legislation of all the civilized nations.

In Russia, this problem was discussed within the Russian Technical Society (RTO) which, on the one hand, recognized the necessity for invention privileges to be maintained, but on the other hand, expressed its concern over the incommodity of the system adopted in Russia. In 1879, it established a special

other dossiers remained regularly unexamined. As a result, the number of unprocessed applications was constantly dangerously growing. See Afanas’eva, *Razvitie zakonodatel’sтва...*, p. 3.

³¹ Aer, Op. cit., p. 82.

³² Aer, Op. cit., p. 83.

³³ The economic crisis of the 1870 was perceived by the contemporaries as a direct consequence of the free trade.

commission headed by V. Veshnjakov with the aim to draft the revision of the existing legislation, and in particular, the Statute of 1833. In its conclusion submitted finally, after various vicissitudes, to the Ministry of Finances in 1893, the commission pointed out the shortages of the existing system of patenting: its highly bureaucratic character; the absence of a special State institution enabled to process invention privileges, and so on. The commission proposed, in its turn, an independent patent office to be established on the German model, as an organism which would cumulate all the functions relative to the processing of invention privileges, from application and investigation to the function of court of law in disputes. According to the RTO's idea, such a special institution had to be attached to the Ministry of Finances. The commission also proposed to extend the term of the privilege to 20 years, to discontinue the current practice in case of two simultaneous applicants, to reduce privilege fees and to replace one-time fees by a system of progressively increasing annual fees, to simplify the application processing, to introduce a fixed deadline for it, and so on. In addition, it renewed the demand, formulated in its earlier proposal of 1882, for a 'protective certificate' shaped upon the British or American practice of the 'caveat', giving the privilege holder one-year priority for the further development of his invention.³⁴

These proposals seemed, however, too idealistic to be accepted as such by the government. The RTO's strong faith in the power of West European patent legislation badly fit with the ambiguous nature of the Russian concept of property rights. However, the process of reflection being already engaged, in November of same years 1893, the emperor authorized the Ministry of Finances to present the draft of a new invention privilege law to the State Council.

In his report, submitted to Nicolas II on January 10, 1896, the Minister of Finances Sergej Witte recognized that the Russian patent law 'hardly corresponded to the modern situation in this field'.³⁵ He said himself convinced that the protection of invention by means of granting privilege was necessary for being recognized as useful mean for the industrial development.

³⁴ Instituted by the US Patent Act of 1836, the *caveat* was a kind of patent application with a description of an invention and drawings, but without claims. It was an official notice of intention to file a patent application at a later date. A caveat expired after one-year, but was renewable by paying an annual renewal fee. The filing fee for a caveat was much less costly than the filing fee for a patent application and did not entail an additional lawyer's fee for drafting claims.

³⁵ Quoted after: Eroshkina, Op. cit., p. 227

The project of a new patent reform elaborated within the Department of Trade and Manufactures was debated by a Special Conference attached to this latter. The Conference included the representatives of the Council of Trade and Manufactures and the experts in the matter. Opinions of some other ministries (of Internal Affairs, of Agriculture, of State Property, of War, of Navy and of Justice) have also been collected. Then, the project was successively examined by the Council of Trade and Manufactures, by the Department of State Economy (February 17, 1896) and by the General Assembly of State Council (April 29, 1896). After having been approved there on May 20, 1896, the project of patent law titled *Statute of invention and improvement privileges* was confirmed by the emperor.

The new law included 31 articles. Its central point dealt with the creation of a special patent office (Committee on Technical Affairs) attached to the Department of Trade and Manufactures of the Ministry of Finances and headed by the chief of the Department. The Committee's staff included a vice-director of the Department and nine permanent members designed by the Minister of Finances among the highly technically trained officers, representatives of different ministries (of War, Navy, Internal Affairs, Ways of Communication, Agriculture, State Property, and so on) and the invited experts. Its different sections had for task to examine both the applications and the conclusions of the invited experts. The complaints were processed at the Committee's general meeting. Special fees were allocated for the patent library.

The new law established a unique term of privilege and extended it from 10 to 15 years. If the invention was already patented abroad, the term of its Russian privilege could not go beyond the term of the foreign patent.

Another big innovations of the *Statute* of 1896 were the notion of *formula of invention* and a list of *non patentable* matters (f. ex. those which 'run counter to the established order, morals or decency'; chemical gustatory matters, medicines and apparatus for their fabrication as well as matters which 'don't contain any substantial novelty'). It also introduced a new professional category -that of patent attorneys- and the practice of privilege alienation in favor of the State (applied essentially to the spheres of military and navy).

One of the articles was specifically dedicated to the definition of those who might ask for a privilege. This category included Russian and foreign subjects as well as their legatees, at the only condition for the

invention to offer a substantial novelty. The Statute also fixed the right of the first applicant who was privileged in case some other persons would apply for the same invention while this latter was already in processing.

All individual wanting to obtain an invention privilege had to apply for it, personally or through a patent attorney, to the Department of Trade and Manufactures, by presenting a full description of his invention or improvement in Russian language and a certificate of the Treasury about the payment of 30 rubles of overhead fees (examination and publication of the application). As for the description itself, it had to be accompanied with ‘explanations, drawings and models’ clear enough to allow an easy execution of the invention or improvement. At the end, the applicant had to enumerate ‘distinctive features of the applied invention or improvement that he considered as being its novelty’. The applicant was granted a safeguard, and this information was published in the “*Vestnik finansov, promyshlennosti i trgovli*” and in “*Pravitel’syvennyj vestnik*”. Once in possession of the safeguard, the applicant was free to make reports or publications concerning his invention or to make public trials of it. The safeguard became invalid if the privilege was not granted.

In case of positive decision, the applicant had to submit, in the space of 3 months, a receipt of the Treasury attesting of the fees paid for the first year of privilege. If the payment did not take place, the privilege was automatically revoked (in some cases, the Minister of Finances had right to release from fees for 3 years). If all the necessary conditions were met, the Department of Trade and Manufactures gave an order to prepare and to deliver to the applicant a privilege patent. This patent differentiated from the privilege form granted according to the law of 1870 not only by its name (patent) but also by a presence of the formula of invention. The patent was signed by the Minister of Finances, countersigned by the chief of the Department of Trade and Manufactures and rubber-stamped. The Department was also entrusted with annual publication of the list of granted privileges.

The invention or improvement privilege was a property of its holder: this latter was free to apply it, to diffuse it, to allow other individuals to use it. It was subject to alienation, to inheritance, to legal proceedings. The new *Statute* fixed an ‘obligatory principle’ of the privilege: indeed, the privilege recipient was endeavored to ensure its industrial application within 5 years from the date of the patent signature, with a corresponding certificate of local authorities being submitted to the Department of Trade

and Manufactures. Such a measure was conditioned by the fact that, from the point of view of the State, the patent was a kind of arm able to damage the industry by depriving it of the possibility to use the invention, and in consequence, the privileges were granted in the interest of the industry as a such, and not in the interest of an individual inventor. It was an artificial measure aiming to equally protect all the branches of industry. Although not too logic, this measure was justified in Russia given that at the end of the 19th century, inventions were mostly a deal of foreigners. It was introduced in order to oblige foreigners to introduce their inventions in Russia.

Non concluding remarks

V. Afanas'eva, who dedicated a special article to the study of this law, concludes her analysis in the following terms: 'With the adoption of the Statute of 1896, the period of elaboration of an adequate patent system in Russia came to its end. It stipulated a legal mechanism which insured the exclusive right provided by the invention patent. By the end of 19th century, Russia has left on the advanced boundaries of invention protection. The Russian patent legislation fully answered the international legal norms'.³⁶

As all the previous Russian patent laws, to begin with the Manifesto of 1812, this last document was, indeed, influenced by the West-European prototypes. Its legislative models are, however, difficult to discover. A. Aer estimates that no one particular model seemed to have served as the basis for the Russian statute of 1896, since it was constructed by eclectically adapting and combining parts of laws of various countries. Thus, the Committee for Technical Affairs seems to be shaped upon the American 'Patent Office'; the principle of the 'first applicant' would be inspired by the German system; as for the regulations concerning the subject and object of invention privileges, Russia would follow the general European practice. From this point of view, the harmonization of the Russian legislation in the field of patenting with that it its West-European and American counter-parts shows a clear will to approach the international legal norms.

In one important point, however, the Finnish scholar brings a serious nuance to that of the Russian historian, because she closes her fundamental study of the *Patents in the Imperial Russia* by the following words: 'The Committee for Technical Affairs found it difficult to understand that the invention had a

³⁶ Afanas'eva, *Sovershenstvovanie patentnogo prava...*, p. 11-12.

juridical as well as a technical content. Because of the fundamental difference in the concept of property rights, the rights of the inventor remained an alien element in Russia society.³⁷

We don't think, however, that these two conclusions contradict each other. They only offer two of many possible ways to approach this problematic, juridical and economical, political and cultural, philosophical and statistical. They also give evidence of an extreme complexity of the patent studies in general and of the Russian case in particular. As D. Revinskij pointed it out in his militant essay, the complex approach to the Russian privilege system still waits its researcher. Many difficulties are to be overloaded, and this of an adequate terminology, and of its adequate translation are only some of them. The enormity of sources to explore is another important point to take into consideration. It remains that all the authors whose studies we could read while preparing this short overview, fundamentally agree that the concept of privilege as natural property of the inventor took about 250 years to be accepted in Russia whereas the notion of patent in the West-European sense could never take roots at the Russian Empire. What to say about the Soviet period? The growing interest towards the questions of property right we observe today in Russia offers a good chance to deep our knowledge of the Russian patent system. Let's wish this work to be continued...

Annexe I: Selected Bibliography

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- A non-scholarly work intended to inform the inventors and manufacturer about the situation in this field.

³⁷ Aer, Op. cit., p. 207.

- Patent Literature in Russia, published during the Soviet period:

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Annexe II. Main sources for privilege publication:

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Summary registers of privileges granted in Russia except those granted by the Ministry of State Goods (texts, incomplete, 1812-1870)

Index

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Chronological Index, alphabetical and by subject, of privileges granted in Russia from 1814.