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Inter-lingual correspondence between the conceptual systems of patent law in Russia and the United States

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Abstract. Due to its deep connection with international law and the requirement to register patents in every country where protection of an invention is sought, patent law requires an immense number of translations every year. Nevertheless, considerable diversity in national patent legislations around the world hinders translation of patent documentation because of significant terminology differences. This paper studies patent law terminology equivalence in Russian and U.S. patent law. The main objective is to identify concept correlation between the main patent law terms in the U.S. and Russian legal systems and to classify the identified term-pairs according to their degree of equivalency, pointing out problematic cases and suggesting ways of their resolution for better translation of documents in this field. This objective is reached through comparative definitional analysis of the key patent law terminological units extracted from legislation texts, monolingual term glossaries, and bilingual term dictionaries. Notwithstanding the predominance of full equivalents, the research shows that national patent law systems preserve their characteristic features which result in a significant number of partially equivalent and non-equivalent terms, many of which are related to the very basic patent law concepts such as patentability. However, no currently existing bilingual English-Russian or Russian-English dictionary provides up-to-date and accurate information about Russian and American patent law terms with all necessary remarks concerning possible differences between the concepts. The research results can serve as the basis for compilation of a specialised bilingual glossary of Russian and American patent terms which can be used as a reference during translation of patent documentation.

Keywords: term, terminology, equivalence, legal translation, patent, patent law, glossary

Introduction

Patent law is a field that requires an immense number of translations every year due to the requirement to register patents in every country where the protection of an invention is sought. According to the latest annual report published by Rospatent, in 2020 the Russian Federal Service for Intellectual Property issued 28788 new patents granting protection of an invention, of which 11607 patents belong to foreign applicants. Among foreign countries the U.S. has the largest number of effective patents registered in Russia (Rospatent. Godovoj otchet 2020). Thus, patent translation is in high demand in the translation market.

However, despite the deep connection between patent and international law, existing diversity of national patent law systems around the world results in multiple terminological differences that may cause significant challenges in translation of patent documentation (Shiflett 2015, 29–30). Terminological inaccuracy or ambiguity in translated texts may be as critical as to alter the scope of the patent, resulting in serious legal complications (Larroyed 2019, 355). Together with the rapid development of technology and international cooperation in science and business, this proves the importance of comparative research into patent terminology.

Most of the existing English-Russian and Russian-English dictionaries of patent terminology date

back to the 1970s and 1980s and are largely outdated because the patent law systems of both Russia and the U.S. have undergone significant changes since then. *The English-Russian Dictionary of Patents and Trademarks* by S. V. Glyadkov (Glyadkov 2004) lacks definitions and sufficient comments whenever it suggests several translations for a term, which can lead to errors due to misunderstanding of the concept designated by the term. A deeper analysis of the Russian and American patent terminology systems and their conceptual equivalency can provide a clearer understanding of the existing language practice and help suggest better ways of translation.

The aim of this paper is to study correspondence between patent law terminology in Russia and the U.S. The major objectives are to identify main concepts in the term systems of the U.S. and Russian patent law, classify the identified terms according to their equivalency, point out problematic cases and suggest ways of their resolution in order to achieve higher quality translation of patent documentation. In this paper *term* is understood as a unity of a concept of a specialised conceptual system and its designative unit (Rey 1995); *equivalence* is understood as *inter-lingual conceptual terminological equivalence* established at the level of concepts of individual words and phrases, which implies that two or more lexical units of different languages have the same or similar terminological meaning.

Method

The first step of the study was to compile Russian and English corpora of specialised texts related to patent law for the subsequent terminology extraction.

Unlike many terminology studies limited to the analysis of dictionary definitions, the present paper studies both reference texts and specialised texts that provide context for the functioning of the term.

The compiled corpora include monolingual patent term glossaries and bilingual law dictionaries, legislation texts, patent documentation, law textbooks, and websites of national and international organisations. The glossaries and dictionaries served as the primary source for the list of selected patent terms, which was later expanded with terms automatically extracted from other patent-related texts.

The term selection was based on the following criteria: a certain word or word-combination should be fixed to a specific concept of patent law and its usage in specialised texts should be consistent.

Apart from patent terminology, the glossaries included titles of legal acts and names of organisations; however, these lexical units were excluded from the final list of selected terms due to their obvious harmonisation and lack of clear definitions.

The selected terms were later combined into term-pairs. In cases where a term lacked an equivalent in the corresponding conceptual system, such term was paired with its possible translation variant. We understand a translation variant as a lexical unit that can be used to designate a concept of a foreign specialised field that is absent in the conceptual system of the target language.

Then, the identified term-pairs were classified into the following categories based on their equivalence: exact equivalence, partial equivalence (further subdivided into overlapping and one-to-many equivalence), and non-equivalence.

1) **Exact equivalence** — two terms in different languages refer to identical concepts.

Notably, exact equivalents can be called "exact" only relatively, since significant differences in national legal systems make absolutely equivalent terms impossible. Only terminology harmonisation in international law can achieve absolute equivalence. Certainly, international law significantly affects national patent law systems; nevertheless, differences persist to some extent. In this study, exact equivalents include terms which designate concepts coinciding in the essence of a legal phenomenon and the legal consequences arising in connection with this phenomenon.

2) Partial equivalence:
- overlapping — two terms in different languages refer to concepts that share their characteristics only partially;
- one-to-many equivalence — a single concept which exists in one concept system corresponds with two or more concepts in another concept system.

In this category the degree of equivalence is individual in each term-pair. Partial equivalents can be organised not only in pairs, but also in groups of terms, and in some cases they might include terms with a synonymous meaning.

3) **Non-equivalence** — a concept exists in one concept system but is absent in the other.

It might be possible to find a translation variant in the target language for a non-equivalent term; however, this does not make a corresponding concept appear in the legal concept system of the target language. Such translation variants only refer to the concept that exists in the concept system of the source language. This paper compares multiple translation variants and suggests new ones in cases where there are none.

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The classification stated above is a modified version of a term equivalence classification suggested by A. V. Achkasov and based on the ISO 5964–1985 international standard that regulates compilation of multilingual thesauri which include equivalent terms necessary for inter-lingual exchange (Achkasov 2013, 6). Creation of such thesauri does not require harmonisation of the concepts; they only describe the current state of a language for specific purposes and record differences between the concepts.

The term equivalence classification includes the following categories:

1) exact equivalence;
2) inexact or near equivalence — concepts designated by the terms differ in few cultural characteristics but correspond in the most part;
3) partial equivalence — concepts designated by the terms differ significantly;
4) one-to-many equivalence;
5) non-equivalence.

Thus, the classification used in this paper combines inexact and partial equivalence since their differentiation is based only on the degree of the discrepancy between the concepts (minor/major differences), which in many cases is impossible to determine objectively. Moreover, one-to-many equivalence is treated as a special case of partial equivalence.

Results and discussion

In total, 302 terms (145 Russian and 157 American) were extracted and later combined into 161 term-pairs. Non-equivalent terms were paired with their translation variants.

Based on the degree of their equivalency, term-pairs fall into categories as follows:

1) exact equivalence: 116 terms (63 PCT terms and 53 national terms);
2) partial equivalence: 25 terms (22 cases of overlapping and three cases of one-to-many equivalence);
3) non-equivalence: 24 terms (20 U.S. terms and four Russian terms).

Fig. 1 demonstrates this distribution in percentage terms.

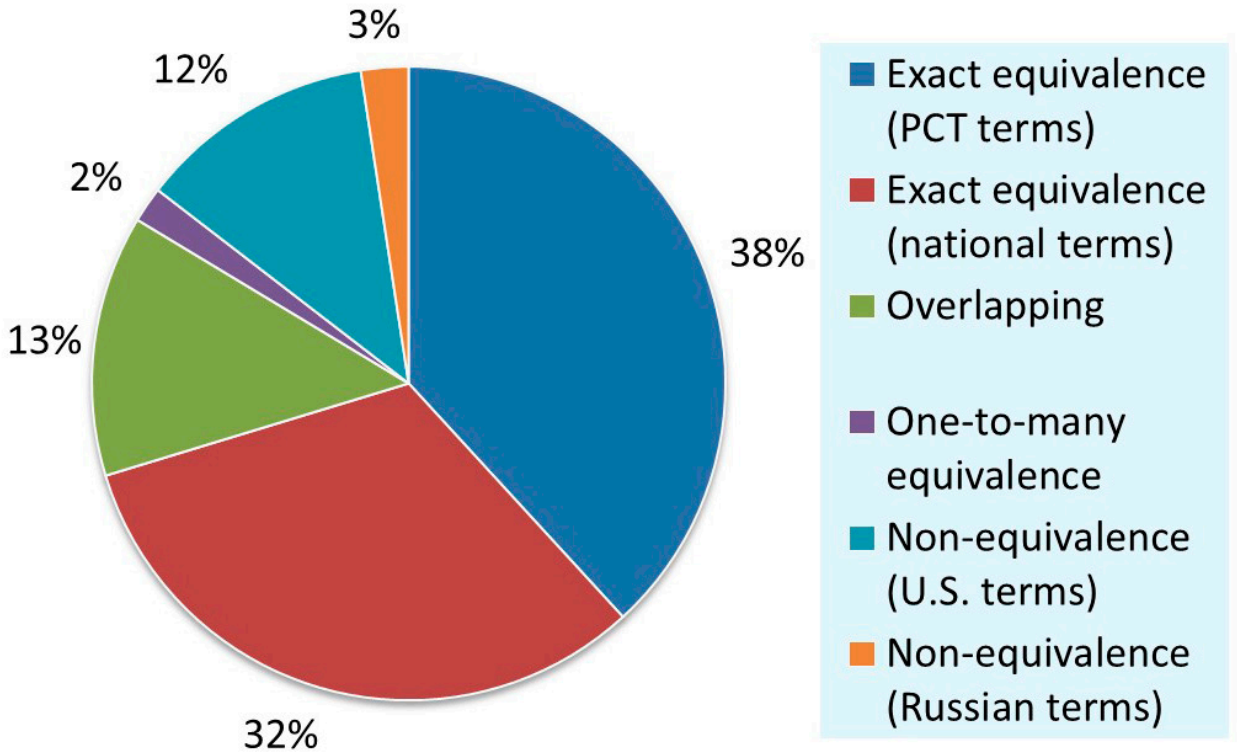

Fig. 1. Distribution of Russian and U.S. patent terms according to their equivalence

Let us review each category in detail and consider the most illustrative examples.

Exact equivalents

The majority of the terms belong to the exact equivalence category. This is due to the successful process of legal internationalisation and subsequent term harmonisation which is required for effective functioning of patent law as a significant part of international law (Gervais 2002). The terms are further subdivided into two groups: (1) international terms of the Patent Cooperation Treaty (PCT); and (2) terms of the national patent law systems.

PCT terms

Both Russia and the U.S. are contracting states of the Patent Cooperation Treaty that establishes a unified system of international patent applications — the PCT System. Based on the PCT and the PCT Instructions Annex, the World Intellectual Property Organization (WIPO) has published glossaries of the main PCT terms in the languages of the contracting states.

From a legal point of view, international treaties signed by the state become a source of law in this state; therefore, the PCT terms form an integral part of the U.S. and the Russian patent law systems. Although the PCT glossaries are monolingual, all terms are present in both the Russian- and the English-language glossaries. Comparison of the corresponding term-pairs revealed exact equivalence of the designated concepts, which, among other things, is obvious from the similar wording of definitions (see Example 1).

Example 1

Designated State
"a Contracting State indicated in the international application in which protection for the invention is sought" (PCT Glossary).
Указанное государство
«договаривающееся государство, указанное в международной заявке, в котором испрашивается охрана изобретения» (PCT Glossary).

Since the equivalence of the PCT terms was achieved artificially through harmonisation, these term-pairs are truly exact equivalents, unlike the second group (terms of the national patent law systems) which, as mentioned above, can be considered exact equivalents only relatively.

Nevertheless, the analysis indicated several cases where concepts have alternative designations despite the fact that corresponding terms (and their full equivalents) are fixed in such an authoritative source as the PCT.

Example 2

A rather problematic case is the term *patent agent*. The PCT Glossary provides the following definitions for this term and the related Russian term *патентный агент*:

(patent) agent
"a person who has the right to practice before a national Office or PCT Authority and who may be appointed to act on behalf of an applicant for an international application" (PCT Glossary);
(патентный) агент
«лицо, которое имеет право на ведение дел в национальном Ведомстве или органе PCT и которое может быть назначено для совершения действий в отношении международной заявки от имени заявителя» (PCT Glossary).

However, in practice, Russian patent documentation often contains another name for such a person — *патентный поверенный*. Let us analyse what functions this person performs under the Russian legislation:

«Патентный поверенный осуществляет ведение дел с федеральным органом исполнительной власти по интеллектуальной собственности по поручению заявителей, правообладателей и иных заинтересованных и иных заинтересованных граждан и юридических лиц <…> Патентными поверенными признаются граждане, получившие в установленном настоящим Федеральным законом порядке статус патентного поверенного и осуществляющие деятельность, связанную с правовой охраной результатов интеллектуальной деятельности и средств индивидуализации, защитой интеллектуальных прав, приобретением исключительных прав на результаты интеллектуальной деятельности и средства индивидуализации, распоряжением такими правами <…>»[1] (Federal Law No. 316-FZ "On patent attorneys" 2022, article 1.2–2.1).

[1] "The patent attorney is responsible for solicitation with the federal executive governmental body charged with intellectual property matters on behalf of applicants, rightholders and other concerned citizens and legal entities… The following persons shall be deemed patent attorneys: citizens who have received in the procedure established by the present Federal Law the status of patent attorney and who are pursuing an activity relating to the legal protection of the results of intellectual activities and means of individualisation, protection of intellectual rights, acquisition of exclusive rights to the results of intellectual activities and

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The definition reveals that the concept of *патентный поверенный* is much broader than that of patent agent, who performs only one function of the person called *патентный поверенный* (namely, "activity relating to <…> acquisition of exclusive rights"). Therefore, the WIPO's attempt to create a separate lexical unit to designate this concept is justified.

Furthermore, the concept denoted by the Russian term *патентный поверенный* also correlates with the English term *patent attorney*. Indeed, the official translation of the Federal Law No. 316-FZ uses the latter to designate this concept.

Let us compare the definitions of *patent attorney* and *patent agent* in the glossary of the United States Patent and Trademark Office:

> ***(patent) agent***
> *"one who is not an attorney but is authorized to act for or in place of the applicant(s) before the Office, that is, an individual who is registered to practice before the Office" (USPTO glossary);*
> ***patent attorney***
> *"an individual who is a member in good standing of the bar of any United States court or the highest court of any State and who is registered to practice before the Office" (USPTO glossary).*

The main difference between these terms is that a patent attorney is a lawyer who has the right to perform any activity related to the protection of exclusive rights, including to represent the applicant and appear in court, while a patent agent is not a lawyer, but only a representative of the applicant during filing a patent application with the national patent office.

The analysis shows that *патентный поверенный* in the Russian Federation performs the functions of both the patent agent and the patent attorney; consequently, in practice, we are dealing with a partial equivalence of these terms, more specifically with one-to-many equivalence. Thus, although in theory the term *patent agent* has an exact Russian equivalent codified in a legal source, in practice a partial equivalent of this term is often used instead. To eliminate this inconsistency, we suggest the following approach:

> *patent agent — патентный агент;*
> *patent attorney — патентный поверенный,*

where a patent agent is a patent attorney appointed to act on an international application on behalf of the applicant before the national office or the PCT authority.

Terms of the national patent law systems

The second subgroup of the exact equivalents includes terms of the national U.S. and Russian legal systems that did not undergo harmonisation. Many pairs of national terms may be considered exact equivalents only relatively because their equivalence is determined on the level of the basic concept without taking into account differences of the procedural details or legal consequences.

Example 3

The terms *design patent* and *патент на промышленный образец* denote similar types of patents issued by the national patent offices of Russia and the U.S.:

> ***design patent***
> *"a patent issued for a new, original, and ornamental design embodied in or applied to an article of manufacture" (USPTO glossary);*
> ***патент на промышленный образец***
> *«в качестве промышленного образца охраняется решение внешнего вида изделия промышленного или кустарно-ремесленного производства» (Civil code of the Russian Federation, Part 4, article 1352, sec. 1).*

It is not obvious from the definitions, but these patent types have different validity periods (Design patent application guide 2022). This fact leads to a mismatch in the scope of the concepts and, therefore, using these equivalents in translation is possible, but in certain cases may require clarification.

Example 4

> ***non-obviousness***
> *"in order to be patentable, an invention must not be obvious to a person having ordinary skill in the art to which the invention pertains" (Patent glossary 2022);*
> ***изобретательский уровень***
> *«одно из условий патентоспособности; изобретение имеет изобретательский уровень, если для специалиста оно явным образом не следует из уровня техники» (Civil code of the Russian Federation… 2022, article 1350).*

The definition analysis indicates the exact equivalence of the concepts; however, this term-pair has several synonymous terms. While *non-obviousness* is a national term of the U.S. jurisdiction, in international law it is called *inventive step*:

means of individualisation and disposal of such rights <…>" (Official translation of Federal Law No. 316-FZ).

"One of the requirements for patentability; an invention is considered to include an inventive step if it is not obvious to a skilled person in the light of the state of the art" (Glossary of relevant patent and related terms 2022).

Since *изобретательский уровень* is a calque of the term *inventive step*, the use of the latter instead of *non-obviousness* when translating from Russian into English might, at first glance, seem preferable. Nevertheless, this is only possible in international legal practice, while it is unacceptable to use this term in relation to the patentability requirement under the U.S. national law. A number of glossaries, including the "PCT glossary", suggest the term *неочевидность* as an equivalent of *non-obviousness*. This term is found in a number of academic papers, but it is less common than *изобретательский уровень*. Moreover, Russian national legislation states only *изобретательский уровень* as a patentability requirement. Therefore, the usage of *неочевидность* in practice is not recommended.

Partial equivalents

Currently, there is no single international patent that could eliminate the need to file an application with national patent offices, and differences between national patent law systems still largely affect terminology. Including the terms in Example 2, 15% of the identified term-pairs belong to partial equivalents. This category demonstrates significant variation in meaning due to discrepancies in the Russian and the U.S. national patent systems.

Example 5

For instance, we can observe significant difference between the terms *right of attribution* and *право авторства*:

right of attribution
"the inventor shall have the right to be mentioned as such in the patent" (Gader-Shafran 2013, 76);
право авторства
«право признаваться автором изобретения, полезной модели или промышленного образца» (Civil code of the Russian Federation… 2022, article 1356).

In the Russian legal system, *право авторства* is a major right acquired with the grant of a patent—the right to prohibit all other persons in the country to call themselves authors of this invention. On the other hand, in the American legal system, the right of attribution as the right to be recognised as the author of a work refers mainly to copyright, while in patent law the implementation of this right is limited to the text of the patent and does not imply any legal protection that would prohibit other persons from being called the authors of the invention in other cases.

Example 6

The following concept is one of the main patentability requirements under U.S. law:

utility
"a statutory requirement that a patent have some usefulness" (Glossary of patent terms 2022).
In Russian patent law it corresponds with the concept below:
промышленная применимость
«изобретение является промышленно применимым, если оно может быть использовано в промышленности, сельском хозяйстве, здравоохранении, других отраслях экономики или в социальной сфере» (Civil Code art. 1350 sec. 4).

The U.S. Code states that in order to be patentable an invention should be useful (United States Code… 2022). Utility, or usefulness, has a much broader sense than applicability in a certain industry. In American law, the main point of utility is understood as the possibility to utilise properties of an invention in order to satisfy certain needs of people or bring them other benefits (Pilicheva 2016, 32).

The PCT glossary provides two synonymous equivalents for the term *utility*: *полезность* and *промышленная применимость*. The former synonym seems preferable as it refers to utility in a broader sense. In international law, the term industrial applicability is used when talking about *промышленная применимость*.

Example 7

An illustrative example of the one-to-many equivalence is the term *patentability* (referring to all possible subjects of patenting) that corresponds to two Russian terms at once: *охраноспособность* (used only in relation to new animal breeds and plant varieties) and *патентоспособность* (denoting other subjects of patenting):

patentability
"the ability of an invention to satisfy the legal requirements for obtaining a patent" (Glossary of relevant patent… 2022);
патентоспособность
«совокупность свойств технического решения, без наличия которых оно не может быть признано изобретением на основе действующего

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в данной стране законодательства» (Dodonov, Ermakov, Krylova et al. 2001, 377);
охраноспособность
«термин, применяемый для оценки селекционных достижений вместо термина патентоспособность» (Dodonov, Ermakov, Krylova et al. 2001, 370).

In case of Russian-to-English translation where these terms occur in one sentence or in a close context and their distinction is necessary for the adequacy, *okhranosposobnost'* (transliteration) or *protectability* (calque) may be used to refer to *охраноспособность* with an additional explicatory comment from the translator.

Non-equivalent terms

15% of the analysed concepts lack equivalents due to asymmetry of national legal conceptual systems. Non-equivalent terminology is predominantly translated with calques.

A number of non-equivalent terms of the U.S. conceptual system reflect the national procedural features of filing applications.

Example 8

provisional application
"a U. S. national application for patent filed in the USPTO under 35 U.S.C. § 111(b). It allows filing without a formal patent claim, oath or declaration, or any information disclosure (prior art) statement. It provides the means to establish an early effective filing date in a nonprovisional patent application filed under 35 U.S.C § 111(a) and automatically becomes abandoned after one year" (USPTO glossary).

The definition itself reflects the fact that this type of application is a specific U.S. national patent application. This term is consistently translated into Russian as *предварительная заявка*; however, Russian patent law provides for no similar type of patent application. Thus, this translation variant refers only to the concept of American law.

Example 9

The term *provisional application* leads to another rather frequently used American term that has no equivalent in the Russian legal system — ***patent pending*** (or ***PP***):

"It means that someone has applied for a patent on an invention that is contained in the manufactured item. It serves as a warning that a patent may issue that would cover the item and that copiers should be careful because they might infringe if the patent issues" (USPTO glossary).

Filing a U.S. provisional application entitles inventors to apply the patent pending mark on their product for 12 months. The Russian translation of this term is not unified; some of the most frequent translation variants are as follows: *патентная заявка находится на рассмотрении, патент заявлен, вопрос о выдаче патента рассматривается*.

Another group of non-equivalent American concepts is associated with types of claims. American patent law is complex and varied in this regard, unlike Russian patent law where most claims have the same structure: one sentence which includes a generic concept (reflecting the purpose of the invention), the prior art clause (indicating what the invention has in common with the closest prior art), and a characterising clause (indicating what distinguishes the invention from the closest prior art).

Example 10

For instance, the classic U.S. patent claim is an apparatus claim, which requires the applicant to describe the invention through its structure:

apparatus claim
"a claim directed to a machine, must be structurally different from the prior art (not just functionally different)" (Glossary of Patent Terms 2022).

A translation variant suggested in dictionaries is *формула изобретения на устройство* (ABBYY Lingvo Live 2022; Glossarij dlya perevoda patentov… 2022; Multitran Dictionary 2022).

Example 11

Another common U.S. claim often used in the field of computer electronics describes the invention through its function instead of its structure:

means-plus-function claim
"a claim in which function rather than structure is recited; when a means-plus-function claim is properly used, the recited function corresponds to structure recited within the specification" (Glossary of patent terms 2022).

Multitran Dictionary suggests the following translation variant: *формула изобретения «шаг плюс функция»* (Multitran Dictionary… 2022). However, the application of this expression in patent-related texts is limited.

The existing variety of American claims as well as the requirements imposed on them by law cause challenges for translators, who often have to rewrite the claims completely. At the same time, knowledge

of the relevant terminology is necessary since the examiners of the US Patent Office utilise it to indicate the need to make corrections in the filed application.

All the identified non-equivalent Russian terms are associated with the national patent types.

Example 12

One of such patent types is the following:

> ***патент на полезную модель***
> *«в качестве полезной модели охраняется техническое решение, относящееся к устройству»* (Civil code of the Russian Federation… 2022, article 1351, sec. 1).

A technical solution related to a device can be protected by both *патент на полезную модель* and *патент на изобретение* (U.S. *utility patent*), which protects a technical solution related to any product (including a device). The difference between the two is the term of the patent as well as the applicable patentability requirements (*патент на полезную модель* does not require an inventive step).

In the U.S. this type of patent is not granted, therefore, we are dealing with a non-equivalent concept. Despite the existing suggestion to translate the Russian term as *utility model* and vice versa (Multitran Dictionary), this is not recommended since it misleads the reader by referring to a different concept of the U.S. legal system. In international practice, this patent type (which exists not only in Russia) is usually called *utility model patent* (WIPO), which is a calque of the Russian term. The existing translation variant *useful model patent* (Glyadkov 2004) is uncommon and not recommended for use.

Conclusion

Notwithstanding the predominance of exact equivalents, for a number of terms their exact equivalence is identified at the level of the basic concept, while a more detailed study of the procedural features and legal consequences associated with them reveals differences between the concepts. At the same time, a number of alternative equivalents are used in practice despite the fact that a different equivalent is stated in authoritative sources such as international treaties.

Furthermore, national patent law systems still preserve their characteristic features which results in a significant number of partially equivalent and non-equivalent terms, many of which are related to the very basic patent law concepts such as patentability.

All this may cause significant challenges for translators, especially those with little experience in this field. However, no currently existing bilingual English-Russian or Russian-English dictionaries provide up-to-date and accurate information about Russian and American patent law terms with all necessary remarks concerning possible differences between the concepts.

The research results can be used to compile a specialised glossary of Russian-American patent terms which can be used as a reference material during translation of patent documentation as well as the basis for further research—possibly, expanding the glossary by including terms from the related fields of intellectual property law.

Conflict of Interest

The author declares that there is no conflict of interest, either existing or potential.

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Abbreviations

OECD—Organisation for Economic Co-operation and Development
PCT—Patent Cooperation Treaty
USPTO—United States Patent and Trademark Office
WIPO—World Intellectual Property Organization

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