

By the Judgement of 12 March 2026 No. 13-II, the Constitutional Court assessed constitutionality of Article 1362 (paragraphs 1 and 2 of item 1) of the Civil Code of the Russian Federation

The specified legal provisions were the subject of consideration to the extent that, on their basis within the system of current legal regulation, the issue of granting a compulsory license to use an invention for the production and supply of medicinal products is resolved.

The contested legal provisions were recognised as not contradicting the Constitution to the extent that, in their constitutional and legal meaning they:

establish the right to file a lawsuit against the patent holder for the grant of a compulsory (non-exclusive) license to use an invention on the territory of the Russian Federation for the production and supply of medicinal products, allowing for limitations on the intellectual rights of patent holders in the interests of the state and society by a court decision granting a compulsory license if the interested party has evidence of non-use or insufficient use of the invention by the patent holder within the periods established by this norm without valid reasons;

proceed from the understanding that compulsory licensing is an exceptional and forced measure to prevent the non-use or insufficient use of a patent-protected object, which may be caused, *inter alia*, by abuses of intellectual rights, and to overcome a shortage of certain goods, works, or services on the Russian market, and do not imply its widespread dissemination and application without sufficient grounds duly established by the court, as well as they do not allow either hindering the proper functioning of the intellectual property protection system existing in the Russian Federation, including the rights of foreign rights holders, and access of quality innovative goods to the Russian market, or the formation of reputational risks for the Russian jurisdiction, or the creation of threats to research, innovation, investment, production, or trading activities;

assume that when considering lawsuits for the grant of compulsory licenses, each party, in accordance with the constitutional principle of adversarial proceedings, must prove to the court the circumstances in the establishment of which it is interested (in particular, the necessity of resolving the existing situation precisely by granting a compulsory license to use specific intellectual property objects), but cannot be compelled to provide information which it should not possess by following the usual procedure for obtaining access to such information, or which it is not entitled or obliged to disclose; moreover, both the unjustified demand from a party for information constituting commercial, industrial, or other secrets protected by current legislation, and procedural bad faith, which may be expressed in an attempt to limit the court's ability to properly examine facts and establish circumstances relevant to the consideration of the case, are inadmissible;

take into account that confirmed facts of abuse by the patent holder of their patent rights (in particular, in the form of direct or indirect obstruction by them or affiliated persons of scientific and industrial developments, research, testing, passage of procedures and approvals provided for in national jurisdictions, including patenting procedures), ultimately aimed at maintaining a dominant position in a certain market segment and at unfairly preventing the appearance on the Russian market of similar goods in a sufficient volume to establish fair market pricing and the emergence of a guaranteed supply, even if such actions were performed by the patent holder outside the Russian Federation, may be indicators of behavior that may result in insufficient use of an intellectual property object patented in the Russian Federation and, accordingly, confirms the absence of the patent holder's intention to ensure sufficient supply of certain products to the Russian market in the context of fair market pricing;

proceed from the understanding that limitations on intellectual rights through the grant of compulsory licenses, as well as through other measures, including antitrust regulation measures, may occur both to remedy and prevent the negative consequences of established clearly bad faith behaviour of their holder, and in the presence of objectively existing circumstances that threaten the interests of protecting the life and health of citizens and in the context of which behaviour formally not possessing signs of bad faith effectively acquires the properties thereof;

allow that non-use or insufficient use of a patent, leading to insufficient supply of certain goods on the market, may be found, in particular, in cases of refusal by the patent holder or the person entrusted by the patent holder to supply them, and in cases of systematic evasion from participating in tenders in the Russian Federation in accordance with the procedure established by its laws for the purchase of goods (when a significant part of goods for which there is a real need on the Russian market can be purchased only through competitive procedures in accordance with Russian legislation), and in cases where the protection of the life and health of citizens depends on sufficiently satisfying the need of the Russian market for certain products – also when the patent holder is ready to supply such products to the Russian market exclusively at extremely high prices, significantly exceeding the prices for similar products that could be supplied to the Russian market in the required volume if a compulsory license were granted; or upon demonstration by them of other forms of non-competitive behaviour in the market, the facts of which have been established and presented at the court's request by the authorised antitrust authority;

assume that, when granting a compulsory license, the court must determine the scope of possible actions of the licensee taking into account the actual existing

need of the Russian market for the relevant goods, and when there is a significant public interest in sufficiently satisfying the need of the Russian market for certain products, in particular when the protection of the life and health of citizens depends on it, which may also be expressed in the centralised purchase of medicinal products for provision to citizens for free or at preferential prices, the specific scope of possibilities granted to the licensee on the basis of the granted compulsory license may be determined based on the current volume of supplies demanded by the Russian market;

mean that when granting a compulsory license, the actual capabilities of the licensee to perform the production and/or sale of products equivalent to those manufactured on the basis of the patented invention must be taken into account, ensuring their necessary quality (in particular, ensuring the therapeutic efficacy and safety of medicinal products), so that the actions of the licensee do not create threats to the rights and legally protected interests of Russian consumers of the relevant products;

provide that the terms of granting the compulsory license, including the total amount of payments for such a license, must be established in the court decision, based on the market conditions, and the patent holder is not deprived of the opportunity to continue independent use of the patented invention without any restrictions or discrimination;

proceed from the understanding that as the Russian market becomes saturated with goods, works, or services whose production and/or sale were permitted to the licensee on the basis of a compulsory license, in the absence of prerequisites for the emergence of new states of extreme necessity, threats to defense and security interests, life and health of citizens (in particular, with a significant reduction in market prices for such products, the emergence of guaranteed alternative supply channels, the presence of a guaranteed supply on the market) and if the patent holder is ready to use the patented object in sufficient volume at a reasonable price, the effect of the previously granted compulsory license is subject to termination.

The Constitutional Court separately noted that the approach expressed in this Judgement regarding the grant of a compulsory license to use an invention for the production and supply of medicinal products is also applicable to the grant of compulsory licenses in other areas, taking into account their specific features.