

AZERBAIJAN

Law on Patent

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Chapter I General Provisions

Article 1 Basic notions

Basic notions used in this Law are as follows:

subject matter of industrial property - invention, utility models and industrial design being the result of intellectual activity of man;

invention - new solution, which answer conditions of patentability, enabling practical solution to a specific problem of industry and the other spheres of activity of economy;

utility model - constructive solution means of production and consumer goods or of their components;

industrial design - the novel outward appearance of an article, art-constructive solution outward appearance of an article;

patent - title of protection issued by appropriate body of executive power for invention, utility model and industrial design;

process - fulfillment of processes correlation of actions upon material objects;

substance - artificially created material object;

device - structure, mechanism, article - of constructive elements or combined from constructive elements, being in functional-constructive unity;

application - arranged series of documents for obtained of patent on subject matter of industrial property.

Article 2 Legislation of the Republic of Azerbaijan on patents

Legislation of the Republic of Azerbaijan on patents consist from Constitution of the Republic of Azerbaijan, this Law and other legislative act adopted in accordance with the present Law and international agreements of the Republic of Azerbaijan.

Article 3 Legal protection of objects of industrial property

Rights to subject matter of industrial property are protected by the State and certified by patent.

Patent certifies authorship and priority on the subject matter of industrial property and gives an exclusive right on use of them.

Invention, utility models and industrial design, that are contrary to public interests, principles of humanism and morality, are not protected by patent.

Article 4 Respective body of executive power in the sphere of industrial property

1. Respective body of executive power in the sphere of industrial property of the Republic of Azerbaijan (hereinafter referred to as respective body of executive power) carries out the state policy in the sphere of protection of subject matter of industrial property, in accordance with this the present Law shall admit application materials from legal entities and natural persons on of subject matter of industrial property, shall examine their, shall registrations the subject matter of industrial property in State Registers, shall grant patent, shall publish official information, shall carries out attestation and registration of patent attorneys, fulfills other functions shall be determined and regulated in accordance by this Law and by the Statute of respective body of executive power.

2. While fulfilling their duties in the respective body of executive power, as well as within one year after termination of their labor relations with the respective body of executive power, the officials the respective body of executive power may not file patent applications.

3. Sources of financing of activity of the respective body of executive power are means allocated from State budget of the Republic of Azerbaijan, patent fees and payments for services rendered.

Article 5 Commission of Appeal

1. Disputes deriving from the filed application on subject matter of industrial property, its examination, of the grant of a patent, as well as attestation of patent attorneys, their registration and activity are considered by the Commission of Appeal of the respective body of executive power.

The decision of the Commission of Appeal may be filed the appeal to a court in an order established by legislation.

2. Statute for Commission of Appeal of the respective body of executive power established by the respective body of executive power.

Article 6 Patent attorney

1. Patent attorney shall be a citizen of the Republic of Azerbaijan, shall have a permanent residence in the territory of the Republic of Azerbaijan, shall have a higher education, knows state language of the Republic of Azerbaijan and registered in State Register of patent attorneys.

Patent attorneys assist the person giving warrant in granting of patent

on subject matter of industrial property, in conduct of undertakings for its validity in the territory of the Republic of Azerbaijan, represents it in putting into life of rights on subject matter of industrial property and during conclusion of license agreements, protects interests of the person giving warrant in the respective body of executive power and court and fulfills works within his competence.

2. Activities of patent attorney regulated by the present Law and the Statute approved by the respective body of executive power.

3. Patent attorney might not be the owner of patent and the author of subject matter of the industrial property.

Chapter II Conditions of patentability for subject matter of industrial property

Article 7 Conditions of patentability for invention

1. The following subject matter may be considered invention:

- device;
- process;
- substance;
- strain of a microorganism;
- plant or animal cell culture;
- the use of a know device, process, substance, strain of microorganism for new purposes.

2. The subject matter of an invention shall be legal protection if it is new, involves an inventive step and is capable of industrial application.

3. An invention shall be considered new if it does not form part of the entire sum knowledge (state of the art). The entire sum knowledge (state of the art) shall be held to comprise any information, which has become available for everybody in the world before to the filing date of the application on invention.

The entire sum knowledge (state of the art) shall be held to comprise also of application on inventions filed to the respective body of executive power and which were published in official bulletin.

4. Items 3 of this article do not apply to invention, which have novelty of consist from only a new use, if the use itself is not comprised in the entire sum knowledge (state of the art).

5. The disclosure of information concerning the subject matter of an invention during 12 months before the filing date of the invention application to the respective body of executive power shall not affect the novelty of the invention if it was made by the author, the applicant or other person having obtained such information directly or indirectly from the author or applicant. Author or applicant undertakes the proof of the fact of disclosure of information.

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

7. An invention shall be considered as capable of industrial application if its subject matter can be made or used in any fields of industry or economy.

8. The following subject matter shall not be deemed inventions:

- scientific theories;
- mathematical methods;
- outcome of the art-constructive performance (design);
- methods of organization and performing for intellectual activity and for business activity;
- rules and methods for playing games;
- algorithms and programs for computers;
- methods of presenting information;
- symbols, schedules and rules;
- projects and plans for structures and buildings and for land development;
- plant varieties and animal breeds (this provision shall not apply to microbiological processes or to products which are obtained through such processes);
- layout designs of integrated circuits;
- methods for the diagnostic of illnesses, methods for therapeutic and surgical treatment of humans or animal organisms.

Article 8 Conditions of patentability for utility model

1. If means of production, consumer goods or their components, constructive solutions and functional peculiarities are utility, give advantage, save time, soften handwork or improve hygienic or psychophysical conditions of labor, used for a new purposes, it shall be deemed a utility models.

2. Utility model shall be legal protection that is new and is capable of industrial application.

3. Utility model shall be considered new, if her significant features are unknown from entire sum knowledge.

The entire sum knowledge (state of the art) consists of objects utility model of the same assignments and information concerning their use in the Republic of Azerbaijan has been available for everybody before to the prior date of the application on utility model.

The entire sum knowledge (state of the art) shall be held to comprise also of application on utility models filed by other legal entities and natural persons to the respective body of executive power and which were published in official bulletin.

4. The disclosure of information concerning the subject matter of a utility model during 12 months before the filing date of the utility model application to the respective body of executive power shall not affect the novelty of the utility model, if it was made by the author, the applicant or other person having obtained such information directly or indirectly from the author or applicant. Author or applicant undertakes the proof of the fact of disclosure of information.

5. A utility model shall be considered as capable of industrial application if its subject matter can be made or used in any fields of industry or economy.

6. The following subject matter shall not be deemed utility models:

- processes;
- substances;
- strain of microorganisms;
- culture of plant or animal cells, their use or their for new purposes;
- Subject matters appointed in the item 8 of the article 7 of the present Law.

Article 9 Conditions of patentability for industrial design

1. Art-constructive solutions determining outward appearance of an article refers to industrial design. Industrial design shall be constituted by in the picture or model or in a combination of those features.

2. An industrial design shall be legal protection that is new and original and is capable of industrial application.

3. An industrial design is considered novel if its significant features (shape, configuration, ornament or the combination of the colors), causing aesthetic and ergonomic peculiarities of the industrial design, are unknown from knowledge available for everybody in the world before to the priority date of the application.

The entire sum knowledge (state of the art) shall be held to comprise also of application on industrial designs filed by other legal entities and natural persons to the respective body of executive power and which were published in official bulletin.

4. The disclosure of information concerning the subject matter of an industrial design during 6 months before the filing date of the industrial design application to the respective body of executive power shall not

affect the novelty of the industrial design, if it was made by the author, the applicant or other person having obtained such information directly or indirectly from the author or applicant. Author or applicant undertakes the proof of the fact of disclosure of information.

5. Industrial design, significant features of which determine by creative character to its aesthetic peculiarities of an article, shall be considered original.

6. An industrial design shall be deemed capable of industrial application if it can be repeated in manufacture.

7. The following subject matter shall not be deemed industrial designs:

- solution that are determined exclusively by the technical function of the manufactured article;
- architectural concepts (with the exception of small scale architectural forms);
- industrial, hydraulic and other stationary structures;
- printed matter as such;
- subject matter of unstable shapes such as liquids, gaseous, dry substances and the like.

Article 10 The scope of the legal protection conferred by a patent and its validity term

1. The scope of legal protection conferred by patent to subject matter of industrial property shall be determined as follows:

- for invention and utility model - by their claims;
- for industrial design - by its significant features indicated in photographs of the Article (model, drawing).

2. The term of a patent's validity in the Republic of Azerbaijan shall be determined from the date on which the application was filed to the respective body of executive power:

- for invention - 20 years;
- for utility model - 10 years;
- for industrial design - 10 years.

3. The rights conferred by patent for process of obtaining a product (article) extending to the any identical product obtained by this process and in the absence of proof to the contrary, the new product are deemed to be obtained by the patented process.

Chapter III Author and owner of patent

Article 11 Author of invention, utility model and industrial design

1. The natural person that creative work has resulted in an invention, utility model and industrial design shall be considered as the author thereof.

Where subject matter of industrial property is the result of the joint creative work of several natural persons, those persons shall be deemed as the joint authors thereof.

The conditions for exercising the rights belonging to the joint authors shall be determined by agreement between them.

2. Natural persons, who have not made any personal creative contribution to the making of the subject matter of industrial property, but have merely provided the author (or joint authors) with technical, organizational or material assistance, or have helped for legalization of rights on subject matter of industrial property and use thereof, shall not be deemed an author.

3. The right to authorship of a subject matter of industrial property shall constitute an inalienable personal right and shall enjoy protection without limitation in time.

4. Relations concerning use of subject matter of industrial property between author, applicant or owner of patent (not being an employer) are regulated by agreement concluded between them. Litigation between them concerning use of subject matter of industrial property shall be considered by the Court proceedings.

Article 12 Owner of the patent

Patent is granted to the following persons:

- to the author (authors) of the subject matter of industrial property or his (their) successors;
- to the legal entities or natural persons upon their consent specified by the author or joint authors) or his (their) legal successors in the application for the grant of a patent or in the request before to the date of registration of the subject matter of industrial property filed to the respective body of executive power;
- employer in the provisions referred in the Articles 13 of this Law.

Article 13 Employer and author

1. Owners of enterprises or head of enterprise, competent body, author used by him, as well as natural persons engaged in business activity not prohibited by legislation are considered to be employed regardless of organizational - legal form of labor activity carried out by employee (hereinafter employee), which is an author.

2. The right for granting patent on subject matter of industrial property created by an employee in the accomplishment of his work-related duties or specific tasks (targets) (production, scientific research, art-graphic or other type) entrusted to him in writing by his employer shall belong to the employer, unless otherwise provided by contract.

Relations between employer and employee concerning creation of the new subject matter of industrial property shall be determined by contract.

3. Within one month of the date on which of subject matter of industrial property has been created according to item 2 of this article, the employee (employees) shall be required to inform his employer in writing thereof employee (employees), which have created of subject matter of industrial property according to item 2 of this article, should send a written notification to employer about this within 1 month after creation of the on subject matter.

4. If the employer refuses from filing an application on subject matter of industrial property or does not inform the employee about his intention of use of this right within a period of 3 month as from the date on which the author has informed his employer, then this right shall revert to the employee.

Employer and employee shall refrain from any disclosure of the essence of the subject matter of industrial property before application has been filed.

5. According to item 4 of this article the employer within 6 months after obtaining of patent by employee has a preferential right to use of the patent on the bases of the license contract.

6. Right of obtaining patent to the subject matter of industrial property in all cases, except cases stipulated in the item 2 of this article belongs to employee.

7. Employer pays certain amount to employee for creation of the subject

matter of industrial property in accordance with terms of contract concluded between the employee and the employer.

Where employer transfer the right of use on subject matter of industrial property to other person and profit obtained by employer does not conform with amount of remuneration paid to employee or if the employer continues his participation in the use of the subject matter of industrial property and makes a profit not conforming with amount of remuneration paid to the employee, the employee has the right to require increase of amount of charge.

If economic benefit obtained is more than that stipulated in the agreement concluded between employer and employee during use of the subject matter of industrial property, the employee has the right of receiving extra remuneration. If the employee decides to refuse in the right concerning patent referring to subject matter of industrial property, he should suggest the employee conclusion of agreement on transfer of rights on this the subject matter of industrial property on him in advance.

8. If the respective body of executive power is the customer of special scientific-research and design-construction works relating to national security of the State, the right of concerning created by the executor of subject matter of industrial property in connection with fulfillment of these works are regulated by legislation of the Republic of Azerbaijan.

9. Litigation arising between employer and employee in connection subject matter of industrial property are considered by the Court proceedings in an order established by legislation of the Republic of Azerbaijan.

Chapter IV Right on use an Invention, Utility Model and Industrial Design

Article 14 Exclusive right on use of subject matter of industrial property

1. Exclusive right on use of subject matter of industrial property shall belong to the owner of the patent, if it does not infringe upon the rights of other patent owners and the present Law.

2. Nobody may use the subject matter of industrial property for which the patent was granted without having obtained the consent of the owner of the patent.

3. The owner of the patent shall use the rights conferred on him by the patent without causing a prejudice to public interests or of the State.

4. If the subject matter of industrial property owned by several patent owners, rights on patent may be transferred by each of them to other legal entities or natural persons according to agreement concluded between them. If they cannot arrive at an agreement, litigation settled are considered by the Court proceedings in an order established by legislation of the Republic of Azerbaijan.

Article 15 Use of subject matter of industrial property

1. The placing on the market of any product in which a patented a subject matter of industrial property has been used or the application process protected by a patent shall be deemed to have been used of a subject matter of industrial property if the they contain all of the essential features a patented of subject matter of industrial property.

2. Mutual relations resulting from the exploitation of subject matter of industrial property, for which a joint patent has been granted, shall be defined by an agreement between the joint patent owners. In the event that such an agreement has not been concluded, each joint patentee shall have the right to use the subject matter of industrial property as he sees fit, except in cases regarding the granting of to other person a license or transfer of rights on patent. In the absence of agreement, each of the owners may use the subject matter of industrial property by its discretion, without to the licensing or assignment of a patent. Litigation arising between joint patentees in connection of subject matter of industrial property shall be considered by the Court proceedings in an order established by legislation.

3. The applicant of subject matter of industrial property might assignment of use of the subject matter to any legal entity or natural person according to agreement till he obtains patent. Where the subject matter of industrial property has several applicants, rights on application might be transferred to other legal entity or natural person by each of them according to the agreement between them. Agreement on transfer the right on use registered by the body of appropriate executive power after filed request and payment of prescribed fee.

Legal entity or natural person having used the subject matter of industrial property during its provisional legal protection for continuation of this use after obtaining a patent by the applicant conclude a license agreement with patent owner in accordance with Article 19 of the present Law.

Article 16 Right of prior use

1. Any legal entity or natural person who, before the priority date of subject matter of industrial property protected by a patent and independently of the author, has devised and used in good faith on the territory of the Republic of Azerbaijan an identical subject matter of industrial property or has up until that date been making the necessary preparations for such use, has the right, without hindrance and without paying any compensation to the patent owner, to continue independently using the subject matter, provided that the scope of the use of the subject matter is not expanded.

2. For recognition the right of prior user the respective body of executive power considers his request according to his application and sends a notification to patent owner within the period of 1 month. Upon application the prior user should also present the document certifying payment by him of the prescribed fee.

If there are no objections from patent owner on prior use within the period of 2 months, the respective body of executive power shall adopt a decision on recognition of right of prior user and shall de recorded it in appropriate the State register and shall publish a notice thereof in the official bulletin.

Litigations arising between prior user and patent owner consider by the Court proceedings.

3. The right of prior use may only be transferred to successor, another legal entity or natural person together with the enterprise where the subject matters of industrial property is used or where the necessary preparations for such use had been made. Successor, legal entity or natural

person might use this right in a scope given a prior user in accordance with item 1 of the present Article.

Article 17 Assignments concerning subject matter of industrial property

1. If there are no other cases stipulated by legislation of the Republic of Azerbaijan the right concerning to any application, to patent or other rights deriving from them may be assigned, in whole or in part, to another person in an order stipulated by legislation of the Republic of Azerbaijan.

2. Right on obtaining of patent for a subject matter of industrial property may be transferred by succession in an order established by legislation of the Republic of Azerbaijan.

3. Assignment concerning of subject matter of industrial property on application, on patent or other rights deriving from them to another person are registered by the body of the appropriate executive power.

Article 18 Using of the subject matter of industrial property without consent of patent owner

With the objectives of safeguarding the interests of national security respective body of executive power has the right of giving his consent on use of the subject matter of industrial property without the consent of patent owner.

In this case remuneration compensation is paid to patent owner. In the case when the patent owner is not satisfied with the amount of compensation, he may appeal to the Court in an order established by legislation the Republic of Azerbaijan.

Article 19 Exclusive and non-exclusive license agreements concerning granted the right to exploit the subject matter of industrial property

1. Any legal entity or natural person, not being patent owner, may exploitation the subject matter of industrial property only with consent of patent owner, according to license agreement.

According to license agreement patent owner (licensor) shall grants the right to exploit a subject matter of industrial property to another legal entity or natural person (licensee) in a scope stipulated by agreement. The license agreements shall be registered with the respective body of executive power.

2. License may be exclusive and non-exclusive.

An exclusive license grants the right to the licensee the exclusive right

to exploit the subject matter of industrial property in a scope stipulated by license agreement.

Licensee may conclude sublicense agreement with other legal entity and natural person according to written consent of licensor. This agreement registered by respective body of executive power.

Sublicense shall be non-executive character and may not be granted to others person. In case exclusive license is terminated, sublicense agreement is terminated as well.

3. A non-exclusive license shall enable the licensor, whilst affording to the licensee the right to exploit the subject matter of industrial property, to maintain all rights under the patent, including the right to afford licenses to other parties.

4. Changing introduced to the license agreement by according to mutual consent of the parties shall be recorded by the respective body of executive power, when the license agreement was registered in the body of appropriate executive power.

5. Litigations concerning license agreement consider by the Court proceedings in an order established by legislation.

Article 20 Compulsory license concerning granted of right on use

1. Where the owner of a patent or his right successor does not use the subject matter of industrial property within 3 years time from the date a patent is granted without any valid reason and does not made serious preparation to use or suspend more than 3 years and refuses from grant the license after termination of this period, any legal entity or natural person may appeal to the Court with a request for the grant compulsory license on use the subject matter of industrial property.

Compulsory license shall be of non-exclusive character.

Where in the licensee does not use compulsory license within the period of 2 years from the date of obtaining, the owner of patent may appeal the Court for cancellation of the license in an order established by the legislation.

Relations between patent owner and person obtained the compulsory license from the date of granting of compulsory license considered equal to the relations between licensor and licensee established by the present Law.

2. If a patent owner is not able to exploit the subject matter of industrial property without infringing the rights of another patent owner, he shall

be entitled to require the latter to conclude with him a license agreement. Litigations concerning this problem consider by the Court proceedings in an order established by legislation.

Article 21 State incentives for the use of the subject matter of industrial property

State incentives creation and use of the subject matter of industrial property and may establish privileges, as well as preferential loans to authors, patent owners and economic entities.

Chapter V Infringement of rights on patents

Article 22 Infringement of exclusive rights of patent owner

The manufacturing, using, importing, offering for sale, selling, any other form placing on the market or holding in stock for such purpose, of a product (article) of forming the patented subject matter of industrial property, as also the use of a process protected by the patent, form placing on the market or holding for such purpose of a product obtained by that process if they performed without the consent of the patent owner shall be deemed to constitute an infringement of the exclusive rights of the patent owner.

Article 23 Acts not constituting infringement of the exclusive rights of patent owners

The following shall not be deemed as infringements of the exclusive rights of the patent owner:

- non-profit use of product containing patented subject matter of industrial property for non-commercial purposes;
- the use of product containing a patented subject matter of industrial property for the scientific experiments or research purposes, as well as in the testing of a patented subject matter of industrial property;
- the preparation of medicine in a pharmacy in exceptional cases as prescribed by a doctor;
- the use of devices forming the patented subject matter of industrial property in the construction or operation of means of transport of other countries when such means of transport temporarily or accidentally enter the territory of the Republic of Azerbaijan, provided that such devices are used there exclusively for the needs of the means of transport, if the means of transport belong to legal entity or natural persons of countries affording the same rights to owners of means of transport of the Republic of Azerbaijan.

Article 24 Infringement of patent

1. Any legal entity or natural person using the subject matter of industrial property protected by a patent with infringement of provisions of the present Law shall be deemed to infringe of rights on patent. A person who infringement the rights on patent may be held responsible in accordance with an order established by legislation.

2. In the case when patent owner do not reach an agreement concerning the amount compensation for the damage with legal entity or natural persons

who infringe the patent, then the litigations are considered by the Court proceedings in an order established by legislation.

Chapter VI Filing of applications and obtaining of patent

Article 25 The subject matter of industrial property concerning national security

If disclosure of information on filed application concerning the subject matter of industrial property may damage national security the Republic of Azerbaijan, this application shall be considered in an order determined by a rule of respective body of executive power.

Article 26 International application

1. In the case when international application filed to the respective body of executive power, in accordance with international treaty to which the Republic of Azerbaijan is party, the applicant shall within 2 month from filing date of international application to the respective body of executive power submit a translation of the claims, abstract, description on international application into the Azerbaijan language.

2. Legal entities and natural persons of the Republic of Azerbaijan may be file of international application in accordance with international agreements, in which the Republic of Azerbaijan participates.

3. The respective body of executive power deemed as a receiving office for international application filed in accordance with the item 2 of the present article.

Article 27 Filing of application for obtaining of patent

1. Legal entity or natural persons wishes to obtain patent for subject matter of industrial property shall be file an application to respective body of executive power.

2. Applicant may file application to respective body of executive power as follows:

- directly himself;
- through the patent attorney who has been registered by the respective body of executive power.

Foreign legal entities and natural persons, if there are no other cases stipulated by international agreements, which the Republic of Azerbaijan participates in, file application to respective body of executive power by patent attorney registered in the respective body of executive power of the Republic of Azerbaijan. Competence of patent attorney is certified through a warrant, granted by applicant.

3. The application for invention or utility model shall relate to one invention or utility model only or to a group of inventions or utility models so linked as to satisfy the requirement of unity. An application shall contain the following:

- a request for the grant of patent, stating the names of the author (authors) and the legal entity or natural persons in whose name the grant of patent is sought, together with addresses of their places of residence or of business;
- a description disclosing the subject matter of the invention or utility model sufficiently clear and complete for it to be carried out;
- the claims shall define the subject matter of invention or utility model and supported by the description;
- drawing and other material where necessary for the understanding of the subject matter of the application;
- an abstract.

4. The application for industrial design shall relate to one industrial design only.

When several subject matters create unite art-constructive form, they are deemed as one industrial design.

Where several industrial designs belong to the same class of classification, they are deemed as one industrial design.

An application for industrial design shall contain the following:

- a request for the grant of patent, stating the names of the author (authors) and the legal entity or natural persons in whose name the grant of patent is sought, together with addresses of their places of residence or of business;
- a set of photographs, model or drawing of the manufactured article, providing a full and detailed view of its outward appearance;
- an overall drawing of the manufactured article, a representation of its functional features or an assembly diagram where necessary for the disclosure of the subject matter of the industrial design;
- a description of essential features of the industrial design.

5. The application shall be accompanied by document, confirming payment of the prescribed deposit patent fee for filing application or circumstances giving entitlement to a reduction in the fee.

6. Requirements related to application for obtain the respective body of executive power should determine patent.

7. A request for the grant of patent shall be filed in the Azerbaijani language. Other materials of application may be filed in the Azerbaijani or other language. Translation of materials on application filed in other language into Azerbaijani should be submitted within of 2 months after date filing application.

Record keeping concerning application is carried out in Azerbaijani.

8. Within one month of the filing date of the application, the applicant shall have the right, on his own initiative, to make corrections or amendments in the application, which do not affect the essence of the subject matter of industrial property.

The applicant may make corrections or amendments in the application after expiration of 1month period on terms of payment of established fee until of the respective body of executive power admits the decision on publish of materials of application in official bulletin.

The amendments may be made according to proposal of expert as well. Additional elements modifying the essence of subject matter of industrial property on application, containing features that do not appear in the application, 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.

Article 28 Priority of subject matter of industrial property

1. The priority of the subject matter of industrial property shall be determined by the date of acceptance to the respective body of executive power of a regular application in accordance with article 27 of the present Law.

The right to priority shall occur for invention in accordance with items 3 and 4 of article 7 of the present Law, for utility model in accordance to item 3 of article 8 of the present Law, for industrial design accordance to item 3 of article 9 of the present Law from the filing date of application.

2. The priority of a subject matter of industrial property 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 model is filed to the respective body of executive power within 12 months of that date or of 6 months in the case of an industrial design.

The priority of a subject matter that has been shown in an official international exhibition held on the territory of a State party to the Paris Convention may be claimed with to the date as from which the subject

matter was presented to the public as such exhibition, on condition that the application be filed within six months following such date (exhibition priority).

This time limit shall not be cumulative with the convention priority time limit.

3. An applicant desiring to take of the right to Convention priority shall be required to state the fact when filing the application or within two months of the date on which the application is received by the respective body of executive power and shall be filed information concerning previous application and patent certified as correct by the authority which received such application.

In this information the applicant indicating bibliographic data concerning of the subject matter of previous application. If it is necessary the respective body of executive power may require additional information concerning filing information of the previous application from the authority, which received such application.

4. If the declaration of priority is not file in the period indicated in the item 2 of this article and provisions indicated in the item 3 and 8 of this article are not fulfilled, priority shall be determined by the date of receipt at the respective body of executive power.

5. The priority may be determined by the filing date of the first identical application, filed according to international agreements on protection of industrial property, which the Republic of Azerbaijan is a member of, if this application will be withdrawn by applicant and between dates which he provided priority and the date of receipt at the respective body of executive power of the application, should not pass more than 12 months for invention and utility model and 6 months for industrial design from the date of admission of the earlier application.

6. The priority may be determined the date of admission of additional materials, if the applicant as had executed them a separate application filed within 3 months of the date of receipt by the applicant of a notification from the respective body of executive power to the effect that the additional documents will not be taken into consideration since they modify the subject matter of the application.

7. The priority of subject matter of industrial property may be determined by the date of filing with the respective body of executive power an earlier

application of the same applicant, which discloses the subject matter of industrial property, provided that the application, the priority of which is claimed, is filed before expiration of 12 months from the date of receipt of the earlier application for invention or utility model and was filed before expiration of 6 months from the date of receipt of the earlier application for industrial design.

In such a case the earlier application is considered withdrawn.

8. For claiming of Convention priority or priority concerning on earlier filed application applicant shall submit a document on payment of established fee to respective body of executive power within of 2 months from the date of his the request.

9. The priority of may not be determined by the date of receipt of an application in which an earlier priority was already claimed.

10. In the case when dates of priority of similar subject matter of industrial property are established to be same during examination, priority is established according to the application, which has been sent to respective body of executive power earlier. If these dates are also same, application which was obtained registration number earlier by the respective body of executive power (if there are no other terms stipulated by the agreement between the applicants).

11. Disputes between applicants concerning priority are considering by commission of Appeal. Where the applicant does not agree with the decision commission of Appeal he may appeal to the Court.

Article 29 Examination of application

1. The respective body of executive power within 1 month from the date of receipt of application determine whether the filed application complies with the requirements to items 3, 4, 5 and 6 of article 27 of this Law, accept a decision on registration of application, established the priority or accept a decision on examination.

2. If the documents of application do not satisfy the required conditions concerning items 3, 4, 5 and 6 of article 27 of this Law, the respective body of executive power shall sent the notification to the applicant. The applicant shall submit the corrected or missing documents (materials) within 2 months from the date of obtaining the request.

If the applicant does not submit the required materials in accordance

with determined term or does not submit the petition concerning prolongation of the term in the determined date (on terms of payment of fee), the application shall be considered not filed.

3. Where an application admit for consideration the respective body of executive power shall examine the application on the content subject matter of industrial property with following:

- for inventions - requirements of paragraph 3 of article 3, items 1, 6, 7, 8 of article 7 the present Law;
- for utility model - requirements of paragraph 3 of article 3, items 1, 5, 6 of article 8 the present Law;
- for industrial design - requirements of paragraph 3 of article 3, items 1, 5, 6 and 7 of article 9 the present Law.

Examination of the application on a subject matter of industrial property concerning the conditions of novelty shall examine with according to paragraph 2 of item 3 and item 4 of article 7, to paragraph 2 of item 3 of article 8, to paragraph 2 of item 3 of article 9 the present Law and to subject matter of industrial property which is protected in the territory of the Republic of Azerbaijan.

If the result of the examination shows that the subject matter of industrial property on application meets the prescribed requirements of this article, then the decision shall be taken on publish of application in official bulletin of respective body of executive power and materials concerning of application are published after payment a corresponding fee by applicant.

4. The decision to refuse grant of patent shall be based on the findings of the examination by the respective body of executive power if a subject matter of industrial property of application is not satisfactory conditions established in this article.

5. Where the application, which contains of several subject matter of application concerning invention and utility model and not satisfying the requirements of unity the applicant shall be offered to notify which the subject matter on application are to be taken into consideration within two months from the date of obtaining of the corresponding notification. If the applicant does not reply to a notification from the examiner within the indicating period, in this case respective body of executive power the examination shall be carried out in respect of the subject matter on application that is mentioned first in the application.

The other subject matter of applications for invention and utility model

contained in the initial application may be submitted as divisional applications and filed as a separate application.

The subject matter of invention or utility model of divisional application should not exceed the bounder of contents of the initial application and should be exactly characterized by the applicant as its component part. Divisional application should be submitted to respective body of executive power within the period of 12 months after filing of initial application for invention, but for utility model within the period of 6 months after filing of initial application. Fee for each divisional application shall be payment in an established amount for handing of separate application. If this condition is satisfied the priority of the divisional application shall be determined by the priority of the initial application. If the subject matter of divisional application exceeds the bound of contents of initial application, then the date of submitted of final edition of application is deemed to be the date of filing of application.

6. The applicant may, on payment-established fee, appeal from decision to refuse the grant of patent to the commission of Appeal of respective body of executive power within two months period of the date of receiving such decision.

7. Applicant might acquaint with all materials concerning the decision commission of Appeal.

8. The applicant has the right to take back the application until the registration of the patent. In this case paid fees are not given back.

9. An applicant shall have the right of converting his invention application to a utility model application (or vice verse) by filing a request before the publication of data concerning an invention.

In these cases priority of initial application are preserved.

10. In accordance with request filed by the applicants or an interested person can be presented to the respective body of executive power within 18 months after the date of filing of application, on terms of payment of the established fee, the body of the respective body of executive power may carry out search of information for establishment the patentability of subject matter.

In accordance with filed request of the applicants or an interested person can be presented to the respective body of executive power within 18 months after the date of filing of application, on terms of payment established

fee, may carry out the substantive examination of the application. Results of contents of the substantive examination are notified to the applicant or an interested person.

The search of information and substantive examination shall be carried out in accordance with the rules determined by the respective body of executive power.

Article 30 Publication of information concerning of application

1. No later than 12 months after the date of receipt of the applications an invention or utility model and no later than 6 months after the date of receipt of the application of industrial design the respective body of executive power shall publish information concerning the applications in the Official bulletin.

2. The author (inventor) has the right to demand in a request not to be mentioned as the inventor of the subject matter of industrial property in any official publication of the respective body of executive power.

3. Following shall be specified information concerning the applications:

- information on the author (if he has not refused to be mentioned as author) and on the applicant;
- the title of the subject matter;
- index of International Patent Classification;
- international index of industrial design;
- the priority date;
- the abstracts of the invention or utility model;
- the list and the description of essential features of the industrial design.

4. The applicant will bear responsibility for novelty of subject matter of the application with according to paragraph 2 of item 3 of article 7, to paragraph 1 and 2 of item 3 of article 8, to paragraph 1 of item 3 of article 9 the present Law after publish of information concerning of application.

5. As soon as the information concerning of the application has been published, any legal entity or natural person, having interest, has the right to inspect the application materials in the respective body of executive power and to obtain, on terms of payment established fee, a copy of the description, drawings, figures and photographs of the subject matter of industrial property.

Procedure of inspection with published materials of application is established the body appropriative executive power.

6. Information concerning an application shall not be published in the following cases:

- a decision to refuse grant of patent has been taken;
- the application has been withdrawn;
- if the applicant presents the request for postponement;
- if the applicant presents the request for refusal from the publish.

7. If the subject matter of invention or utility model affects the interests of national security of State, the respective body of executive power shall have the right, upon its own initiative, to postpone the publication the publication of the information concerning of application for up to four months from the date of decision of the publication. Upon expiration of this term, the decision of the respective body of executive power becomes null and void, if it is not approved and a respective body of executive power does not extend the term (the term is not extended by a respective body of executive power).

If the respective body of executive power prohibits publication of the information, the open use of the invention (utility model) is prohibited or the use subject matter of industrial property on application or on patent is prohibited, the applicant or the patent owner may request by the respective body of executive power paid respective compensation. Respective compensation might be required in the case if the first 12 months period of prohibition of published information and use of invention (utility model) is being prolonged.

In this case litigations are settled by the Court proceedings.

8. Each subject matter of industrial property on application shall be conferred temporary legal protection from the date of publication of the materials of application before to the date of grant of patent.

Temporary legal protection is not deemed to start if a decision is adopt (admit) on refusal of grant of patent.

Article 31 Opposition to application

1. Within 6 months from the date when information of application is published any legal entity or natural person shall have the right to submit to the commission of Appeal a substantiated opposition. In this case copies of referred materials should be presented as well.

2. An opposition against the application may be filed, if the requirements of paragraph 3 articles 3 and articles 7, 8, 9, 27 and 29 of this Law have not been observed.

3. Copy of the valid opposition shall be forwarded to the applicant. Applicant shall answer on opposition within the period of 2 months after received of copy of opposition.

Where the applicant does not submit his answer to commission of Appeal within the established terms, the application will be deemed rejected.

4. The commission of Appeal shall examine the opposition within 2 months from the date of receipt of the applicant's observation. Both parties shall have right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations.

5. According to the results of the opposition examination, the commission of Appeal shall adopt a decision either to fully or partially revoke the patent or to reject the opposition and sends the notification to the applicant.

Article 32 Registration of subject matter of industrial property and grant of patent

1. The respective body of executive power, after expiration established of term on submission of opposition to published application or from the date the adopt by Appeal commission of decision on grant of patent, within the period of 2 months on conditions of payment of the prescribed fee for registration, grant and publication of patent the subject matter of industrial property shall be registered by the respective State Register and grant the patent to the applicant.

Procedure of inclusion of subject matter of industrial property to State register is determined by the body appropriate executive power.

2. In order to maintain the validity of patent his owner should pay the annual fee beginning from 3rd year of validity after the date of file on application.

3. If patent is request by more than one person, one single patent shall be granted to one of them, while the rest are granted copy of the patent certified by the respective body of executive power.

4. According with substantiated to request, on terms of payment by the

established fee, patent owner may obtain the duplicate of the patent.

5. If the applicant and author are different persons, the author may to obtain the copy of the patent.

6. The author may refuse from mentioned of his name in the patent.

Article 33 Publication of information concerning patent

1. The respective body of executive power shall publication the information concerning patent in its official bulletin within the period of three months after registration of the subject matter of industrial property and grant of patent. The information shall be include following:

- name of patent owner (owners), name of author (authors), if he has not refused to be mentioned as author;
- the title of the subject matter of industrial property;
- the date of receipt at the body appropriate executive power of a application;
- the priority date;
- the claims of invention or utility model;
- the list and the description of essential features of the industrial design.

2. The patent owner shall be responsible for not lack of correspondence the granted patent of the subject matter of industrial property with requirements determined of item 3 of article 7, to paragraph 1 and 2 of item 3 of article 8, to paragraph 1 of item 3 of article 9 of this Law in an order established by legislation.

Article 34 Opposition to granted patent

1. Within 6 months from the date when information concerning of the patent is published any legal entity or natural person shall have the right to submit with the commission of Appeal a substantiated opposition against granted of the patent if the conditions have not complied with of paragraph 3 of article 3, items 1, 6, 7, 8 of article 7, items 1, 5, 6 of article 8, items 1, 5, 6 and 7 of article 9, article 27 and 29 or if the claims of invention, utility model and industrial design contain of essential features that did not appear in the application as initially filed.

2. Patent owner and legal entity or natural persons who filed opposition may participate in the proceedings of commission of Appeal.

3. Commission of Appeal will not accept the opposition concerning granted of patent after 6 months from the date the publication of information on the subject matter of the patent.

4. A decision of commission of Appeal may be appealed to the Court.

Article 35 Changes to the patent and in the State Register of the subject matter of industrial property

1. The respective body of executive power according to request of patent owner shall correct obvious and technical mistakes in the granted patent.

2. In the case when patent owner changes name of the legal entity, surname, name and patronymic of the natural person in the patent, he shall submit this information to the respective body of executive power.

In the case when patent owner files the request concerning changes in the patent and on pays the prescribed fee, the respective body of executive power shall introduce changes to the State Register of the subject matter of industrial property.

Article 36 Lapse of patent

1. The patent shall lapse before the expiration of its term provided that:

- the patent owner submits a request to the body of appropriate executive power to terminate the patent;
- the annual maintenance fee is not paid at the prescribed time;
- in the patent is annulled in accordance with article 37 of this Law.

2. The respective body of executive power shall publish information on lapse patents in its Official bulletin.

Article 37 Invalidation of a patent

1. The patent may be declared as null and void in the established procedure provided that:

- when it does not meet requirements set out in articles 7, 8, 9 of this Law;
- when in the description of the patent, the essence of the subject matter is not disclosed sufficiently clearly and completely, in order to enable a specialist to implement the subject matter;
- the scope of rights, granted by patent exceeds the limit of the initial application;
- the patent has been granted to a person who is not entitled to such

rights with accordance article 12 of this Law.

2. The patent may be invalidated in part, where the provisions prescribed in items 1 of this article do not fully apply to the entire patent.

3. Commission of Appeal or Court shall consider the disputes occurred by the invalidation of a patent.

Article 38 Restoration of rights contingent on time limits

1. An applicant who fails to comply with the time limits laid down in items 6 of article 29 and items 3 of article 31 of this Law may be reinstated in his rights by the respective body of executive power if the presents legitimate reasons and pays the prescribed fee.

2. The request for restoration of rights contingent on a time limit may been filed by the applicant within 12 months after the expiry of the time limit concerned.

Chapter VII Final provisions

Article 39 Patent fees and charges

Patent fees shall be paid for performance of valid actions associated with patent established by this Law.

The respective body of executive power receives corresponding charges for attestation, registration of patent attorneys, and grant of certificates and publication of information concerning them.

The amount of patent fees and charges and procedures of their payment will be established by corresponding the respective body of executive power.

Article 40 Conditions for hearing litigation

Litigation arising from applies of this Law concerning patents will be considered by Court in an order established by legislation of the Republic of Azerbaijan.

Article 41 Patented of the subject matter of industrial property in foreign countries

The subject matter of industrial property created in the Republic of Azerbaijan may be patented in a foreign country within the period 12 months after filing date of application on this subject matter to the respective body of executive power.

The respective body of executive power adopts a corresponding decision on possibility of filing over of application on a patent to foreign country within the period of 3 months after admission of application on subject matter of industrial property by the respective body of executive power and sends a notification to applicant.

Disputes concerning decision of the respective body of executive power will be considered by Court in an order established by legislation.

Article 42 Rights of foreign legal entities and natural persons concerning patent

Foreign legal entities and natural persons shall enjoy the rights afforded by this Law in the same way as Azerbaijan citizens in accordance with international of the Republic of Azerbaijan or mutual principles.

Article 43 International agreement

In case when procedures established by international agreements of the Republic of Azerbaijan differ from the procedures stipulated in this Law, procedures of international agreement will be applied.