

BELARUS

Patent Law

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Title I Legal Protection of Inventions, Utility Models and Industrial Designs

1. Patents for Inventions, Utility Models and Industrial Designs

(1) Rights in inventions, utility models and industrial designs shall be protected by the State and attested to by a patent.

(2) A patent for an invention, a utility model or an industrial design shall attest to the authorship of the invention, utility model or industrial design, the priority date thereof and the exclusive right to use the invention, utility model or industrial design.

(3) A patent shall be valid as from the date of filing of the application with the State agency "the National Center of Intellectual Property" of the Committee on Science and Technologies to the Council of Ministers of the Republic of Belarus (hereinafter referred to as "the Patent Office"). An invention patent shall have a term of 20 years as from the date of filing of the application. Where the use of a substance incorporating an invention requires, in accordance with the legislation, the authorization of the competent authority, the term of the invention patent may be extended, at the request of the owner of the patent, by the Patent Office for a period not exceeding five years.

A utility model patent shall have a term 5 years as from the date of filing of the application and may be extended, at the request of the owner of the patent, by the Patent Office for a period not exceeding three years. An industrial design patent shall have a term of 10 years as from the date of filing of the application and may be extended, at the request of the owner of the patent, by the Patent Office for a period not exceeding five years.

(4) When computing any time limit referred to in paragraph (3) of this Article with respect to a patent which has been granted on a divisional application and which enjoys the priority in accordance with paragraph (6) of Article 16 of this Law, the date of filing of the divisional application shall be held to be the date on which the initial application was filed.

(5) The scope of the legal protection conferred by an invention patent or utility model patent shall be determined by the claims relating to the invention or utility model. The invention (utility model) claims shall represent a logical definition of the subject matter of the invention

(utility model) by the sum of all the essential features thereof. The description and the drawings may serve only to interpret the claims of the invention (utility model).

(6) The scope of the legal protection conferred by an industrial design patent shall be determined by the sum of its essential features as shown in the graphic representations of the article (model, design).

(7) The procedure for the granting of legal protection for inventions, utility models and industrial designs that have been declared secret in the prescribed manner and for the handling of secret inventions, utility models and industrial designs shall be laid down by the legislation.

2. Conditions of Patentability of Inventions

(1) Under this Law, an invention in any field of technology, whether a product or process, shall be granted legal protection if it is novel, involves an inventive step and is industrially applicable.

For the purposes of this Law, the term "product" means any article as a result of the human work and the term "process" means any process, art or method for performing interconnected actions upon an object (or objects), and also the application of a process, art or method or the use of a product for a desired purpose.

An invention shall be considered novel if it does not form part of the prior art.

An invention shall be considered to involve an inventive step if, having regard to the prior art, it is not obvious to a person skilled in the art.

The prior art shall consist of any kind of information which has been made available to the public anywhere in the world before the priority date of the claimed invention. When determining the novelty of an invention, the prior art shall likewise include all applications for the protection of inventions and utility models that have been filed by other persons in the Republic of Belarus, that enjoy earlier priority and that have not been withdrawn, and also inventions and utility models that have been patented in the Republic of Belarus.

An invention shall be considered industrially applicable if it can be used in industry, agriculture, public health or other fields of activity. Disclosure of information concerning the invention shall not adversely affect its patentability where it has the effect of making information on the invention generally accessible, where such disclosure is made by the applicant (or author) or by any other person who has obtained such

information directly or indirectly from them and where such disclosure occurred during the 12 months preceding the filing of the application with the Patent Office. The burden of proof of the foregoing shall be on the applicant.

(2) The following shall not be recognized as inventions:

- discoveries, scientific theories and mathematical methods;
- solutions concerning solely the outward appearances of manufactured articles and intended to satisfy aesthetic requirements;
- schemes, rules and methods for performing mental acts, playing games or doing business, and also algorithms and programs for computers;
- mere presentation of information.

The subject matter or activities referred to above shall not be recognized as inventions under this Law only to the extent to which an application for a patent for invention relates to such subject matter or activities as such.

(3) The following shall not be recognized as patentable inventions under this Law:

- plant varieties and animal breeds;
- topographies of integrated circuits;
- inventions contrary to public interest, humanitarian principles or morality.

3. Conditions of Patentability of Utility Models

(1) A technical solution relating to a device shall constitute a utility model eligible for legal protection under this Law if it is novel and industrially applicable.

A utility model shall be considered novel if the sum of its essential features does not form part of the prior art.

The prior art shall consist of any kind of information which has been made available to the public anywhere in the world, before the priority date of the claimed utility model, concerning devices of similar function and their use in the Republic of Belarus. When determining the novelty of a utility model, the prior art shall likewise include all applications for the protection of inventions and utility models that have been filed in the Republic of Belarus, that enjoy earlier priority and that have not been withdrawn, and also inventions and utility models that have been patented in the Republic of Belarus.

A utility model shall be considered industrially applicable if it can be used in industry, agriculture, public health and other fields of

activity.

Disclosure of information concerning the utility model shall not adversely affect its patentability where it has the effect of making information on the utility model generally accessible, where such disclosure is made by the applicant (or author) or by any other person who has obtained such information directly or indirectly from them and where such disclosure occurred during the 12 months preceding the filing of the application with the Patent Office. The burden of proof of the foregoing shall be on the applicant.

(2) Under paragraph (1) of this Law, no legal protection shall be granted for:

- solutions concerning solely the outward appearance of manufactured articles and intended to satisfy aesthetic requirements;
- solutions contrary to public interest, humanitarian principles or morality.

4. Conditions of Patentability of Industrial Designs

(1) An industrial design eligible for legal protection under this Law shall be construed as an artistic, or both artistic and technical, solution that determines the outward appearance of an article and that is novel and original. The article shall be held to be an industrial or handicraft object.

An industrial design shall be considered novel if the sum of its essential features was not known from information generally available in the world before the priority date of the industrial design.

When determining the novelty of an industrial design, due regard shall be had to all applications for the protection of industrial designs that have been filed by other persons in the Republic of Belarus, that enjoy earlier priority and that have not been withdrawn, and also industrial designs that have been patented in the Republic of Belarus.

An industrial design shall be considered original if its essential features determine the creativeness of the special aspects of the article.

The essential features of an industrial design shall be those features that determine the aesthetic and/or ergonomic aspects of the outward appearance of the article, its shape, configuration, ornamentation or combination of colors.

Disclosure of information concerning the industrial design shall not adversely affect its patentability where it has the effect of making information on the industrial design generally accessible, where such disclosure is made by the applicant (or author) or by any other person

who has obtained such information directly or indirectly from them and where such disclosure occurred during the 6 months preceding the filing of the application with the Patent Office. The burden of proof of the foregoing shall be on the applicant.

(2) Under paragraph (1) of this Article, no legal protection shall be granted for:

- solutions that are determined exclusively by the technical function of an article;
- solutions that are contrary to public interest, humanitarian principles or morality;
- architectural works (with the exception of minor architectural forms) and industrial, hydraulic and other stationary structures;
- printed matter as such;
- subject matter of unstable shape consisting of liquid or gaseous substances, powders or the like.

Title II Authors and Patent Owners

5. Author of an Invention, Utility Model or Industrial Design

(1) The natural person whose creative work has resulted in an invention, utility model or industrial design shall be recognized as the author thereof.

(2) Where an invention, utility model or industrial design is the result of the joint creative work of two or more natural persons, those persons shall be recognized as the joint authors thereof. The conditions for exercising the rights in the invention, utility model or industrial design shall be determined by agreement between them.

(3) Natural persons who have not made any personal creative contribution to the making of the invention, utility model or industrial design, but have merely provided the author (or joint authors) with technical, organizational or material assistance, or have helped in the securing of rights in the invention, utility model or industrial design or in the use thereof, shall not be recognized as joint authors.

6. Patent Owner

(1) The person (or persons) to whom an invention, utility model or industrial design patent has been granted shall be deemed the owner (or owners) of the patent.

(2) The right to the patent shall belong:

- to the author (or joint authors) of the invention, utility model or industrial design;
- to the natural or legal person who is the employer of the author of the invention, utility model or industrial design in the cases provided for in paragraph (3) of this Article;
- to the natural and/or legal person (or persons) who, subject to agreement between them, is or are mentioned by the author (or joint authors) in the application for the grant of a patent or in the request filed with the Patent Office prior to the date of registration of the invention, utility model or industrial design;
- to the successor (or successors) in title of the persons specified in this paragraph.

(3) The right to the patent for a service invention, utility model or industrial design that has been made by an employee shall belong to the

employer, unless otherwise provided in the contract between them. An invention, utility model or industrial design shall be deemed a service invention, utility model or industrial design if its subject matter relates to the employer's area of activity and if the employee has made it in connection with the work forming part of his duties, or as a result of a specific task entrusted to him by his employer, or if the employee has used the knowledge or means provided by his employer for its making. The employee shall be bound to inform his employer in writing of the service invention, utility model or industrial design that he has made. Where the employer, within three months after having been notified by the employee of the invention, utility model or industrial design that he has made, has not filed an application with the Patent Office, the employee shall have the right to be granted a patent. In such case, the employer shall be entitled to use the invention, utility model or industrial design under the conditions specified in a licensing agreement.

Where the employer has obtained the patent or, through his own fault, has failed to obtain a patent on his application, the employee shall be entitled to remuneration commensurate with the profit that the employer has made or expected to make through the proper use of the invention, utility model or industrial design. The amount of remuneration and the terms of the payment thereof shall be stipulated in a contract between the employer and the employee.

Where the parties have failed to agree on the amount and the procedure for the payment of remuneration or compensation, the dispute shall be referred to the courts. The minimum amount of remuneration shall be prescribed by the legislation. Where the remuneration or compensation is not paid as stipulated in the contract, the offending employer shall be liable to the sanctions provided for in the legislation.

The termination of the employment contract shall not affect the rights and obligations of the employee and the employer arising from the making of a service invention, utility model or industrial design. The employer may also file an application for a service invention, utility model or industrial design before one year has expired as from the date of termination of the employment contract. After one year has expired, the right to file an application for a service invention, utility model or industrial design shall belong to the employee.

Other relations arising from the making of a service invention, utility model or industrial design shall be governed by the legislation.

Title III Rights in Inventions, Utility Models or Industrial Designs

7. Rights of the Author

(1) The author of an invention, utility model or industrial design shall be entitled to moral and related economic rights.

(2) Authorship (the right to be recognized as the author) shall be a personal non-property right and that right shall enjoy protection of unlimited duration. The right to authorship shall be inalienable and non-transferable.

8. Rights and Obligations of the Patent Owner

(1) The exclusive right to use the patented invention, utility model or industrial design shall belong to the owner of the patent.

The exclusive right to use an invention, utility model or industrial design shall consist of the right of the owner of the patent to use the invention, utility model or industrial design at his discretion, insofar as such use does not infringe the rights of other persons, and also in the right to prohibit other persons from using the invention, utility model or industrial design.

(2) The exclusive right to use the patented invention which is a process for obtaining a product shall also extend to the product directly obtained through such process. In the absence of proof to the contrary, a new product shall be deemed to have been obtained through the patented process.

(3) The exclusive right to use the patented invention, utility model or industrial design shall be exercised by the owner of the patent during the term of the patent starting on the date on which the particulars of the patent grant were published in the Official Bulletin of the Patent Office.

(4) The owner of the patent shall exercise the rights conferred on him by the patent without causing a prejudice to the rights of other persons or to the interests of society or of the State.

(5) At the request of the owner of the patent, it shall be ordered that infringement of his exclusive right be stopped and that the owner of the patent be compensated by the infringer for damages incurred in accordance with the legislation.

9. Acts Constituting Infringement of the Exclusive Rights of Patent Owners

The following acts shall be considered infringements of the exclusive right of the owner of the patent if performed without his authorization:

- the manufacture, use, importation, offering for sale, sale or any other form of marketing or storage for that purpose of a product or an article incorporating the patented invention, utility model or industrial design, and also the performance of the said acts in relation to a device in the operation or exploitation of which a patented process is employed in accordance with the purpose claimed;
- the use of a process protected by an invention patent or marketing or storage for that purpose of a product directly obtained by a process protected by an invention patent.

10. Acts Not Constituting Infringement of the Exclusive Rights of Patent Owners

The following shall not be considered infringements of the exclusive right of the owner of the patent:

- the use of devices incorporating patented inventions, utility models or industrial designs in the construction or operation of means of transport (seagoing or river vessels, aircraft, spacecraft or land vehicles) of other countries when such means of transport temporarily or accidentally enter the territory of the Republic of Belarus, provided that such devices are used there exclusively for the needs of the means of transport. Such acts shall not be deemed to infringe the exclusive right of the owner of the patent if the means of transport belong to natural or legal persons of countries affording the same rights to natural or legal persons of the Republic of Belarus;
- the use of devices incorporating a patented invention, utility model or industrial design for the purposes of scientific research or experimentation;
- the use of devices incorporating patented inventions, utility models or industrial designs in the event of exceptional or force-majeure circumstances, provided that the patent owner is subsequently paid equitable compensation;
- the use of devices incorporating patented inventions, utility models or industrial designs for private and non-commercial purposes;
- the occasional preparation, on prescription, of a medicine incorporating a patented invention in a pharmacy;
- the use, offering for sale, sale, importation or storage for those purposes of a product incorporating a patented invention, utility model or industrial design if that product has been lawfully put on the market

in the Republic of Belarus.

11. Assignment or Other Transfer of the Patent and of the Rights Deriving from the Patent to Third Parties, Pledge of Economic Rights

(1) The owner of the patent may assign the patent by contract and the right to use an invention, utility model or industrial design by license to any natural or legal person.

(2) The exclusive right of the owner of the patent to use the patented invention, utility model or industrial design and the right of the author to remuneration may be transferred by succession or inherited.

(3) The economic rights attested to by a patent may be pledged.

Title IV Grant of Patents

12. Filing of Patent Applications

(1) An application for a patent for inventions, utility models or industrial designs shall be filed with the Patent Office by the person or persons who is or are entitled to obtain the patent in accordance with paragraph (2) of Article 6 of this Law (hereinafter referred to as "the applicant or applicants").

The applicant may act himself or through a patent agent registered with the Patent Office for the filing of applications with the Patent Office and for the purposes of any procedure before the Patent Office.

(2) The application filed through a patent agent shall be accompanied by a power of attorney issued by the applicant or applicants.

(3) The conditions to be satisfied by the elements of the invention, utility model or industrial design application shall be determined by the Government agency of the Republic of Belarus to be authorized by the Council of Ministers of the Republic of Belarus.

13. Applications for Invention Patents

(1) The application for a patent for invention (hereinafter referred to as "the invention application") shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (requirement of unity of invention).

(2) The invention application shall contain:

1. a request for the grant of a patent, stating the names of the inventor or inventors and the person or persons in whose name the grant of a patent is sought, together with the addresses of their places of residence or of business;
2. a description, disclosing the claimed invention in sufficient detail for it to be carried out;
3. one or more claims defining the subject matter of the invention and fully supported by the description;
4. drawings and other material where they are necessary for the understanding of the subject matter of the invention;
5. an abstract.

(3) The filing date of an invention application shall be the date on which the Patent Office has received all of the elements allowing to establish

priority in accordance with paragraph (1) of Article 16 of this Law or, if the said elements are filed on different dates, the date on which the Patent Office has received the last of the missing elements.

(4) The document attesting payment of the prescribed fee or circumstances affording entitlement to exemption from payment or to a reduction in the amount of the fee shall be submitted together with the invention application or within two months following the date of its receipt at the Patent Office. Where the said document is not submitted within the time limit specified, the invention application shall be deemed withdrawn.

14. Applications for Utility Model Patents

(1) The application for the grant of a utility model patent (hereinafter referred to as "the utility model application") shall relate to one utility model only or to a group of utility models so linked as to form a single general creative concept (requirement of unity of utility model).

(2) The utility model application shall contain:

- a request for the grant of a patent, stating the names of the author or authors of the utility model and the person or persons in whose name the grant of a patent is sought, together with the addresses of their places of residence or of business;
- a description, disclosing the claimed utility model in sufficient detail for it to be made;
- one or more claims defining the subject matter of the utility model and fully supported by the description;
- drawings and other material where they are necessary for the understanding of the subject matter of the utility model;
- an abstract.

(3) The filing date of a utility model application shall be the date on which the Patent Office has received all of the elements allowing to establish priority in accordance with paragraph (1) of Article 16 of this Law or, if the said elements are filed on different dates, the date on which the Patent Office has received the last of the missing elements.

(4) The document attesting payment of the prescribed fee or circumstances affording entitlement to exemption from payment or to a reduction in the amount of the fee shall be submitted together with the utility model application or within two months following the date of its receipt at the Patent Office. Where the said document is not submitted within the

time limit specified, the utility model application shall be deemed withdrawn.

15. Applications for Industrial Design Patents

(1) The application for the grant of an industrial design patent shall relate to one industrial design only or to a group of industrial designs so linked as to form a single general creative concept (requirement of unity of industrial design).

(2) The industrial design application shall contain:

- a request for the grant of a patent, stating the names of the author or authors of the industrial design and the person or persons in whose name the grant of a patent is sought, together with the addresses of their places of residence and of business;
- a set of graphic representations of the article (model, design), providing full and detailed views of its outward appearance;
- a description of the industrial design, covering all its essential features;
- drawings, affording general views of the article, ergonomic scheme, or confection chart if they are necessary for the disclosure of the nature of the industrial design.

(3) The filing date of an industrial design application shall be the date on which the Patent Office has received all of the elements allowing to establish priority in accordance with paragraph (2) of Article 16 or, if the said elements are filed on different dates, the date on which the Patent Office has received the last of the missing elements.

(4) The document attesting payment of the prescribed fee or circumstances affording entitlement to exemption from payment or to a reduction in the amount of the fee shall be submitted together with the industrial design application or within two months following the date of its receipt at the Patent Office. Where the said document is not submitted within the time limit specified, the industrial design application shall be deemed withdrawn.

16. Priority of Inventions, Utility Models and Industrial Designs

(1) The priority of an invention or utility model shall be determined by the date of filing with the Patent Office of an invention or utility model application containing the request for the grant of a patent, the description, the claims and the drawings, where referred to in the

description.

(2) The priority of an industrial design shall be determined by the date of filing with the Patent Office of an industrial design application containing the request for the grant of a patent, a set of graphic representations of the article (model, design) and the description.

(3) Priority may be determined by the filing date of the first application in a State party to the Paris Convention for the Protection of Industrial Property (Convention priority) if the invention application or the utility application has been filed with the Patent Authority within 12 months, and in the case of the industrial design application within six months, from that date. The Patent Authority may, at the request of the applicant, extend the said time limit for a period not exceeding two months.

The applicant who wishes to avail himself of the right to Convention priority in respect of an invention application shall be required to state the fact when filing the invention application or within two months following the date on which the invention application has been received by the Patent Authority and shall submit to the Patent Authority a certified copy of the first application no later than 16 months after the date on which the first application was filed. If the applicant fails to comply with the said time limit, the Patent Authority may restore the right of priority at the applicant's request, filed before that time limit has expired, provided that the applicant has requested a copy of the first application no later than 14 months after the date on which the first application was filed and has submitted it to the Patent Authority within two months as from the date on which he has received it.

An applicant who wishes to avail himself of the right to Convention priority in respect of a utility model or industrial design application shall be required to state the fact when filing the utility model or industrial design application or within two months following the date on which the utility model or industrial design application has been filed with the Patent Authority, and shall attach thereto a certified copy of the first application or shall submit it to the Patent Authority no later than three months after the date on which the utility model or industrial design application was received at the Patent Authority.

(4) Priority may be determined by the date of receipt by the Patent Authority of additional documents if they are submitted by the applicant as a separate application filed within three months of the date of receipt by the applicant of a notification from the Patent Authority to the effect that the additional

documents will not be taken into consideration since they modify the subject matter of the claimed invention, utility model or industrial design, and, on the date of filing of the separate application, the application in respect of which the additional documents were submitted, has not been withdrawn or has not been deemed withdrawn.

(5) Priority may be determined by the date of filing with the Patent Authority of an earlier application of the same applicant that disclosed the subject matter of the invention, utility model or industrial design, and that was not withdrawn or was not deemed withdrawn on the date of filing of the application claiming such priority, provided that the application claiming such priority reaches the Patent Authority no later than 12 months after the date of filing of the earlier application in respect of an invention and no later than six months after the date of filing of the earlier application in respect of a utility model or industrial design. In such a case, the earlier application shall be deemed withdrawn.

Priority may not be determined by the filing date of an application in which an earlier priority was already claimed.

(6) The priority of an invention, utility model or industrial design under a divisional application shall be determined by the date of filing with the Patent Office of the initial application of the same applicant disclosing the subject matter thereof, or if there exists the right to establish an earlier priority on the initial application, by the date of such priority, provided that, on the filing date of the divisional application, the initial application has not been withdrawn or has not been deemed withdrawn, and the divisional application is filed with the Patent Office before a final decision refusing the grant of a patent has been taken on the initial application or, where a patent has been granted on the initial application, before the date of registration of the invention, utility model or industrial design in accordance with Article 28 of this Law.

For the purposes of this Law, the term "divisional application" means an application which may be divided from the initial application if the initial application did not comply with the requirement of unity of invention, utility model or industrial design. The applicant of the initial application may also file the divisional invention application in cases where:

- an invention was not included in the claims when the initial application was filed, but was disclosed in the description;
- a group of inventions for one patent was claimed but the applicant decided

to obtain a patent for each invention.

(7) The priority of an invention, utility model or industrial design may be determined on the basis of two or more earlier applications or of additional materials thereto, provided that each such application meets the conditions specified in paragraphs (3) - (6) of this Article.

(8) Where it is ascertained in the examination that the identical inventions, utility models or industrial designs have the same priority date, the patent shall be granted for the application having a proven earlier mailing date, or, where the mailing dates coincide, for the application having an earlier registration number at the Patent Office, unless otherwise agreed between the applicants.

17. Amendment or Correction of the Application

(1) The applicant shall have the right to amend or correct elements of the invention application, provided that the amendments or corrections do not modify the subject matter of the claimed invention, before a decision to grant a patent or to refuse the grant of a patent has been taken by the Patent Office with respect to the invention application.

Within two months after the filing date of the utility model or industrial design application the applicant shall have the right to amend or correct elements of the utility model or industrial design application, provided that the amendments or corrections do not modify the subject matter of the claimed utility model or industrial design.

Additional elements shall be deemed to modify the subject matter of the claimed invention or utility model if they contain characteristics that do not appear in the description (claims) as initially filed and which would have to be reflected in the invention or utility model claims. Additional elements shall be deemed to modify the subject matter of the claimed industrial design if they contain the representations of the article (model, design) showing the features which are the essential features of the industrial design not appearing in the initial representations of the article (model, design).

(2) Any amendment in the indication of the applicant when assigning the right to the patent or any amendment relating to the change in the name of the applicant, and also any correction of technical and obvious mistakes in the application elements may be permitted up to the date of registration of the invention, utility model or industrial design.

18. Examination of Invention Applications

(1) The examination of an invention application shall be carried out by the Patent Office in accordance with this Law and other normative texts. It shall consist of a preliminary examination and a substantive examination.

(2) Where the applicant files additional elements relating to the application, an examination shall be made to ascertain whether they modify the subject matter of the claimed invention.

The additional elements modifying the subject matter of the claimed invention shall not be taken into consideration for the purposes of the examination and the applicant may file them in the form of a separate application.

(3) Where the application does not comply with the requirement of unity of invention, the Patent Office shall invite the applicant to state, within two months following the date of notification of non-compliance with the requirement, which of the solutions should be examined and to correct, if necessary, the elements of the application accordingly. Where the application does not comply with the requirement of unity of invention or where other solutions are contained in the initial application, the applicant may file one or more divisional applications.

If the applicant fails, within two months following the date of receipt of the notification, to state which solution or solutions should be examined and to furnish corrected documents, the examination shall be carried out with respect to the solution that is mentioned first in the claims.

(4) An application may be withdrawn by the applicant prior to the date of publication of the relevant particulars but not later than the date of registration of the invention.

19. Preliminary Examination of Invention Applications

(1) An invention application shall be subject to preliminary examination within three months of the date of its receipt at the Patent Office.

(2) The preliminary examination shall be carried out in order to verify that the required documents are all present and that they comply with the prescribed conditions, and to determine whether the claimed solution relates to subject matter that is patentable.

(3) The Patent Office shall inform the applicant in writing of a decision

taken as a result of the preliminary examination and of the filing date established in accordance with Article 16 of this Law within 5 working days as from the date on which the decision is taken.

(4) Where it is found during the preliminary examination that the claimed solution does not relate to subject matter that is patentable under this Law, a decision shall be taken to refuse the grant of a patent.

(5) Where necessary, the applicant may be invited by the Patent Office to provide more information with regard to his application within two months following the date of receipt of the relevant invitation. In such case, the examination period shall be extended for a period that is necessary in order to receive the applicant's response.

If the applicant fails to provide the necessary additional information to the Patent Office within the period laid down or does not submit the documents that were missing on the date of receipt of the application, or file a request for extension of the period laid down, the application shall be deemed withdrawn and the Patent Office shall notify the applicant accordingly.

20. Publication of Particulars of Invention Applications

(1) The Patent Office shall publish the particulars of every application that has successfully undergone preliminary examination in the Official Bulletin of the Patent Office (hereinafter referred to as "the Official Bulletin") on the expiration of a period of 18 months from the filing date of the application. The list of published particulars shall be determined by the Patent Office.

(2) At the request of the applicant filed before the expiration of a period of 12 months from the filing date of the application, the Patent Office may publish the particulars of the application before the period referred to in paragraph (1) of this Article expires.

(3) Once the particulars of the application have been published, any person shall be entitled to inspect the application documents maintained by the Patent Office.

(4) The particulars of the application shall not be published if, prior to the expiration of the time limit for publication, the application has been withdrawn or is deemed to have been withdrawn or the grant of a patent has been decided and the patent has been registered in the State Register

of Inventions, or a final decision has been taken to refuse the application.

(5) The inventor shall be entitled to waive his right to be named as such in the publication of the particulars of the application if he is not the owner of the patent.

21. Substantive Examination of Invention Applications

(1) Within three years following the date on which the Patent Office received the application, the applicant or any other interested person may file a request for substantive examination of the application. Where no request for substantive examination is filed within the prescribed time limit, the application shall be deemed withdrawn.

(2) The substantive examination of invention applications shall be carried out in order to verify the patentability of the invention and to determine the priority thereof.

(3) During the substantive examination procedure the Patent Office may request the applicant to furnish additional elements, including amended claims, where such elements are indispensable for the purposes of the examination.

The applicant may request, within one month of the date of receipt of the Patent Office's request, a copy of the documents cited against his application during the examination.

The additional elements requested by the Patent Office shall be furnished within two months after the receipt by the applicant of the request or the copies of the documents cited against the application and shall not modify the subject matter of the invention.

Where the applicant has failed to furnish, within the prescribed time limit, either the additional elements requested by the Patent Office or a request for extension of the said time limit, the application shall be deemed withdrawn.

The additional elements modifying the subject matter of the claimed invention shall not be taken into consideration for the purposes of the examination and the applicant shall be notified accordingly.

(4) Where the substantive examination finding is that the claimed invention, as defined by the applicant in the claims, complies with the requirements of patentability, the Patent Office shall decide to grant a patent with the said claims and the priority date as determined.

(5) Where the Patent Office finds that the claimed invention, as defined by the applicant in the claims, does not comply with the requirements of patentability, it shall decide to refuse the grant of a patent.

A decision refusing the grant of a patent shall likewise be taken in the case where the applicant fails to amend the claims after having been notified that the claims as proposed by him define the invention that complies with the requirements of patentability but contains features that did not figure in the initial description or claims.

(6) The Patent Office shall inform the applicant in writing of a decision taken as a result of the substantive examination and also of the priority date of the invention within 5 working days as from the date on which the decision was taken.

(7) The applicant may request, within one month of the date of receipt of the decision on the application, a copy of the documents cited against his application as a result of the substantive examination.

(8) The decision to grant a patent may be reconsidered by the Patent Office before the registration of the invention where the invention or utility model application has been filed that enjoys earlier priority in accordance with paragraphs (3-6) of Article 16 of this Law, and also in the case where the application or the granted patent in respect of the identical invention or utility model that enjoys the same priority has been found.

(9) The Patent Office may reconsider the decision taken as a result of the substantive examination if it has been taken in violation of the manner of prosecution of the invention application established in accordance with this Law. The decision to grant a patent may be reconsidered before the invention has been registered in the State Register of Inventions.

(10) In the event of disagreement with the decision to refuse the grant of a patent, the applicant shall have the right to file a request for reconsideration with the Patent Office within three months following the date on which he received the decision or, if he has so requested, the copies of the documents cited against his application.

(11) Reconsideration shall take place within six months as from the date on which the applicant's request was received at the Patent Office.

(12) If it is found during the examination that identical inventions have

the same priority date, a single patent shall be granted to the applicants, subject to their agreement.

In the absence of agreement the applicants may apply to a court to decide the matter of the patent grant. No patent shall be granted by the Patent Office until the court has ruled on the matter.

22. Provisional Legal Protection

(1) An invention in respect of which an application has been filed shall, as from the date of publication of the particulars of the application and up to the date of publication of the particulars of the patent grant, enjoy provisional legal protection within the limits of the published claims.

(2) Any natural or legal person who uses the claimed invention during the period of provisional legal protection shall be required to pay compensation to the owner of the patent after the grant thereof. The amount of the compensation and the procedure for paying thereof shall be determined by agreement between the parties.

(3) If the application is withdrawn or is deemed to have been withdrawn or if a final decision refusing the grant of a patent is taken, the provisional legal protection shall be deemed never to have existed.

23. Examination of Utility Model Applications

(1) The examination of utility model applications shall be carried out by the Patent Office in accordance with this Law and other normative texts.

(2) Utility model applications shall not be subject to verification of compliance with the patentability requirements laid down by this Law.

(3) The examination shall be carried out to verify that all necessary documents are present and that they satisfy the required conditions, and to examine whether the claimed utility model relates to subject matter that is patentable.

(4) The examination shall be carried out within three months of the date on which the application is received at the Patent Office.

(5) If it is found as a result of the examination that the application is for a utility model that does not relate to patentable subject matter, the Patent Office shall take a decision to refuse the grant of a patent.

(6) Where the documents contained in the application do not comply with the prescribed requirements, the applicant shall be invited by the Patent Office to furnish corrected or missing documents within two months of the date of receipt of the invitation. If the applicant fails to comply within the prescribed time limit with the invitation or fails to file a request for extension of the time limit, the application shall be deemed withdrawn.

(7) Where the applicant files additional elements, an examination shall be made to ascertain whether they modify the subject matter of the claimed utility model.

(8) The additional elements modifying the subject matter of the claimed utility model shall not be taken into consideration for the purposes of the examination and the applicant may file them in the form of a separate application.

(9) Where the application does not comply with the requirement of unity of utility model, the applicant shall be invited to state, within two months, which solution should be examined and to correct the description, the claims and the drawings accordingly.

If the applicant fails, within two months following the date of receipt of the notification of non-compliance with the requirement of unity of utility model, to state which of the solutions should be examined and to furnish the corrected documents, the application shall be deemed withdrawn.

(10) In order to determine whether a claimed utility model is novel, the applicant or any interested person may request that a state-of-the-art search be carried out in respect of the application. The conditions for the search and the communication of information obtained shall be determined by the Patent Office.

(11) Where it is ascertained, as a result of the examination, that the application concerns a utility model that is patentable and that the documents contained in the application comply with the prescribed requirements, a decision to grant a patent shall be taken by the Patent Office.

(12) The Patent Office shall inform the applicant in writing of a decision taken as a result of the examination, and also that a priority date has

been determined in accordance with Article 16 of this Law within 5 working days as from the date on which the decision is taken.

(13) The applicant shall be entitled to withdraw his application prior to registration of the utility model.

24. Examination of Industrial Design Applications

(1) The examination of industrial design applications shall be carried out by the Patent Office in accordance with this Law and other normative texts.

(2) Industrial design applications shall not be subject to verification of compliance of the claimed industrial design with the patentability requirements laid down by this Law.

(3) The examination shall be carried out to verify that all necessary documents are present and that they satisfy the required conditions, and to examine whether the claimed industrial design relates to subject matter that is patentable.

(4) The examination shall be carried out within three months of the date on which the application is received at the Patent Office.

(5) If it is found as a result of the examination that the application is for an industrial design that does not relate to patentable subject matter, the Patent Office shall take a decision to refuse the grant of a patent.

(6) Where the documents contained in the application do not comply with the prescribed requirements, the applicant shall be invited to furnish corrected or missing documents within two months. If the applicant fails to comply within the prescribed time limit with the invitation or fails to file a request for extension of the time limit, the application shall be deemed withdrawn.

(7) Additional elements that alter the essential characteristics of the industrial design as a whole shall not be taken into consideration for the purposes of the examination. The applicant may file them in the form of a separate application.

(8) Where the application does not comply with the requirement of unity

of industrial design, the applicant shall be invited to state, within two months, which industrial design should be examined and to correct the relevant documents.

If the applicant fails, within two months following the date of receipt of the notification of non-compliance with the requirement of unity of industrial design, to state which of the industrial designs should be examined and to furnish the corrected documents, the application shall be deemed withdrawn.

(9) Where it is ascertained, as a result of the examination, that the application concerns an industrial design that is patentable and that the documents contained in the application comply with the prescribed requirements, a decision to grant a patent shall be taken by the Patent Office.

(10) The Patent Office shall inform the applicant in writing of a decision taken as a result of the examination, and also that a priority date has been determined in accordance with Article 16 of this Law within 5 working days as from the date on which that decision is taken.

(11) The applicant shall be entitled to withdraw his application prior to registration of the industrial design.

25. Appeal Against Decisions on Applications

(1) In the event of disagreement with the decision taken as a result of the preliminary or the substantive examination of the invention application or with the decision taken as a result of the examination of the utility model or industrial design application, the applicant shall have the right to appeal against that decision, setting out his arguments, to the Examination Appeal Board of the Patent Office (hereinafter referred to as "the Appeal Board") and/or to the courts. The Appeal Board is an authority for hearing appeals from decisions taken as a result of the examination of applications for industrial property subject matter, and also for examining and ruling on opposition to the grant of a patent for industrial property subject matter.

(2) The applicant shall lodge an appeal with the Appeal Board within three months of the date on which he received the relevant decision or, if he has so requested, copies of the documents cited against his application. The appeal shall be considered within four months of the date on which it was received. In the case of a complex application, that period may

be extended with the agreement of the applicant.

(3) The applicant may appeal to a court of justice against the ruling of the Appeal Board within a period of six months from the date on which the ruling was received.

26. Conversion of Applications

(1) The applicant may, prior to publication of the particulars of the invention application but not later than the date on which he has received the decision to grant a patent for invention, convert the said application into a utility model application by filing a request to that effect with the Patent Office.

The utility model application may be converted into an invention application at any time before the applicant has received a decision to grant a patent for utility model or, if a decision to refuse the grant of a patent for utility model has been taken, prior to expiration of the time limit for lodging an appeal against that decision.

(2) A converted application shall maintain the priority date and the filing date of the initial application.

27. Reinstatement of Rights Contingent on Time Limits

(1) An applicant who fails to comply with the time limits laid down in paragraph (5) of Article 19, paragraphs (3) and (10) of Article 21 and paragraph (2) of Article 25 may, upon request, be reinstated in his rights by the Patent Office if he pays the prescribed fee and presents legitimate reasons to justify his failure.

(2) The request for reinstatement of rights contingent on a time limit may be filed by the applicant not later than 12 months after the expiration of the time limit concerned.

28. Registration of Inventions, Utility Models and Industrial Designs

(1) After the decision to grant a patent has been taken, and subject to the payment of the prescribed fee, the Patent Office shall register the invention in the State Register of Inventions or, in the case of a utility model, in the State Register of Utility Models or, in the case of an industrial design, in the State Register of Industrial Designs. The State Registers shall include the particulars of the registration of the invention, utility model or industrial design, and also any amendments of the said particulars. The list of the particulars of the invention,

utility model or industrial design that are entered in the State Registers shall be prescribed by the Patent Office.

(2) In order to enter an amendment in the relevant State Register, the owner of the patent shall, at the same time as he files a request to that effect, furnish to the Patent Office the documents that justify the reasons for the amendment.

(3) The Patent Office may, on its own initiative or at the request of the owner of the patent, correct grammatical, typographical or other obvious errors in the entries concerning the registration of the invention, utility model or industrial design in the State Registers.

(4) In the event of failure to furnish the document attesting payment of the prescribed fee for the registration of an invention, utility model or industrial design or for the grant of a patent, the invention, utility model or industrial design shall not be registered in the State Register concerned and the patent shall not be issued, and the relevant application shall be deemed withdrawn.

29. Publication of Particulars of Patents

(1) The Patent Office shall publish the particulars of the invention patent, utility model patent or industrial design patent in the Official Bulletin within six months as from the date the invention, utility model or industrial design is entered in the relevant State Register. The list of the published particulars shall be determined by the Patent Office.

(2) There shall also be published in the Official Bulletin all amendments that are entered in the State Registers.

30. Grant of Patents

(1) After having published the particulars of the invention, utility model or industrial design patent, the Patent Office shall issue a patent to the owner of the patent.

(2) Where two or more persons are entitled to obtain a patent, one single patent shall be issued to them naming all patent owners.

31. Patent Fees

(1) Fees shall be payable for the filing of an invention, utility model or industrial design application, for the registration of an invention,

utility model or industrial design, for the grant and maintenance of a patent and for the performance of other acts relating to the patenting of inventions, utility models and industrial designs.

(2) The list of acts for which fees are payable, the amounts of the fees and the time limits for paying them, shall be determined by the Council of Ministers of the Republic of Belarus.

(3) The procedure for using the fees shall be laid down by normative texts.

32. Patenting Abroad

(1) Natural and legal persons of the Republic of Belarus shall be entitled to seek patents for inventions, utility models and industrial designs abroad.

(2) Before filing an invention, utility model or industrial design application abroad, the applicant shall be required to file a corresponding application in the Republic of Belarus and to inform the Patent Office of his intention to seek an invention, utility model or industrial design patent abroad.

If no prohibition of the Patent Office is notified to him within three months following receipt of notice of his intention, he may subsequently file invention, utility model or industrial design applications abroad. The filing abroad of an invention, utility model or industrial design application may be effected before the expiration of the prescribed time limit, but not earlier than after verification of the presence of confidential information, the disclosure of which may be prejudicial to the security of the Republic of Belarus, carried out in accordance with the procedure prescribed by the Council of Ministers of the Republic of Belarus.

Inventions, utility models and industrial designs including confidential information, the disclosure of which may be prejudicial to the security of the Republic of Belarus, shall be kept secret in the manner prescribed by the legislation and shall not be patented abroad.

(3) Any expenses occurred in seeking invention, utility model or industrial design patents abroad shall be borne by the applicant or, with his consent, by any other natural or legal person.

(4) Applications for seeking patents under international treaties to which the Republic of Belarus is party shall be filed with the Patent Office,

unless otherwise provided for in accordance with provisions of those international treaties.

Title V Lapse and Restoration of Patents

33. Invalidation of Patents

(1) Throughout the term of its validity, an invention, utility model or industrial design patent may be invalidated, either totally or in part, in the following cases:

(a) the protected invention, utility model or industrial design does not meet the conditions of patentability specified in this Law;

(b) the claims of the protected invention or utility model include features that did not appear in the description or claims as initially filed;

(c) the patent contains an incorrect indication of the author (joint authors) or the patent owner (patent owners).

(2) The Patent Office shall publish information concerning invalidated patents in the Official Bulletin.

(3) Any natural or legal person may file opposition to the grant of a patent with the Appeal Board on the grounds specified in subparagraphs (a) and (b) of paragraph (1) of this Article.

Opposition to the grant of a patent shall be considered by the Appeal Board within six months of the date on which it was received. The opponent and the owner of the patent may take part in the proceedings.

The decision taken by the Appeal Board on the opposition to the patent grant may, within six months from the date on which it was received, be appealed to the courts by the opponent or the owner of the patent.

(4) Opposition to the grant of a patent filed on the ground specified in subparagraph (c) of paragraph (1) of this Article shall be considered by the courts.

34. Premature Termination of Patents

(1) The validity of a patent shall terminate prematurely

(a) at the request of the owner of the patent, filed with the Patent Office;

(b) in the event of failure to pay the annual maintenance fee within the prescribed time limit;

(c) in the event of invalidation of the patent under Article 33 of this Law.

(2) The Patent Office shall publish information on prematurely terminated patents in the Official Bulletin.

35. Restoration of Patent Validity

(1) Where the validity of a patent has been terminated in the event of failure to pay the patent maintenance fee and where the term of the patent has not yet expired, the validity of that patent may, at the request of the owner of the patent, be restored by the Patent Office, provided that the owner of the patent has paid the maintenance fee arrears and the prescribed fee for the filing of the request.

(2) Any natural or legal person who, during the period between the date on which the invention, utility model or industrial design patent has lapsed and the date of its restoration in accordance with paragraph (1) of this Article, has used an identical solution on the territory of the Republic of Belarus or has made the necessary preparations for such use, shall maintain the right to continue using that solution free of charge, provided that the scope of the use is not extended (right of subsequent user).

Title VI Use of Inventions, Utility Models and Industrial Designs

36. Manner of Using Inventions, Utility Models and Industrial Designs

(1) The marketing of any product in which a patented invention has been used or the application of a patented process shall be deemed to constitute use of an invention.

The manufacture of a product shall be deemed to involve use of a patented invention and a patented process shall be deemed to have been applied if the product or process incorporates each essential feature of the invention included in an independent claim or an equivalent feature.

(2) The marketing of any product in which a patented utility model has been used shall be deemed to constitute use of a utility model.

The manufacture of a product shall be deemed to involve use of a patented utility model if the product incorporates each essential feature of the utility model included in an independent claim or an equivalent feature.

(3) The marketing of any article in which a patented industrial design has been used shall be deemed to constitute use of an industrial design.

The manufacture of an article shall be deemed to involve use of a patented industrial design if the article incorporates all the essential features of the industrial design and if it is visually indistinguishable from the representation protected by the patent.

(4) No person who is not the owner of the patent may use the invention, utility model or industrial design without having obtained the authorization of the owner of the patent, except where such use does not infringe the rights of the owner of the patent under this Law.

(5) Any natural or legal person wishing to use the invention, utility model or industrial design shall be required to conclude an agreement with the owner of the patent for the grant of the right to use the invention, utility model or industrial design (hereinafter referred to as "licensing agreement").

(6) Any licensing agreement, patent assignment contract or pledge on the economic rights attested to by a patent shall be registered with the Patent Office, failing which it shall be deemed null and void.

(7) Where two or more persons are owners of the same patent, their relations with regard to the use of the invention, utility model or industrial design

under the patent shall be determined by agreement between them. In the absence of agreement, each of the owners may use the invention, utility model or industrial design at his discretion, except with respect to the licensing or assignment of the patent.

37. Open Licensing

(1) The owner of a patent may communicate to the Patent Office, for official publication, a declaration in which he undertakes to grant to any person the right to use the invention, utility model or industrial design (open licensing) on the basis of an ordinary, non-exclusive license. In such cases, the patent maintenance fee shall be reduced by 50% as from the year following the year of publication of the declaration.

(2) Any person wishing to use the invention, utility model or industrial design shall be entitled to seek from the owner of the patent a licensing agreement on such conditions as have been specified in the declaration concerning the open licensing.

38. Compulsory Licensing

Where the owner of a patent has failed to use or has insufficiently used an invention within five years or a utility model or an industrial design within three years following the date of the grant of the patent, any person who wishes to use the patented invention, utility model or industrial design and is in a position to do so, but with whom the owner of the patent has refused to conclude a licensing agreement, may apply to the courts for the grant of a non-exclusive compulsory license. The court shall grant a compulsory license and shall lay down the limits on the use of the invention, utility model or industrial design, as also the amount, dates and procedure for the payment of royalties, unless the owner of the patent is able to prove that the failure to use or the insufficient use of the invention, utility model or industrial design is justified by legitimate reasons.

39. Right of Prior User

(1) Any natural or legal person who, before the priority date of a patented invention, utility model or industrial design and independently of the author, has devised and used in good faith on the territory of the Republic of Belarus a solution that is the same as the patented invention, utility model or industrial design or has made the necessary preparations for such use, shall maintain the right to continue using that solution free of charge, provided that the scope of the use is not extended (right of prior user).

(2) The right of prior user may only be transferred to another natural or legal person together with the production unit in which use of the identical solution has taken place or in which the necessary preparations for use were made.

Title VII Institutional Basis for the Legal Protection of Inventions, Utility Models and Industrial Designs and Liability for Infringement of the Rights of Authors and Patent Owners

40. Functions of the Patent Office

(1) The Patent Office shall, in accordance with this Law, receive applications in respect of inventions, utility models and industrial designs, shall undertake their examination, effect the State registration of inventions, utility models and industrial designs, grant patents having effect throughout the territory of the Republic of Belarus, ensure, within the limits of its competence, compliance with patent legislation, draft general implementing regulations, interpret and clarify the provisions of this Law, provide, in respect of the above matters, methodological assistance to interested natural and legal persons, train specialists in patent matters, provide patent information services, organize the official proficiency examination for patent agents and register them, and shall perform other functions specified in the legislation.

(2) Where an invention relates to a method of treatment for human beings, the Patent Office may, after the relevant application has been published, obtain information from the responsible State authorities on the possibility of using the claimed invention.

(3) Officials and employees of the Patent Office may not, during the period of their employment and for one year after the termination of their employment, file invention, utility model or industrial design applications or acquire directly or indirectly any right in a patent or draw up invention, utility model or industrial design applications on behalf of any other person.

41. Liability for Infringement of the Rights of Authors and Patent Owners

(1) Any person who usurps authorship, acquires status of joint author by coercion or without authorization discloses the subject matter of a presumed invention, utility model or industrial design before a patent application has been filed or who violates the exclusive rights of the patent owner shall be liable under the legislation.

(2) Officials and patent examiners of the Patent Office, and also of the authority which is responsible to give permission for the use of a patented product or process, shall be liable under the legislation if they disclose the subject matter of the relevant application prior to its publication.

Title VIII Final Provisions

42. International Treaties

Where an international treaty to which the Republic of Belarus is party contains provisions that differ from those set out in this Law, the provisions of the international treaty shall prevail.

43. Rights of Foreign Natural and Legal Persons and of Stateless Persons

Foreign natural and legal persons and stateless persons shall enjoy the rights provided by this Law and other legislative texts on patents for inventions, utility models and industrial designs of the Republic of Belarus, and have liability, on the same footing as natural and legal persons of the Republic of Belarus, except as otherwise provided in the laws of the Republic of Belarus and in international treaties.

44. Entry into Force of this Law

(1) This Law shall enter into force six months after its official publication, except for Article 46 which shall enter into force on the day of the official publication of this Law.

(2) Until the legislation of the Republic of Belarus has been made to comply with this Law, the hitherto applicable Law shall continue to apply where it is not contrary to this Law, unless otherwise provided in the Constitution of the Republic of Belarus.

45. Invalidation of Certain Legal Acts

In connection with the entry into force of this Law there shall be repealed:

(1) the Law of the Republic of Belarus on Industrial Design Patents of February 5, 1993 (published in the Vedomosti of the Supreme Soviet of the Republic of Belarus, 1993, No. 11, p. 119);

(2) the Law of the Republic of Belarus on Patents for Inventions and Utility Models of July 8, 1997 (published in the Vedomosti of the National Assembly of the Republic of Belarus, 1997, No. 27, p. 471);

(3) the Law of the Republic of Belarus of January 6, 1998, amending and supplementing the Law of the Republic of Belarus on Patents for Inventions and Utility Models (published in the Vedomosti of the National Assembly of the Republic of Belarus, 1998, No. 5, p. 26);

(4) Articles 1 and 3 of the Law of the Republic of Belarus of July 16, 2001, amending certain industrial property legal acts of the Republic of Belarus (registered in the National Register of Legal Acts, 2001, No. 67, 2/791);

(5) the Decision of the Supreme Soviet of the Republic of Belarus of February 5, 1993, on the Enactment of the Law of the Republic of Belarus on Industrial Design Patents (published in the Vedomosti of the Supreme Soviet of the Republic of Belarus, 1993, No. 11, p. 120).

46. Bringing Legislation of the Republic of Belarus into Compliance with this Law

Within a period of six months, the Council of Ministers of the Republic of Belarus shall:

- bring its decisions into compliance with this Law;
- ensure that the authorities of the State bring their normative texts into conformity with this Law;
- secure the adoption of normative texts necessary for the implementation of this Law.