

**EURASIAN PATENT OFFICE**

**Patent Convention**

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## **Preamble**

The States party to this Convention (hereinafter referred to as "the Contracting States") represented by Governments,

Desiring to strengthen cooperation in the field of the protection of inventions,

Striving to establish an interstate system for obtaining such protection on the basis of a common patent having legal effect on the territory of all the Contracting States,

Desiring to conclude, for this purpose, a Convention which constitutes a special agreement within the meaning of Article 19 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, and a regional patent agreement within the meaning of Article 45(1) of the Patent Cooperation Treaty of June 19, 1970,

Have agreed as follows:

## **Part I The Eurasian Patent System**

### **Article 1 Establishment of the Eurasian Patent System**

(1) The Contracting States, maintaining their complete sovereignty to develop their national systems for protection of inventions, hereby establish a Eurasian Patent System.

(2) No provision of this Convention shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to the Paris Convention.

## **Part II The Eurasian Patent Organization**

### **Article 2 Establishment of the Eurasian Patent Organization**

(1) The Eurasian Patent Organization (hereinafter referred to as "the Organization") is established in order to administer the functioning of the Eurasian Patent System and the grant of Eurasian patents.

(2) All Contracting States shall be members of the Organization.

(3) The organs of the Organization are the Administrative Council and the Eurasian Patent Office (hereinafter referred to as "the Eurasian Office").

(4) The Eurasian Office is headed by the President who is the chief executive of the Organization and represents the Organization.

(5) The Organization is an intergovernmental organization having the status of legal entity. The Organization shall, in each Contracting State, enjoy the legal capacity attributed to legal entities in conformity with the national law of that State. The Organization may acquire or dispose of movable property or real estate and may defend its rights in court. The headquarters of the Organization shall be at Moscow, Russian Federation.

(6) The official language of the Organization shall be Russian.

(7) The Organization, the plenipotentiary representatives of the Contracting States and their deputies, the staff of the Eurasian Office and other persons engaged in carrying out the tasks of the Organization shall enjoy on the territory of every Contracting State the rights, the privileges and immunities granted by such Contracting State to any other international organization and its staff, and on the territory of the Russian Federation also regulated by the special headquarters agreement of the Organization concluded between the Organization and the Government of the Russian Federation.

### **Article 3 Administrative Council**

(1) Each Contracting State shall be represented in the Administrative Council. Each Contracting State shall have one vote in the Administrative Council. Two-thirds of the Contracting States shall constitute a quorum. Decisions shall be made by consensus or, failing that, by a simple majority of the voting plenipotentiary representatives of the Contracting States,

with the exception of those cases where this Convention requires unanimity or a majority of two-thirds of the votes cast.

(2) The Administrative Council shall meet in ordinary session in each calendar year and in extraordinary session on the initiative of at least three Contracting States, the Chairman of the Administrative Council or the President of the Eurasian Office. The sessions shall be convened by the President of the Eurasian Office.

(3) The Administrative Council shall

(i) adopt its own Rules of Procedure;

(ii) elect the Chairman of the Administrative Council for a renewable term of two years;

(iii) appoint the President of the Eurasian Office for a renewable term of six years; the conditions of appointment shall be fixed in a contract between the Organization and the future President;

(iv) give advice to the President of the Eurasian Office in respect of the appointment, by the President, of Vice Presidents of the Eurasian Office;

(v) approve the headquarters agreement of the Organization concluded by the Organization with the Government of the Russian Federation;

(vi) approve agreements concluded by the Organization with States and international organizations;

(vii) adopt by a majority of two-thirds the Patent Regulations, the Financial Regulations, and the Administrative Regulations;

(viii) establish by a majority of two-thirds the yearly budget, examine the yearly report and approve the yearly accounts of the Organization;

(ix) take any other action aimed at performing the tasks of the Organization.

(4) The World Intellectual Property Organization (hereinafter referred to as "WIPO") shall be represented at the meetings of the Administrative Council in an advisory capacity in conformity with the provisions of an agreement concluded between the Organization and WIPO.

#### **Article 4 Eurasian Office**

(1) The Eurasian Office shall carry out all administrative tasks of the Organization. It shall be the secretariat of the Organization.

(2) The President of the Eurasian Office shall determine its structure and shall appoint the staff. He may participate in all meetings of the

Administrative Council.

(3) Each Contracting State shall have its quota in respect of the staff of the Eurasian Office, which shall be determined in the Administrative Regulations.

(4) The Eurasian Office shall be located at Moscow, Russian Federation.

## **Article 5 Finances**

(1) The Organization shall be self-supporting in that its expenses shall be covered from fees and other income earned by it. No Contracting State shall be obliged to pay contributions to the Organization.

(2) The budget of the Organization shall be financed from the following sources:

(i) the proceeds from fees and charges for services rendered by the Eurasian Office;

(ii) the proceeds from the publishing activities of the Eurasian Office;

(iii) gifts, bequests and subventions given to the Organization;

(iv) rents, interests and other miscellaneous income of the Organization.

(3) Any excess of income of the Organization over its expenditure shall be used for the development of the Eurasian Office.

(4) In the headquarters agreement of the Organization referred to in Article 3(3)(v), it shall be provided that, whenever the financial means of the Organization are insufficient for its activities, the Russian Federation shall grant advances to the Organization. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between the Organization and the Government of the Russian Federation.

### **Part III Substantive Patent Law**

#### **Article 6 Patentable Inventions**

The Eurasian Office shall grant a Eurasian patent for any invention that is new, involves an inventive step and is industrially applicable.

#### **Article 7 Persons Entitled to a Eurasian Patent**

(1) The right to a Eurasian patent shall belong to the inventor or his successor in title. Where the inventor is an employee, the right to a Eurasian patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has a place of business to which the employee is attached.

(2) For the purposes of proceedings before the Eurasian Office, the applicant shall be deemed to be entitled to the Eurasian patent.

#### **Article 8 Right of Priority**

The right of priority shall be recognized in conformity with the Paris Convention for the Protection of Industrial Property.

#### **Article 9 Patent Rights**

(1) The owner of a Eurasian patent shall have the exclusive right to use, and also to authorize the use or prohibit others from using, the patented invention.

(2) The owner of a Eurasian patent may assign or license his rights.

(3) After an application for the grant of a Eurasian patent (hereinafter referred to as "the Eurasian application") has been published, the applicant shall enjoy provisional protection in conformity with the national legislation of the Contracting States.

#### **Article 10 Extent of Legal Protection**

The extent of the legal protection conferred by a Eurasian patent shall be determined by the claims. The description and drawings shall serve only to interpret the claims.

#### **Article 11 Term of Eurasian Patent**

The term of a Eurasian patent shall be 20 years from the filing date of



the Eurasian application.

#### **Article 12 Compulsory Licenses**

(1) Compulsory licenses for the use of a Eurasian patent by third parties may be granted in conformity with the Paris Convention for the Protection of Industrial Property by the competent authority of a Contracting State with effect in the territory of that State.

(2) A decision to grant a compulsory license may be contested in the courts or other competent authorities of the Contracting State in the territory of which the compulsory license has been granted.

#### **Article 13 Validity of Eurasian Patent and Enforcement of Rights**

(1) Any dispute arising from the validity, in a given Contracting State, or the infringement, in a given Contracting State, of a Eurasian patent shall be resolved by the national courts or other competent authorities of that State on the basis of this Convention and the Patent Regulations. The decision shall have effect only in the territory of the Contracting State.

(2) Each Contracting State shall, in the case of infringement of a Eurasian patent, provide for the same civil or other liability as in the case of a national patent.

(3) Any national court or other competent authority of a Contracting State may require that the plaintiff furnish to it a translation of the Eurasian patent in the State language of the Contracting State.

#### **Article 14 Patent Regulations. Substantive Provisions**

The Patent Regulations shall provide for the details concerning substantive patent law, and in particular the following:

- (i) the definition of the criteria of patentability of an invention, including the definition of novelty, inventive step and industrial applicability, and the requirement of the disclosure of the invention;
- (ii) disclosures that do not affect the patentability of the invention;
- (iii) the requirement of unity of invention;
- (iv) the definition and effects of the right of priority;
- (v) the definition of the exclusive right in the patented invention;
- (vi) the right of the prior user;
- (vii) the interpretation of claims;

- (viii) the right of the inventor to be mentioned in the Eurasian application and Eurasian patent;
- (ix) the assignment and other transfer of the right to a Eurasian application or patent;
- (x) the confidentiality in processing Eurasian applications.

## **Part IV Procedural Patent Law**

### **Article 15 Eurasian Application and Grant of the Eurasian Patent**

(1) The Eurasian application may be filed:

(i) with the Eurasian Office subject to subparagraph (ii) of this Article;

(ii) in the case of an applicant from a Contracting State, the Eurasian application shall be filed through the national Patent Office of that State (hereinafter referred to as "the national Office"), where provided in the legislation of the Contracting State. The Eurasian application filed through a national Office shall have the same effect as if it had been filed with the Eurasian Office on the same date, provided that it is transmitted to the Eurasian Office within the time limit prescribed in the Patent Regulations. The national Office shall verify the compliance of the application with the requirements prescribed by this Convention and the Patent Regulations with regard to the examination as to form of the Eurasian application and, where the examination finding is that the application complies with the said requirements, it shall transmit the application to the Eurasian Office for further processing.

(2) Where the Eurasian application is filed with the Eurasian Office, a unitary procedural fee for filing, search, publication and other processing shall be payable to that Office at the time of filing. Where the Eurasian application is filed through a national Office, a fee shall be payable to the national Office at the time of the filing for examination as to form and transmittal of the application, whereas the unitary procedural fee shall be payable to the Eurasian Office at the time of the transmittal of the Eurasian application to that Office.

(3) The Eurasian Office shall verify the compliance of the Eurasian application with the requirements prescribed by this Convention and the Patent Regulations with regard to the examination as to form and shall carry out a search in relation to the said application. The search shall result in a search report which shall be forwarded to the applicant.

(4) The Eurasian Office shall publish the Eurasian application together with the search report promptly after the expiry of 18 months from the filing date or, where priority is claimed, from the priority date. At the request of the applicant, the Eurasian Office shall publish the Eurasian application earlier. In that case, the search report will be published separately as soon as it is available.

(5) At the request of the applicant, to be filed with the Eurasian Office before the expiry of six months from the date of publication of the search report, the Eurasian Office shall carry out the substantive examination of the Eurasian application.

(6) The filing of the request referred to in paragraph (5) of this Article shall be subject to the payment of an examination fee to the Eurasian Office.

(7) The decision to grant a Eurasian patent or reject the Eurasian application shall be made, on behalf of the Eurasian Office, by collegia composed of three examiners each, who shall be staff members of the Eurasian Office and, unless otherwise decided by the unanimous decision of the Administrative Council, nationals of different Contracting States.

(8) Where the applicant disagrees with the decision of the Eurasian Office to refuse the grant of a Eurasian patent, he may, within three months following the date of receipt of the notice of refusal, lodge an appeal with the Office which shall be examined by a collegium of the Eurasian Office to be composed in conformity with paragraph (7) of this Article. The collegium shall include at least two examiners who did not participate in the taking of the decision on the subject matter of the said appeal.

(9) The lodging of the appeal referred to in paragraph (8) of this Article shall be subject to the payment of a fee to the Eurasian Office.

(10) The grant of a Eurasian patent shall be subject to the payment of a fee to the Eurasian Office within three months after the date on which the applicant receives notice from the Eurasian Office that it is ready to grant the Eurasian patent.

(11) Subject to the provisions of Article 17, a Eurasian patent shall have effect on the territory of all Contracting States from the date of its publication.

(12) Any person who has the right to be a representative before the national Office of a Contracting State and who is registered with the Eurasian Office as a patent agent may act as representative before the Eurasian Office. Where the applicant does not have his residence or principal place of business in the territory of any Contracting State, he shall

be required to be represented by such a patent agent. Persons having their residence or principal place of business in the territory of any Contracting State may file Eurasian applications and act in all proceedings before the Eurasian Office, either personally or through patent agents or through representatives who are not patent agents.

#### **Article 16 Conversion of Eurasian Applications into National Patent Applications**

(1) Before the expiry of six months from the date on which the applicant receives notice of the Eurasian Office's refusal to grant a Eurasian patent or of its refusal to allow an appeal lodged in accordance with Article 15(8), the applicant may file a request with the Eurasian Office designating those Contracting States in which he wishes to obtain national patents according to the national procedure.

(2) The Eurasian application in respect of which such a decision has been taken and which is the subject of such request shall be treated in any Contracting State so designated as a regular national application filed with the national Office and having the filing date and the priority date, if any, of the Eurasian application, with all the consequences provided in the national legislation, and it shall be further processed by the national Office, provided that the applicant pays the prescribed national fees to the said national Office.

#### **Article 17 Maintenance of Eurasian Patents**

(1) The maintenance of the Eurasian patent shall be subject to the annual payment of fees.

(2) The maintenance fees shall be payable in each of the years following the grant of the Eurasian patent by the date corresponding to the filing date of the Eurasian application.

(3) The continuing effect of a Eurasian patent in each Contracting State shall require that the owner of the patent designate to that end, by name, each Contracting State in which the owner wishes the effect to continue. Such designation shall be addressed to the Eurasian Office and shall be made at the same time as the maintenance fee is paid. Such fee shall be payable in respect of each designated Contracting State.

#### **Article 18 Fees**

(1) Fees concerning any Eurasian application or patent, and all charges

for services rendered by the Eurasian Office, shall be payable to the Eurasian Office and, subject to the provisions of paragraph (2) of this Article, shall belong to the Organization. The fee referred to in Article 15(2) for the examination as to form and transmittal of the Eurasian application is payable to and belongs to the national Office with which the Eurasian application was filed.

(2) All fees for maintenance of a Eurasian patent shall be payable to the Eurasian Office. The ratio of distribution of the maintenance fees between the Organization and the designated Contracting States shall be fixed by the Administrative Council by a majority of two-thirds of the votes cast, provided that at least one-fifth of the fee received for each designation of a Contracting State shall belong to the Organization; the remaining part of the fee shall be transferred to the national Office of the designated Contracting State.

(3) The amount of the fee for maintenance of a Eurasian patent with respect to each Contracting State shall be fixed by that State. The currency in which the fee for maintenance of a Eurasian patent is to be paid shall be determined by the Administrative Council.

#### **Article 19 Patent Regulations. Procedural Provisions**

The Patent Regulations shall provide for details concerning Eurasian patent procedure, and in particular the following:

- (i) requirements as to the form and contents of the Eurasian application;
- (ii) requirements as to patent agents, procedures for their certification and registration as a patent agent;
- (iii) the filing date;
- (iv) calculation of time limits;
- (v) claiming of priority;
- (vi) the currencies and the procedures for the payment of fees;
- (vii) amendment or correction of the Eurasian application;
- (viii) patent search and examination;
- (ix) the documentation and information services rendered by the Eurasian Office;
- (x) the publication of Eurasian applications and patents;
- (xi) the Register of Eurasian Patents;
- (xii) the Gazette of the Eurasian Office;
- (xiii) the conditions and procedures for the administrative revocation of Eurasian patents;

(xiv) the conversion of Eurasian applications into national patent applications;

(xv) the application of the relevant provisions where there are several inventors, applicants, patent owners or representatives;

(xvi) the contacts of the Eurasian Office with applicants, patent owners, patent agents and other third parties and the procedure for consultation of the files of the Eurasian Office by the said persons.

## **Part V Application of the Patent Cooperation Treaty (PCT)**

### **Article 20 Application of the Patent Cooperation Treaty**

The Patent Cooperation Treaty and its Regulations shall be applied in the Eurasian Patent System and, in the case of conflict between them and this Convention and its Regulations, the former shall prevail. The Eurasian Office shall be a receiving Office, and also a designated and an elected Office, under the Patent Cooperation Treaty and may, with the authorization of the Administrative Council, apply for the status of International Searching and Preliminary Examining Authority under the Treaty.



## **Part VI Transitional Provisions**

### **Article 21 Search. Collegia**

(1) The Eurasian Office may, with the authorization of the Administrative Council, conclude with a national or regional patent office an agreement for carrying out, as long as may be deemed necessary, searches in relation to Eurasian applications by that national or regional patent office, provided that the national or regional patent office is capable of carrying out searches of the same type as those carried out under the Patent Cooperation Treaty in all or selected fields of technology.

(2) As long as may be deemed necessary, the collegia of three examiners referred to in Article 15(7) may also consist of examiners recommended by the national Offices of the Contracting States.

## **Part VII Miscellaneous Provisions**

### **Article 22 Independence of National Patent Systems**

(1) This Convention shall not prejudice the right of any Contracting State to grant national patents.

(2) This Convention shall not prevent any Contracting State from participating, on its own, in any international organization or from developing various forms of international cooperation in the field of protection of industrial property.

### **Article 23 Revision of the Convention**

(1) This Convention may be revised at any time by the Contracting States.

(2) The Administrative Council shall decide on the convocation of conferences of the Contracting States for the purpose of revising the Convention. It shall also decide on the rules of procedure and other details of revision conferences.

### **Article 24 Settlement of Disputes**

Where any dispute arises concerning the interpretation or implementation of this Convention, the Director General of WIPO shall, at the request of any of the parties to the dispute, mediate in order to lead the parties to a settlement of the dispute.

## **Part VIII Information Services**

### **Article 25 Dissemination of Patent Information**

(1) Each Contracting State shall receive, free of charge, the Gazette of the Eurasian Office and the descriptions of Eurasian applications and patents.

(2) Subject to paragraph (1) of this Article, no publication of the Eurasian Office may be disseminated free of charge without the authorization of the Administrative Council.

## **Part IX Final Clauses**

### **Article 26 Signature. Entry into Force of the Convention**

(1) This Convention shall be signed in the Russian language.

(2) Any State may become party to this Convention that is a member of the United Nations and bound by the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty. To become party to this Convention, a State shall either sign this Convention and deposit an instrument of ratification, or deposit an instrument of accession.

(3) No reservations to this Convention are permitted.

(4) This Convention shall enter into force, in respect of the first three States to ratify it or accede to it, three months after the third instrument of ratification or accession has been deposited with the Director General of WIPO. In respect of any other State, this Convention shall enter into force three months after such State has deposited its instrument of ratification or accession.

### **Article 27 Denunciation of the Convention**

Any Contracting State may denounce this Convention by notification addressed to the Director General of WIPO. Denunciation shall take effect six months after the day on which the Director General received the notification.

### **Article 28 Depositary**

The Director General of WIPO shall be the depositary of this Convention.