A patent's scope of protection is determined by the specific wording of its claims, which are understood in the context of the patent disclosure. Patent offices and courts therefore construe the words of these claims to determine the breadth or scope of protection. However, a purely literal reading of the claims gives a well-defined, but limited scope of protection (e.g., a claim to a specific drug formulation will cover this and nothing more). This reading of the claims therefore creates the potential for third parties to design around the patent in a manner that still uses the essence of the patented invention.

The doctrine of equivalents, found in many jurisdictions across the globe, attempts to address this problem. It creates the potential for a patent claim to extend beyond the claim's literal interpretation by including things that are considered to be equivalent to its wording. This is in order to impede infringers who try to avoid blatant infringement (i.e., literal wording) by making minor changes to the claims. As a judge famously observed, it is a way "to temper unsparing logic and prevent an infringer from stealing the benefit of the invention".

**The doctrine in Russia**

In the Soviet Union, the doctrine of equivalents was used to assess patentability and determining cases of infringement. In Russian law today, the doctrine of equivalents is applied in cases of infringement only.

Until 2014, the period to assess equivalence in Russia was before an infringement had taken place. Now, equivalence is assessed before the invention's priority date. Under these new rules, it is less likely that something would be considered to be equivalent because equivalence is assessed further in the past, when a skilled person in the art
would have had a more limited knowledge of the invention.

Despite the absence of specific legal regulations or guidance, Russian courts generally determine that a variant is an equivalent if:

- the technical result or effect with a replaced feature is the same; and
- an equivalent feature and a feature being replaced in a claim belong in the same technical field.

On the whole, Russian courts take a rather strict approach to assessing equivalence. Further, the doctrine is common in the mechanical field but not ordinarily applied in pharmaceutical cases. As a rule, the evaluation of a technical result or technical effect, which is achieved by the product if one feature is replaced by another, plays a key role in determining equivalence. If a replaced feature exhibits or gives a product a new technical property, it cannot be considered equivalent.

With regard to infringement, there is a stronger case against an alleged infringer if the patentee is able to:

- indicate the documents from the prior art in which the equivalent feature is disclosed; and
- show that the technical field in which the equivalent feature is disclosed corresponds to the technical field in which the patented invention belongs.

It is enough to provide information about the design, functions, structure, properties and other characteristics of the technical features, confirming the possibility of using such a feature as equivalent in a specific patented object.

**Some helpful tips**

These practical steps are recommended when drafting a patent application in Russia:

- try to avoid wording that is too narrow and limited in independent claims in order to permit for broader interpretations; and
- do not limit the preamble of the independent claim to technical fields or uses.

To facilitate the application of the doctrine of equivalence, the working principle and technical effects of each embodiment and of the distinguishing technical feature should be described in as much detail as possible.

However, it is important to note that the application of the doctrine of equivalents in the
Russian pharmaceutical sector is still significantly unpredictable, largely because it has not often been evoked. Because of this, patentees prefer challenging a regular, more outright infringement. When drafting patents in this country, it is best to recite as much about the preferred embodiments as possible in the independent claims because only independent claims can be considered for enforcement, and therefore the ability to apply the doctrine of equivalence is diminished and it helps to avoid the uncertain application of the doctrine and to increase the chances of finding regular infringement.