

Republic of Kazakhstan

Trademark Law

On Trademarks, Service Marks and Appellation of Origin
as amended by the Law of the Republic of Kazakhstan dated 21.01.2019
No. 217-VI

TABLE OF CONTENTS

Chapter 1. General provisions

Article 1. Basic definitions used in this Law

Article 2. Legislation of the Republic of Kazakhstan on Trademarks,
Service Marks and Appellations of Origin

Article 3. Authorized government body in the field of protection of
trademarks, service marks, appellations of origin

Article 3-1. Expert organization

Chapter 2. Legal protection and terms for registration of trademark

Article 4. Legal protection of trademarks

Article 5. Designations registered as a trademark

Article 6. Statutory grounds for refusal of registration of a
trademark

Article 7. Other grounds for refusal of registration of a trademark

Article 8. Filing of application

Article 9. Requirements for application on registration of trademark

Article 10. Priority of trademark

Chapter 3. Trademark examination

Article 11. Order of examination of application

Article 11-1. Publication of information about application

Article 12. Decisions based on the results of examination of an
application

Article 13. Rights of the applicant

Chapter 4. Registration of the trademark

Article 14. State Register of Trademarks

Article 15. Term of the registration

Article 16. Publication of information on registration

Article 17. Terms of re-registration of trademark

Article 18. Extract from the State register of trademarks

Article 18-1. Recognition of a trademark as well-known

Chapter 5. Use of the trademark

Article 19. Conditions of use of the trademark

Article 20. Warning marking

Article 21. Transfer of the exclusive right to a trademark and the right to use it

Article 22. Trademark assignment when the legal entity is reorganized in the form of demerger

Chapter 6. Termination of the trademark registration

Article 23. Challenging the registration of a trademark and invalidating it

Article 24. Termination of the trademark registration and its nullification

Chapter 7. Legal protection and terms of registration of appellation of origin

Article 25. Legal protection of appellation of origin

Article 26. Designations registered as appellations of origin

Article 27. Designations not registered as appellations of origin

Article 28. Filing an application for appellation of origin and granting the right to use the appellation of origin

Article 29. Requirements for the application

Chapter 8. Examination of appellation of origin

Article 30. Examination procedure

Article 31. Decisions on the results of examination

Article 32. Rights of the applicant

Chapter 9. Registration and granting the right to use appellation of origin

Article 33. Procedure of conducting the State register of appellations of origin

Article 34. Terms of registration of appellation of origin and right to use the appellation of origin

Article 35. Publication of information about registration

Article 36. Right to use the appellation of origin

Chapter 10. Use of the appellation of origin

Article 37. Conditions of use of the appellation of origin

Article 38. Warning marking

Chapter 11. Termination of legal protection of the appellation of origin

Article 39. Contestation of registration of the appellation of origin and (or) granting the right to use the appellation of origin

Article 40. Termination of the registration of the appellation of origin and of the right to use the appellation of origin and their nullification

Chapter 12. Protection of the rights of owners of the trademarks and the rights to use the appellations of origin

Article 41. Appeal board

Article 41-1. Grounds for refusal to consider an objection in the Appeal Board

Article 41-2. Consideration of objection

Article 41-3. Correction of clerical error and obvious technical errors in decision of Appeal board

Article 41-4. Leaving an objection without consideration

Article 42. Consideration of disputes

Article 43. Responsibility for violation of the law on trademarks and appellations of origin

Article 43-1. Exhaustion of the exclusive right to a trademark

Article 44. Methods of protecting the right of the owner (copyright holder) of a trademark or owner of the right to use the appellation of origin of product

Chapter 13. Concluding provisions

Article 45. Payment for services of an expert organization

Article 46. Patent attorneys

Article 46-1. Rights and responsibilities of the patent attorney

Article 46-2. Invalidation of patent attorney certificate and cancellation of information in register of patent attorneys

Article 47. International registration

Article 48. Rights of foreign individuals, foreign legal entities and stateless individuals

Chapter 1. General provisions

Article 1. Basic definitions used in this Law

The following basic definitions are used in this Law:

- 1) exclusive right means a property right of the owner to use the trade mark or the appellation of origin by all means at his own discretion;
- 1-1) marks that are confusingly similar means similar signs or symbols that differ in single elements and are associatively perceived by the consumer as identical;
- 1-2) identical trademarks means signs and symbols that coincide in all elements;
- 1-3) goods or services of the same kind means goods or services performing the same function and relating to the same kind (sort) that may cause by consumer the idea of being produced by the same manufacturer in case of using the identical or similar trademarks;
- 2) bulletin means an official periodical on the protection matters of trademarks and appellations of origin;
- 3) geographical indication means an indication identifying goods that originate in the certain territory, region or area;
- 4) well-known trademark - a designation used as a trademark, or a trademark, recognized as well-known by the decision of the authorized body, based on the evidence of interested persons;
- 4-1) Madrid Agreement means Madrid Agreement Concerning the International Registration of Marks of April 14, 1891;
- 4-2) protocol to the Madrid Agreement - the protocol to the Madrid Agreement on the international registration of marks dated June 28, 1989;
- 5) applicant means a legal entity or an individual who filed an application for registration of the trademark or for registration and granting right to use the appellation of origin;
- 6) patent attorneys mean citizens of the Republic of Kazakhstan who, in accordance with the legislation of the Republic of Kazakhstan, are granted the right to represent individuals and legal entities before the authorized body and expert organization;;
- 6-1) Singapore Treaty means Singapore Treaty the Law of Trademarks, of March 27, 2006;
- 7) International Classification of Goods and Services means a classification confirmed by the Nice Agreement of June 15, 1957 with subsequent amendments and additions;
- 8) trademark, service mark (hereinafter - trademark) means a sign

registered according to this Law or protected without registration by virtue of the international agreements to which the Republic of Kazakhstan is a party, serving to distinguish goods (services) of certain legal entities or individuals from goods (services) of the same kind of other legal entities or individuals;

9) the use of a trademark or appellation of origin - placement of a trademark or appellation of origin on product and in provision of services in respect of which they are protected, on their packaging, manufacturing, use, importation, storage, offer for sale, sale of product with the designation of the trademark or appellation of origin, the use in signboards, advertising, printed matter or other business documentation, as well as their other introduction into circulation;

10) owner (copyright holder) of a trademark or owner of the right to use the appellation of origin of product - an individual or legal entity, possessing the exclusive right to a trademark or exclusive right to use the appellation of origin of product in accordance with this Law;

11) appellation of origin means a designation which constitutes or contains the name of the country, region, population center, area or any other geographical indication as well as any indication derivative of such name and became famous as a result of using it in relation to the good which special characteristics, quality, reputation or other characteristics are connected with its geographical origin including the specific environmental conditions and (or) human factor;

12) collective trademark means a trademark of association (union) or other group of legal entities and (or) individual entrepreneurs (hereinafter - the Association) serving to designate the manufactures or distributed goods (services) with the common qualitative or other characteristics.

Article 2. Legislation of the Republic of Kazakhstan on Trademarks, Service Marks and Appellations of Origin

1. The legislation of the Republic of Kazakhstan on trademarks, service marks and appellations of origin consists of the Civil Code of the Republic of Kazakhstan, this Law and other laws and regulations of the Republic of Kazakhstan.

2. Where the international agreement ratified by the Republic of Kazakhstan sets other rules than those laid down by this Law the

rules of such international agreement shall be applied.

Article 3. Authorized government body in the field of protection of trademarks, service marks, appellations of origin

1. The authorized government body (hereinafter – the Authorized body) is the government body determined by the Government of the Republic of Kazakhstan that performs the government regulation in the field of protection of trademarks, service marks, appellations of origin.

2. The competence of the authorized body shall include:

1) participation in implementation of state policy in the field of legal protection of trademarks and appellations of origin of products;

2) development and approval of:

rules for examination of applications for trademarks and appellations of origin of products;

rules for registration of trademarks and appellations of origin of products in the State register of trademarks and the State register of appellations of origin of products and the issuance of security documents and their duplicates, termination of registration and invalidation thereof;

rules for registration in the State register of trademarks of the transfer of exclusive rights, granting the right to use a trademark;

rules for providing extracts from the State register of trademarks and the State register of appellations of origin of products;

rules for consideration of objections by the appeal board;

rules for examination of applications for trademarks in accordance with international treaties ratified by the Republic of Kazakhstan;

provisions on attestation commission;

provisions on the appeal board; provisions on the appeal commission;

provisions on the commission for recognition of a trademark as well-known in the Republic of Kazakhstan;

3) determination of the procedure for publishing of information in the bulletin, related to the registration of trademarks and appellations of origin of products;

4) attestation of candidates for patent attorneys and their registration in the register of patent attorneys;

5) organization of the activities of the attestation commission, appeal board, appeal commission and commission for recognition of a trademark as well-known in the Republic of Kazakhstan;

6) performance of other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 3-1. Expert organization

1. An expert organization, established by the decision of the Government of the Republic of Kazakhstan in the legal form of a republican state enterprise on the basis of economic management, subordinate in its activities to the authorized body, shall:

- 1) conduct examination of applications for trademarks and appellations of origin of products;
- 2) register trademarks and appellations of origin of products in the State register of trademarks and the State register of appellations of origin of products and issue security documents and their duplicates, terminate the registration and invalidate it;
- 3) register in the State register of trademarks the transfer of exclusive rights, the granting of the right to use a trademark;
- 4) maintain the State register of trademarks and the State register of appellations of origin of products, the bulletin and post them on its Internet resource;
- 5) provide extracts from the State register of trademarks and the State register of appellations of origin of products;
- 6) publish information in the bulletin, relating to the registration of trademarks and appellations of origin of products;
- 7) search for information of registered trademarks and appellations of origin of products based on requests from interested parties;
- 8) consider applications for trademarks and appellations of origin of products in accordance with international treaties, ratified by the Republic of Kazakhstan;
- 9) carry out other activities not prohibited by the legislation of the Republic of Kazakhstan.

2. An expert organization, in agreement with the authorized body, shall approve prices for services in the field of protection of trademarks, appellations of origin of products, provided that the costs, incurred by the organization for their rendering, are fully reimbursed, the break-even of its activities and financing from its own income.

Chapter 2. Legal protection and terms for registration of trademark

Article 4. Legal protection of trademarks

1. The legal protection of trademarks in the Republic of Kazakhstan shall be granted on the basis of their registration in accordance with the procedure established by this Law as well as without registration in virtue of the international agreements of the Republic of Kazakhstan.

2. Legal protection of trademarks shall be granted to individuals or legal entities.

The exclusive right to a trademark shall arise from the date of registration of a trademark in the State register of trademarks.

3. The right to a trademark shall be certified by a certificate and shall be confirmed by an extract from the State register of trademarks.

The certificate form shall be established by the authorized body.

4. The owner of the trademark shall have the executive right to use and dispose the trademark he owns in regard to the goods and services specified in the certificate. No one may use the trademark protected in the Republic of Kazakhstan without the consent of owner thereof.

Article 5. Designations registered as a trademark

1. Graphic, verbal, letter, numerical, three-dimensional and other designations or combinations of designations allowing to distinguish goods and services of certain parties from similar good and services of other parties may be registered as a trademark.

2. Trademark can be registered in any color or color combination.

Article 6. Statutory grounds for refusal of registration of a trademark

1. It is not allowed to register the trademarks consisting solely of the designations that are not distinctive, in particular:

- 1) entered into common use for marking goods (services) of the particular kind;
- 2) are generally accepted symbols and expressions;
- 3) indicate the sort, quality, quantity, character, purpose, value

of goods as well as place and time of their manufacture or distribution;

3-1) are international unpatentable names of pharmaceutical products;

6) have the direct descriptive connection with goods or services that they are used to mark

The mentioned designations may be used as unprotected elements of a trademark if they do not take the dominated place.

2. The designations reproducing armorial bearings, flags and symbols, abbreviated and full names of international organizations and their official signs, flags and symbols, hallmarks of control, warranty or assay, stamps, Olympic logos, awards and other honorary signs as well as designations that are confusingly similar to such signs may not be registered as trademarks. Such designations may be used as unprotected elements if the designation does not consist only of them and if there is consent of the appropriate authorized body or their owner thereof.

3. The registration of designations as trademarks or their elements is not allowed if they:

1) which are false or capable of misleading with respect to a product or its manufacturer, service or person providing a service, as well as names of geographical objects that may be misleading with respect to the place of production of the product;

2) formally indicate the real place of good manufacture but give a wrong impression regarding the origin of good from another territory;

3) constitute or contain the names of geographic locations identifying mineral waters, wines or spirits, for marking such goods not originating from this place as well as if the translation is used or the designation is accompanied by the expressions like "of kind", "of sort", "like" or others;

4) contrary to the public interest, humanity and morality principles.

Article 7. Other grounds for refusal of registration of a trademark

1. The designations may not be registered as trademarks that are identical or confusingly similar to:

1) with trademarks registered in the Republic of Kazakhstan and protected by international treaties with an earlier priority in the

name of another person in respect of similar products or services or with identical trademarks of the same person in relation to the same products or services, except for the trademarks the registration of which is recognized as invalid or which is terminated in accordance with Chapter 6 of this Law;

2) trademarks acknowledged well-known in accordance with the established practice in the Republic of Kazakhstan in regard to any kind of goods and services;

3) with designations, declared for registration with an earlier priority in the name of another person in respect of similar products or services (except for withdrawn and terminated) or with identical designations of the same person in relation to the same products or services;

5) with appellations of origin of goods protected in the Republic of Kazakhstan in respect of any goods, except for cases when they may be included as an unprotected element of a trademark registered in the name of the owner of the right to use this appellation of origin of goods, if the registration of the trademark is carried out in respect of the same goods for individualisation of which the appellation of origin of goods is registered.

Registration of a designation as a trademark in relation to homogeneous products or services similar to the point of confusion with any of the trademarks specified in subparagraphs 1), 2) and 3) of part one of this paragraph, shall be allowed subject to the written consent of the owner of a trademark.

If the owner is a legal entity, then a written consent must be submitted on the letterhead, signed by an authorized person and sealed with the seal of the legal entity (if any), and if the owner is an individual, then the signature must be notarized.

2. Designations shall not be registered as trademarks if they reproduce:

1) industrial designs protected in the Republic of Kazakhstan in the name of other parties on condition of their earlier priority;

3) names of works of literature, science and art, known pieces of art and their fragments widely known in the Republic of Kazakhstan as of the date of filing an application when violating the copyrights;

4) surnames, forenames, pen-names and their derivatives, portraits and facsimiles when violating personal non-property rights of these individuals, their heirs or successors as well as if these

designations form part of the historical and cultural heritage of the Republic of Kazakhstan and are reproduced without permission of the appropriate authorized body.

Article 8. Filing of application

1. The application for a trademark to the expert organization shall be filed by one applicant.

2. The application for a collective trademark shall be filed on behalf of the association in accordance with the agreement of its participants on use of the collective trademark.

Article 9. Requirements for application on registration of trademark

1. Application shall relate to one trademark only.

2. The application must contain:

- 1) the request for expertise of designation specifying the applicant as well as his location or residence;
- 2) the designation in respect of which the application is filed;
- 3) the list of goods and (or) services in accordance with the International Classification of Goods and Services.

3. Application shall be accompanied by:

- 1) a copy of the document confirming the payment of the service for the examination;
- 2) a copy of the power of attorney in the case of record keeping through a representative;
- 3) statute of the collective trademark (in case of filing an application for the collective trademark) including the name of organization authorized to register the collective trademark in its name, purpose of the trademark registration, list of the parties that have right to use the trademark, list and sole characteristics or other characteristics of goods and services which will be marked with the collective trademark, terms of use, use control procedure, responsibility violation of statute provisions of the collective trademark.

4. The application and the annexed documents shall be submitted in Kazakh or Russian language. If the documents are submitted in other language the applicant shall submit their translation into Kazakh or Russian language within one month period.

5. The filing date of an application shall be the date when expert organization received an application that meets requirements of paragraph 2 of this Article; in case that the mentioned documents were not submitted simultaneously the date shall be the date when the last of the submitted documents was received.

Article 10. Priority of trademark

1. The priority of trademark shall be determined by the filing date of application to the expert organization.

2. The priority of trademark may be determined by the filing date of the first application (applications) for trademark in a country - member to the Paris Convention for the protection of industrial property as well as in the international or regional organization provided for in it (Convention priority) if the filing of application to the expert organization was made within six months of the mentioned date. When claiming for the convention priority the applicant shall indicate number, date and country of filing of the first application and attach its certified copy.

3. The priority of trademark placed on the showpieces displayed at the officially recognized international exhibitions may be determined by the date of the open display of the showpiece at the exhibition (exhibition priority) if filing of the application for trademark to the expert organization is made within six months of the mentioned date.

4. The applicant wishing to exercise the right of convention or exhibition priority shall state this fact and submit the relevant documents confirming the legitimacy of this claim on filing an application for trademark or within two months of the date when the expert organization has received the application.

5. In case of a divided application the priority for each application is determined by the priority date of the first application.

The priority for the divided applications is determined by the priority date of the original application of the same applicant; in case there is a right to determine the earlier priority by the original application the priority is determined by the date of this

priority if as of the date of filing the divided application the original application is not revoked and not considered as revoked and the divided application was filed before rendering the decision on the original application.

6. The multiply priority of trademark in regard to different goods shall be determined upon the request of the applicant if several his applications for the designation in regard to various goods are available.

Chapter 3. Trademark examination

Article 11. Order of examination of application

1. Examination of an application shall be carried out in stages:

- 1) preliminary examination - within ten working days from the date of submission of the application;
- 2) full examination - within seven months from the date of submission of the application.

2. At any stage of the examination, the expert organization shall have the right to request additional or clarifying information, without which the examination is impossible.

If the applicant fails to submit the requested information during the examination period and (or) in case of the absence of a request to extend this period, the application shall be considered withdrawn.

3. Information on the progress of consideration of the application shall not be provided to third parties, except for the cases established by the laws of the Republic of Kazakhstan.

Article 11-1. Publication of information about application

1. Within five working days from the date of completion of the preliminary examination, the information about the application shall be published weekly in the bulletin.

2. Information on the submitted applications must contain the following information:

- 1) image of the claimed designation;
- 2) information about the applicant, including the address of the applicant and (or) his representative;
- 3) a list of products (services) in respect of which registration of the mark is requested;
- 4) the number and date of filing the application to the expert organization;
- 5) the country, number and date of filing of the first application, if a convention priority is established;
- 6) reference to a collective trademark.

Article 12. Decisions based on the results of examination of an application

1. Based on the results of the preliminary examination, a notification shall be sent to the applicant within ten working days on the acceptance of the application for consideration or on the termination of the record keeping.

2. If the application is accepted, an expert organization shall carry out a full examination, based on the results of which an expert opinion on registration, preliminary partial registration or preliminary refusal to register a trademark shall be sent to the applicant.

The applicant shall have the right, within three months from the date of sending him a preliminary expert opinion on the refusal or partial registration, to submit a reasoned objection, based on the results of which the expert organization makes a final opinion within three months from the date of receipt of the objection. Based on the final opinion, the expert organization shall make a decision on registration, partial registration or on refusal to register a trademark.

3. The decision on registration or partial registration of a trademark before it is entered in the State register of trademarks may be reviewed in connection with the identification of an application with an earlier priority.

4. The applicant shall pay for the services of an expert organization for the registration of a trademark within three months from the date of sending him a notification of a decision made on registration or partial registration. If a document confirming the payment for the specified service is not provided, the application for a trademark shall be recognized as withdrawn and the record keeping on it ceases.

5. In case of disagreement with the final opinion, the applicant may file an objection to the authorized body within three months from the date of sending this opinion to him. The objection shall be considered by the appeal board within four months from the date of its receipt by the authorized body.

Article 13. Rights of the applicant

The applicant has the right to:

- 1) revoke the application at any stage of examination;
- 2) participate in treating the questions arising in the course of examination of the application;
- 3) complete, specify or correct the materials of the application without changing them substantively until the end of full examination;
- 3-1) request for dividing the application at any stage of its consideration until the end of examination arranging goods and services listed in the original application between the divided applications;
- 4) apply for extension of the time limit for submitting an answer for request or filing an objection but not for longer than six months;
- 5) apply for restoration of the expired time limit but not later than two months from the expiration of the missed time limit;
- 6) get acquainted with the material cited against his application;
- 7) apply for the suspension of procedure due to filing an objection to the Appeal Board;
- 8) apply for the assignment of the right to obtain a trademark to another person before registering the trademark in the State register of trademarks;
- 9) to amend the name and address of the applicant prior to registration of a trademark in the State register of trademarks.

Chapter 4. Registration of the trademark

Article 14. State Register of Trademarks

1. Information on registration of a trademark shall be entered into the State register of trademarks when the services of an expert organization for registration of a trademark are paid.

Information entered in the State register of trademarks must contain:

- 1) an image of a trademark;
- 2) information about its owner and (or) his representative. In relation to a collective trademark, information about owners and a list of entities entitled to use the collective trademark shall be indicated;
- 3) the number and date of registration of the trademark;
- 4) a list of products (services) in respect of which a trademark is registered;
- 5) the number and date of filing the application to the expert organization;
- 6) the country, number and date of filing of the first application, if a convention priority is established;
- 7) other information related to the registration of a trademark, including information about the disposal of the right to a trademark.

2. The State Register of Trademarks shall be public. Upon the request of the interested parties the expert organization provides an extract from the State Register of Trademarks.

3. The owner of the trademark must inform the expert organization of all changes concerning registration including information about changing his surname, forename or father 's name (if relevant), residence or name and location as well as shortening the list of goods (services) in regard to which the trademark is registered without changing the registration substantively.

4. The expert organization enters the changes specifies in paragraph 3 of this Article as well as changes to correct the technical mistakes in the State Register of Trademarks within one month of the date of request for changes and compliant payment.

Within two months of the date of entering the changes in the State Register of Trademarks the notification on filing the appropriate

changes shall be sent to the applicant.

Article 15. Term of the registration

1. The term of the registration of the trademark shall be ten years starting from the date of application.

2. The validity period of a trademark registration shall be renewed every time for ten years at the request of the owner filed during the last year of its validity. Information on the extension of the validity of the registration of a trademark within ten working days from the date of receipt of the application by an expert organization shall be entered into the State register of trademarks and a certificate.

3. The time limit filing the request specified in paragraph 2 of this Article may be restored upon the application of owner filed within six months of expiry of the registration validity.

Article 16. Publication of information on registration

Information relating to the registration of a trademark entered in the State register of trademarks shall be published by the expert organization within two months in the bulletin and shall be posted on its Internet resource immediately after they are recorded in the State register of trademarks. Changes relating to registered trademarks shall be posted by an expert organization on its Internet resource within a period not exceeding three working days from the date of entering information into the State register of trademarks, and shall be published in the bulletin of the next month after entering the information into the State register of trademarks. Information on the owners of a collective trademark shall be additionally entered in the State register of trademarks and the certificate.

Article 17. Terms of re-registration of trademark

The trademark that is identical or confusingly similar to the trademark which registration has expired may not be registered in the name of a person other than the previous owner for a period of one year from the date of termination of the trademark registration. The specified condition shall be also applied in case when the owner of the trademark has refused it before expiry of registration term.

Article 18. Extract from the State register of trademarks

1. Extract from the State Register of Trademarks confirms the registration of trademark, its priority, exceptional right of owner of the trademark in regard to the goods (services) specified in the State Register of Trademarks.

2. The extract form shall be established by the authorized body.

Article 18-1. Recognition of a trademark as well-known

1. In the Republic of Kazakhstan, by a decision of the authorized body, a trademark, registered in the territory of the Republic of Kazakhstan or protected by international treaties, or a designation used as a trademark without its legal protection in the Republic of Kazakhstan, acquired fame as a result of active use in the Republic of Kazakhstan, may be recognized as well-known.

An application of individuals or legal entities on recognition of a trademark as well-known in the Republic of Kazakhstan shall be submitted to the authorized body. The application must relate to one trademark or designation and contain the following:

- 1) information about the applicant indicating the place of residence or location;
- 2) an image of a trademark or designation claimed as a well-known mark;
- 3) the date from which, in the applicant's opinion, the mark became well-known;
- 4) a list of products (services) in relation to which, in the applicant's opinion, the mark has become well-known.

2. The application shall be attached with:

- 1) information confirming the well-known status of a trademark or designation;
- 2) images of a trademark or designations in the format of 8x8 centimeters in the amount of five copies;
- 3) a copy of the power of attorney in the case of submission of an application by a representative;
- 4) a document confirming the payment of the state fee for the recognition of a trademark as well-known.

An application for recognition of a trademark as well-known in the Republic of Kazakhstan shall be considered by a commission of the authorized body for recognition of a trademark as well-known in the Republic of Kazakhstan (hereinafter referred to as the commission of

the authorized body).

Within five working days from the date of receipt of the application for recognition of a trademark as well-known, the compliance of this application and the documents attached to it with the requirements of this article shall be verified.

If a positive verification result is received, the expert organization shall publish information about the application in the bulletin.

After three months from the date of publication, the commission of the authorized body within two months shall consider the application and the materials attached to it, confirming the well-known status of the mark.

The applicant shall have the right to make corrections, additions and clarifications to the application materials before completion of its consideration.

If there is disagreement from the third parties, an appropriate notification shall be sent to the applicant, a response to which is submitted by the applicant before making an opinion on the results of consideration of the application.

Based on the results of consideration of the application by the commission of the authorized body, a decision shall be made to recognize the trademark as well-known or to refuse such recognition, which is sent to the owner (copyright holder) of the trademark within ten working days from the date of such a decision.

If the factual information provided by the applicant confirms the date when the mark became well-known, other than that indicated in the application, the trademark may be recognized as well-known from the actual date.

Information on the actual recognition of a trademark as well-known shall be confirmed by the results of a consumer survey conducted by a specialized independent organization on the territory of the Republic of Kazakhstan. The survey should cover cities of republican significance, the capital and at least five towns of regional significance. The total number of respondents in one locality should be at least one hundred people.

The decision to refuse to recognize a trademark as well-known shall be made if it is established that:

- 1) information is insufficient to recognize the well-known status of a trademark;
- 2) there is a trademark that is identical or confusingly similar to the applicant's trademark, which is protected or declared in the

name of another person with respect to homogeneous products, with the priority which is earlier than the date on which the applicant seeks to recognize his trademark as well-known.

The decision of the commission of the authorized body may be appealed in court.

3. A well-known trademark shall be granted a legal protection provided for by this Law.

4. The legal protection of well-known trademarks shall cease:

- 1) in connection with the expiration of the registration;
- 2) upon the application of any interested person on the early termination of legal protection of a well-known trademark in connection with the loss of the well-known status on the basis of a court decision that has entered into legal force;
- 3) on the basis of a court decision that has entered into legal force on canceling a decision of a commission of the authorized body.

5. Based on the recognition of the designation or trademark as well known, referred to in paragraph 1 of this article, the relevant information shall be entered into the State register of trademarks. The period of validity of a trademark recognized as well-known shall be calculated from the date of filing an application for recognition of a designation or trademark as well-known to the authorized body. The period of validity of recognition of a trademark as well-known at the request of its owner and upon submission of information confirming the well-known status of the trademark shall be extended for a further ten-year period.

Information on the registration of a well-known trademark, its owner and subsequent changes regarding such registration shall be entered into the State register of trademarks and published in the bulletin. The right to a well-known trademark shall be certified by a record of registration in the State register of trademarks and shall be confirmed by an extract from the State register of trademarks.

Information about the termination of legal protection of a well-known trademark shall be entered into the State register of trademarks, posted on the Internet resource of the authorized body and published in the bulletin of an expert organization.

Chapter 5. Use of the trademark

Article 19. Conditions of use of the trademark

1. The owner of the trademark shall be obliged to use the trademark. It shall be forbidden to restrict the use of a trademark along with another trademark, to use a trademark in an amended form, including in a different font, different color design, other form, or use in such a way that may damage the ability of a trademark to distinguish products (services) of one individuals or legal entities from homogeneous products (services) of other individuals or legal entities.

2. The entrepreneurs conducting intermediary activity have right subject to the manufacturer's consent to use their mark on the goods distributed by them along with the trademark of the manufacturer of the good as well as to place it instead of the trademark of the manufacturer.

3. The owners of the collective trademark may use their own trademarks along with the collective trademark on the goods manufactured by them.

4. Any interested person may challenge the registration of a trademark in court in connection with its non-use within three years preceding the date of filing a lawsuit in court. The statement of claim against the registration may relate to all products or their parts indicated in the certificate.

Proof of the use of a trademark shall be considered to be its use on products for which it is registered, and (or) their packaging by the trademark owner or a person to whom such right is granted on the basis of an agreement on transfer of the right to a trademark in accordance with paragraph 2 of Article 21 of this Law. The use of a trademark may be recognized the manufacture, import, storage, offer for sale, sale of product with the designation of a trademark, its use in advertising, signboards, print media, on official forms, other business documents, transfer of the right to a trademark or when demonstrating products at exhibitions held in the Republic of Kazakhstan, as well as their other introduction into circulation. The evidence of use of the trademark submitted by its owner shall concern to the period of time indicated in the objection. When making a decision on termination of registration of the

trademark due to its non-use the evidence submitted by the owner that the trademark was not used because of circumstances beyond his control should be taken into consideration.

5. Excluded by the Law of the Republic of Kazakhstan of 12.01. 2012 № 537-IV (the act is entered into force in ten calendar days after its first official publication).

Article 20. Warning marking

The owner of the trademark certificate may make a warning marking next to the trademark in the form of the Latin letter R, or the word designations "tauar belgisi", " trademark" or "registered trademark" indicating that the designation used is the trademark, registered in the Republic of Kazakhstan.

Article 21. Transfer of the exclusive right to a trademark and the right to use it

1. The exclusive right to a trademark in relation to all products (services) or a part thereof may be transferred under an assignment agreement.

The transfer of the exclusive right to a trademark shall not be allowed if it can be a cause of misrepresentation regarding the product or its manufacturer.

2. In accordance with the terms of a license agreement, an integrated business license agreement or other agreement (license agreement), any person who is not the owner (licensee) shall be entitled to use the protected trademark with the permission of the owner (licensor).

The right to use a trademark may be granted in respect of all products (services) or part thereof.

The licensee shall be entitled to use the trademark throughout the territory of the Republic of Kazakhstan, unless otherwise provided in the agreement.

The period of validity of the right to use a trademark may be extended in accordance with the terms of the agreement or by signing an additional agreement.

In case of failure to indicate the period of validity in the agreement, the period of validity of the right to use the trademark shall be five years from the date of registration of this agreement. The license agreement must contain conditions about:

1) preservation of the quality of products (services) not lower than the quality of products

(services) of the owner (copyright holder) of a trademark;

2) the right of the owner (copyright holder) of a trademark to exercise control over the quality of their products (services).

Transfer of the exclusive right to a trademark to another person shall not entail termination of the agreement.

3. The exclusive right to a trademark in relation to all products (services) and the right to its use may be pledged.

4. The agreements and additional agreements referred to in this article shall be concluded in writing and shall be subject to registration in the State register of trademarks.

5. Transfer of the exclusive right or the license agreement shall be subject to registration within ten working days following the day of receipt of the application from the interested party to the agreement.

6. Failure to comply with the written form and (or) requirements for registration shall entail the nullity of the agreement.

Amendments to the State register of trademarks in connection with the termination of the agreement or cancellation of registration on the basis of a court decision that has entered into legal force shall be carried out within one working day following the day of receipt of the application from the interested party to the agreement.

Errors of a technical nature that do not change their affiliation, nature or content may be corrected in the information about registration within one working day from the date of receipt of the application from the interested person and provided that a written notification is sent to other interested parties to the agreement.

7. Transfer of the right to a trademark shall be registered in the State register of trademarks in the manner determined by this Law.

8. The grounds temporarily preventing the registration of the transfer of the right to a trademark or the granting of the right to its use shall be:

1) the existence of a period for restoration of the terminated

validity of the exclusive right to a trademark;

2) presentation of an incomplete package of documents or inconsistency of information in the submitted documents;

3) inconsistency of the information in the submitted documents with the information contained in the State register of trademarks or in the register, which is maintained in accordance with an international treaty ratified by the Republic of Kazakhstan.

9. In the event that the grounds specified in paragraph 8 of this article are identified, a request shall be sent to the applicant for their elimination.

From the date the request is sent, the registration period shall be suspended for three months.

10. The grounds for refusal to register the transfer of the right to a trademark or to grant the right to its use shall be:

1) the expiration of the period for restoration of the terminated period of validity of the exclusive right to a trademark;

2) the expiration of the term for elimination of grounds temporarily preventing registration;

3) receipt of an application for registration from a person who is not a party to the agreement;

4) lack of registration of the right to dispose the exclusive right to a trademark;

5) misrepresentation regarding a product or its manufacturer in case of transfer of the right to a trademark;

6) whether the party has assumed obligations that impede the granting of the right to use a trademark.

Termination of the exclusive right to a trademark shall entail the termination of the license agreement.

Article 22. Trademark assignment when the legal entity is reorganized in the form of demerger

When the legal entity is demerged the trademark shall be assigned to the newly established legal entity to which the production of goods and services is transferred.

In case that each newly established entity keeps part of production of goods and services for which the trademark is registered the new legal entities shall be acknowledged as the trademark co-owners with their consent.

Chapter 6. Termination of the trademark registration

Article 23. Challenging the registration of a trademark and invalidating it

1. Registration of a trademark may be challenged and invalidated fully or partially during the whole period of validity if it was carried out in violation of the requirements established by Articles 6 and 7, except for subparagraphs 1), 2) and 3) of paragraph 1 of Article 7 of this Law, or within five years from the date of registration of a trademark, if it was carried out in violation of the requirements, established by subparagraphs 1), 2) and 3) of paragraph 1 of Article 7 of this Law.

Any interested person may file an objection to the authorized body against the registration of a trademark on the grounds, specified in this paragraph.

2. Registration of a trademark may be challenged and invalidated fully or partially during the whole period of validity if it is carried out for the name of a representative of the owner of an identical or confusingly similar trademark in one of the countries-participants of the Paris Convention for protection of industrial property without permission of the latter. The owner (copyright holder) of the trademark, registered in one of the countries-participants of the Paris Convention for protection of industrial property shall be entitled to file an objection to the authorized body against the registration of a trademark on the grounds specified in this paragraph.

3. Registration of a trademark may be challenged and invalidated fully or partially if the trademark is identical or confusingly similar in respect of similar products or services with the trade name of another person, the exclusive right to which arose in the Republic of Kazakhstan earlier than the trademark priority date. An objection against the registration of a trademark on the grounds specified in this paragraph may be submitted to the authorized body by a legal entity whose company name is identical or confusingly similar with a trademark, registered in respect of homogeneous products or services.

4. An objection against the registration of a trademark shall be considered by the appeal board within six months from the date of

its receipt. The person, who filed the objection, as well as the owner (copyright holder) of the trademark, shall have the right to participate in the consideration of the dispute.

5. The expert organization shall make an entry in the State register of trademarks on cancellation of the registration of the trademark in connection with recognition of it as invalid and publish the information about it in the bulletin and post it on its Internet resource.

If the registration of the trademark is invalid partially for certain products or services, the expert organization shall make an entry in the State register of trademarks on the cancellation of the registration of the trademark for these products or services, publish the information on the cancellation in the bulletin and place them on its Internet resource.

Article 24. Termination of the trademark registration and its nullification

1. Registration of the trademark shall be terminated:

- 1) due to expiry of its term provided for by Article 15 of this Law;
- 2) in connection with the death of an individual, with the liquidation of a legal entity - the owner (copyright holder) of a trademark;
- 3) based on the written application by the trademark owner on refusal of it;
- 4) in case of non-use of the trademark according to paragraph 4 of Article 19 of this Law;
- 5) Is excluded by the Law of the RK of 12.01.2012 No. 537-IV (enters into force in ten calendar days after its first official publication).
- 6) due to its identity or similarity to the point of confusion with a trademark recognized as well-known in the Republic of Kazakhstan, in the case if the use of such a trademark is able to mislead the consumer regarding the product or its manufacturer.

2. Trademark registration shall be nullified completely or partially by the decision of the Appeal Board or court on the grounds specified in paragraph 1 of Article 23 of this Law.

3. Expert organization makes an entry in the State Register of Trademarks concerning the cancellation of the trademark registration due to its termination or nullification.

Chapter 7. Legal protection and terms of registration of appellation of origin

Article 25. Legal protection of appellation of origin

1. Legal protection of appellation of origin in the Republic of Kazakhstan shall be granted on the basis of their registration in accordance with the procedure established by this Law as well as by virtue of the international agreements of the Republic of Kazakhstan.

2. The exclusive right to use the appellation of origin can be granted to one or several business entities producing in this geographical location goods the special characteristics of which are related, exclusively or mainly, with the geographical area including environmental conditions and (or) human factors.

3. The state registration of the geographical indication as appellation of origin which is located in the foreign state shall be allowed if the name of this indication is protected as such appellation in the country of origin of good. The owner of the exclusive right to use the appellation of mentioned origin may be only the individual whose right to use such appellation is protected in the country of origin of good.

Article 26. Designations registered as appellations of origin

1. Contemporary or historical, formal or informal, full or abbreviated name of country, region, population center, area or other geographical location as well as designation derivative from such name and their combination with the generic name of the good may be registered as an appellation of origin.

2. The designations which are or contain the name of geographical location but entered in the Republic of Kazakhstan into common use as designations of the specific kind of good not related to the place of its production are not acknowledged as an appellation of origin.

Article 27. Designations not registered as appellations of origin

The designations may not be registered as appellations of origin if they:

1) are names of the geographical locations that may mislead as of

the place of production of the good;

2) formally indicate the real place of production of the good but give the false impression that the good originates from another territory;

3) contain the names of geographical locations not related to the place of production of the good.

Article 28. Filing an application for appellation of origin and granting the right to use the appellation of origin

The application for appellation of origin and granting of right to use the appellation of origin (hereinafter - Application) shall be filed to the expert organization.

Article 29. Requirements for the application

1. Application shall relate to one appellation of origin only.

2. Application shall be submitted on a standard form and shall contain:

1) request to carry out examination of the name and (or) to grant the right for the name where the applicant (applicants) as well as his (their) location or residence shall be indicated;

2) designation in regard to which the application is filed;

3) kind of the good;

4) description of the special properties of the product or information about its quality, reputation, other characteristics, which are mainly determined by the natural conditions and (or) human factors typical for a given geographical object;

5) indication of the place of good manufacture (limits of geographical location).

3. If a geographical object, the name of which is declared as an appellation of origin, is located on the territory of the Republic of Kazakhstan, the application shall be attached with the opinion of the local executive body that within the boundaries of this geographical object the applicant produces the product, as well as a document, confirming one of the following criteria: special properties, quality, reputation or other characteristics that are mainly determined by the natural conditions and (or) human factors typical for a given geographical object, issued by the authorized body to the industry of which the declared product refers.

The application for the right to a previously registered appellation

of origin located on the territory of the Republic of Kazakhstan shall be attached with the opinion of the local executive body that within the boundaries of this geographical object the applicant produces the product, as well as a document, confirming the presence of special properties, specified in the State register of appellations of origin of products, issued by the authorized body, to the industry of which the declared product refers.

An application shall also be attached with a document, confirming payment for the services of the expert organization for the examination. In the case of record keeping through a representative, a copy of the power of attorney shall be attached to the application.

4. The application and the attached documents shall be submitted in Kazakh or Russian language. If the documents are submitted in other language the applicant shall submit their translation into Kazakh or Russian language within one month of the date of filing.

Chapter 8. Examination of appellation of origin

Article 30. Examination procedure

1. An expert organization shall conduct an examination within thirty working days from the date of filing the application, during which its compliance with the requirements established by Articles 26, 27 and 29 of this Law shall be checked.

2. At any stage of the examination the expert organization has right to request the additional materials which shall be submitted within three months of the date of sending the request to the applicant. In case of failure by the applicant to submit the additional materials by the specified time or the request to extend the specified time the procedure shall be terminated and the application shall be considered as revoked.

Article 31. Decisions on the results of examination

1. Based on the results of the examination, an appropriate decision shall be made:

- 2) on registration of appellation of origin and (or) granting the right to use the appellation of origin;
- 3) on refusal to register the appellation of origin and (or) to grant the right to use the appellation of origin.

2. The applicant has right to submit a reasoned objection with request to reconsider the examination decision within three months of the date of sending him the decision on refusal to register the application.

In case of disagreement with the new examination decision the applicant may file an objection under the procedure established by paragraph 6 of Article 12 of this Law.

Article 32. Rights of the applicant

While carrying out the examination of appellation of origin the applicant shall be granted rights specified in Article 13 of this Law.

Chapter 9. Registration and granting the right to use appellation of origin

Article 33. Procedure of conducting the State register of appellations of origin

1. The expert organization enters the appellation of origin, number and date of the registration, description of the special features of good, information about all owners of right to use the appellation of origin indicating their place of residence (location), number and date of filing an application and all subsequent changes of the above mentioned information as well as other information related to the registration in the State register of appellations of origin.

2. The owner of the right to use the appellation of origin of product shall be obliged to notify the expert organization about changes regarding registration information. An entry about changes shall be made by an expert organization in the State register of appellations of origin of products and a certificate.

3. The State register of appellations of origin is public. Upon the request of the interested parties the expert organization provides an extract from the State register of appellations of origin.

Article 34. Terms of registration of appellation of origin and right to use the appellation of origin

1. The registration of the appellation of origin remains in force without limit of time on condition of keeping the specific features of good produced in the territory of the mentioned geographical location.

2. The term of the right to use the appellation of origin is for ten years from the date of filing an application to the expert organization.

3. The term of the right to use the appellation of origin shall be extended every time for ten years upon the request of owner applied during the last year of its term on condition of keeping the specific features of good in regard to which the appellation of origin was registered.

4. The request on extending the term of the right to use the

appellation of origin shall be submitted simultaneously with the opinion of the relevant authority in accordance with Article 29 of this Law. Information about extending the term of the registration shall be entered in the State register of appellations of origin and in the certificate.

5. The motion period established in paragraph 3 of this Article may be restored upon the application of owner filed within six months of expiry of the term of registration.

Article 35. Publication of information about registration

Information relating to the registration of appellations of origin of products, entered into the State register of appellations of origin of products, shall be published by an expert organization within two months in the bulletin and shall be posted on its Internet resource immediately after their entry into the State register of appellations of origin of products. Changes relating to the registration of an appellation of origin shall be posted by an expert organization on its Internet resource within a period not exceeding three working days from the date of entry of information into the State register of appellations of origin of products, and shall be published in the bulletin of the next month after entry of information into the State register of appellations of origin of products.

Article 36. Right to use the appellation of origin

1. Extract from the State register of appellations of origin confirms the fact of registration of the appellation of origin and the exclusive right of owner to use it in regard to the good specified in the State register of appellations of origin.

2. Form of the extract shall be established by the authorized body.

Chapter 10. Use of the appellation of origin

Article 37. Conditions of use of the appellation of origin

1. The owner of the right to use the appellation of origin of product shall have the right to use it. The right to use the appellation of origin of product shall arise for its owner from the date of registration of the trademark in the State register of appellations of origin of products.

2. The appellation of origin may not be used without registration if is identical or confusingly similar to the registered appellation of origin in regard to the goods of the same kind.

3. The appellation of origin may not be used if it is or contains the appellations of origin identifying mineral waters, wines or spirits, for marking the goods not originating from this place as well as if the real place of origin is indicated or the translation is used or the designation is attended by the expressions like "of kind", "of sort", "like" or others.

4. The alienation, other transactions of assignment of right to use the appellation of origin and granting right to use the appellation of origin based on the license agreement shall not be allowed.

Article 38. Warning marking

The owner of right to use the appellation of origin may place near the appellation of origin the warning marking looking like the Latin letter R or verbal designations " тауар шығарылған жердын тіркелген атауы ", " registered appellation of origin" or "рег. НМПТ".

Chapter 11. Termination of legal protection of the appellation of origin

Article 39. Contestation of registration of the appellation of origin and (or) granting the right to use the appellation of origin

1. The registration of the appellation of origin and (or) granting the right to use the appellation of origin may be contested and nullified if it was made in violation of the requirements established by Articles 26, 27 and 29 of this Law.

2. The registration of the appellation of origin and (or) granting the right to use the appellation of origin may be contested and nullified within five years of the date of publication of the information about the state registration of the appellation of origin in the official bulletin if the use of the appellation of origin is able to mislead the consumer about the good or its manufacturer due to the trademark with earlier priority as well as the general recognition in the Republic of Kazakhstan as a result of the active use.

3. Any interested person may file an objection based on the grounds specified in paragraphs 1 and 2 of this Article against the registration of the appellation of origin and (or) granting the right to use the appellation of origin to the authorized body. The objection shall be handled in accordance with the procedure and terms established by paragraph 2 of Article 23 of this Law.

Article 40. Termination of the registration of the appellation of origin and of the right to use the appellation of origin and their nullification

1. The registration of the appellation of origin shall be terminated:

- 1) due to disappearance of the representative conditions in the said geographical location and failure to produce the good with the characteristics specified in the State register of appellations of origin in regard to the reviewed appellation of origin;
- 2) due to the termination of the legal protection of the appellation of origin in the country of origin.

2. The right to use the appellation of origin of goods shall be terminated:

- 1) due to the expiry of its term specified in Article 34 of this Law;
- 2) due to loss of the special features of the good specified in the State register of appellations of origin in regard to the reviewed appellation of origin;
- 3) upon the request of the owner of the right to use the appellation of origin filed to the authorized body;
- 4) upon the liquidation of the legal entity or termination of business activity of the individual - owner of the right to use the appellation of origin.

3. The registration of the appellation of origin and (or) granting the right to use the appellation of origin shall be nullified by the decision of the Appeal Board or court on the grounds specified in paragraph 1 of Article 39 of this Law.

4. An expert organization shall make an entry in the State register of appellations of origin of products on the termination of the registration of the appellation of origin of product and (or) the right to use the appellation of origin of product, publish information on this in the bulletin and post on its Internet resource.

Chapter 12. Protection of the rights of owners of the trademarks and the rights to use the appellations of origin

Article 41. Appeal board

1. The Appeal board shall be a collegial body under the authorized body for pre-trial consideration of the applicants' objections.

2. The following may be objected to the Appeal board:

- 1) decisions of an expert organization on the refusal of registration of a trademark, including the refusal to grant legal protection to a trademark declared in accordance with paragraphs 1 and 2 of Article 5 of the protocol to the Madrid Agreement;
- 2) decisions of an expert organization on refusal of registration and (or) granting the right to use the appellation of origin of product;
- 3) against the registration of a trademark, including in accordance with paragraph 6 of Article 5 of the protocol to the Madrid Agreement;
- 4) against registration and (or) the granting of the right to use the appellation of origin of product.

Pre-trial consideration of these objections shall be mandatory.

3. The composition of the Appeal board should include an odd number (at least five) of members, including representatives of authorized bodies for entrepreneurship and in the field of protection of trademarks, appellations of origin of products, as well as public councils from these authorized bodies.

4. The composition of the Appeal board may not include:

- 1) patent attorneys;
- 2) spouses, close relatives or relatives by marriage;
- 3) employees of an expert organization.

5. Replacement of any member of the Appeal board shall be possible in case of:

- 1) recusal or challenge, declared by the participants in the meeting of the Appeal board, on the basis of paragraph 4 of this article;
- 2) absence due to temporary disability, being on vacation or on a business trip.

6. Each meeting of the Appeal board shall be held using video

recording in the manner determined by the authorized body.

Article 41-1. Grounds for refusal to consider an objection in the Appeal Board

The objection shall be refused to be considered if:

- 1) the objection is not subject to consideration in the Appeal Board;
- 2) the objection is not signed or is signed by the person who is not authorized to sign it;
- 3) the objection is filed out of the set time limit and the possibility to extend or restore the time limit is lost;
- 4) the deficiencies related to the requirements for form, content or procedure of filing an objection are not eliminated by the applicant within the established period of time.

Under the above-listed circumstances the notification shall be sent to the individual who filed an objection that the received objection cannot be admitted for examination and shall be considered as unfiled.

The person who filed an objection or his representative may revoke the filed objection before announcement of the decision of the Appeal Board.

Article 41-2. Consideration of objection

1. Consideration of an objection shall be carried out by the Appeal board in the manner determined by the authorized body and within the time periods provided for by this Law.

2. If the deadline for filing an objection is missed, the Appeal board may take it into consideration if the reasons for missing the deadline are recognized as valid on the basis of the submitted documents.

3. The period for consideration of an objection may be extended to three months at the written request of the applicant.

4. The Appeal board shall have the right to postpone the date of the meeting if:

- 1) the applicant does not appear to object, except for the case that he has filed a petition to consider the objection without his participation;
- 2) petitions of the applicant on the need for time to submit

additional evidence.

5. The Appeal board shall make one of the following decisions:

1) on satisfaction of an objection;
2) on partial satisfaction of an objection; 3) on refusal to consider an objection; 4) on refusal to satisfy an objection.
The Appeal board shall not be entitled on its own initiative to change the subject or basis of the objection.

6. All members of the Appeal board, when considering an objection, shall enjoy equal rights. The decision of the Appeal board shall be adopted by a majority of votes of the total number of its members.

7. The decision made shall be sent to the applicant of the objection within ten working days from the date of its adoption.

8. The Appeal board may leave the objection without consideration at the request of the applicant of the objection. The decision to leave the objection without consideration shall be made out by the minutes of the meeting of the Appeal board.

9. The decision may be appealed in court.

Article 41-3. Correction of clerical error and obvious technical errors in decision of Appeal board

1. After the announcement of the decision on the objection, the Appeal board that made the decision shall not be entitled to cancel or change it.

2. The Appeal board may, on its own initiative or at the request of the persons participating in consideration of the objection, correct the clerical errors or obvious technical errors made in the decision.

The issue on making corrections shall be resolved at a meeting of the Appeal board. Persons participating in the consideration of an objection shall be notified of the time and place of the meeting of the Appeal board, but their failure to appear shall not be an obstacle to considering the issue on making corrections.

3. Corrections to the decision of the Appeal board shall be made out by an additional decision of the Appeal board.

Article 41-4. Leaving an objection without consideration

1. The Appeal board shall leave an objection without consideration if:

- 1) the person who filed the objection, duly notified of the time and place of the meeting of the Appeal board, who did not declare the consideration of the objection in his absence, did not appear at the meeting of the Appeal board for the secondary call;
- 2) there is a petition of the person who filed the objection to withdraw his objection.

2. The decision to leave the objection without consideration shall be recorded in the minutes of the meeting of the Appeal board.

Article 42. Consideration of disputes

1. The following disputes shall be considered in court:

- 1) on the legality of issuing a certificate for a trademark or appellation of origin;
- 2) against the validity of the registration of a trademark in connection with its non-use;
- 3) on violation of the exclusive right of the owner (copyright holder) of a trademark or the right to use the appellation of origin of product;
- 4) on the conclusion and execution of license agreements for the use of a trademark;
- 5) on the legality of recognition of a trademark as well-known;
- 6) on termination of the registration of a trademark that is identical or confusingly similar to a trademark recognized as well-known in the Republic of Kazakhstan, if its use is able to mislead the consumer regarding the product or its manufacturer;
- 7) other disputes related to the protection of rights arising from the certificate.

These disputes, except for those specified in subparagraphs 1), 4), 5) and 6) of part one of this paragraph, may be considered by agreement of the parties in arbitration or mediation if this is not prohibited by the laws of the Republic of Kazakhstan "On arbitration" and "On mediation".

The statements of claim against the decisions of the expert organization referred to in paragraph 2 of Article 41 of this Law shall be submitted to the court after consideration of the relevant

objections in the Appeal board.

2. The expert organization, on the basis of a court decision that has entered into legal force, shall make the appropriate changes to the State register of trademarks and the State register of appellations of origin of products, including termination of the validity of the registration of a trademark, well-known trademark or appellation of origin, cancellation of registration of granting the right to use a trademark or changes in the owner (copyright holder) of a trademark, shall publish information about changes relating to registration.

Article 43. Responsibility for violation of the law on trademarks and appellations of origin

1. Violation of the exclusive right to a trademark or the right to use the appellation of origin of product shall be the introduction of a trademark without the consent of the owner (copyright holder) or without the consent of the owner of an appellation of origin or designations similar to it to the extent of confusion, into circulation with respect to homogeneous products or services, and in the case of a well-known trademark - in relation to all products and services.

Violation of the exclusive right of the owner (copyright holder) of a trademark or owner of the right to use the appellation of origin of product shall be the use of a trademark or appellation of origin of product in the media.

2. For violations of the exclusive right to a trademark or the right to use the appellation of origin of product, including for their placement or placement of a designation similar to them to the extent of confusion, on the product or its packaging, the perpetrators shall be liable in accordance with the laws of the Republic of Kazakhstan.

Article 43-1. Exhaustion of the exclusive right to a trademark

The use of the trademark in relation to products that have been lawfully put into circulation in the territory of any of the member states of the Eurasian Economic Union directly by the owner (copyright holder) of the trademark or by other persons with his consent shall not be a violation of the exclusive right to a trademark.

Article 44. Methods of protecting the right of the owner (copyright holder) of a trademark or owner of the right to use the appellation of origin of product

1. A person who has violated the right of the owner (copyright holder) of a trademark or owner of the right to use the appellation of origin of product shall be obliged to immediately cease the violation and compensate the incurred losses to the owner (copyright holder) of the trademark or owner of the right to use the appellation of origin of product.

2. Disputes related to determining the legality of using a trademark, appellation of origin or designation similar to the extent of confusion, or a well-known trademark, shall be considered by the court in the manner established by the civil procedural legislation of the Republic of Kazakhstan.

3. The product and their packaging, on which the trademark is placed without the consent of the owner, the appellation of origin of product or designations similar to them to the extent of confusion shall be recognized as counterfeit. Counterfeit products and their packaging, as well as tools, equipment or other means and materials used for their manufacture, shall be withdrawn from circulation and destroyed at the expense of the violator on the basis of a court decision that has entered into legal force, except for the cases when such products were put into circulation in the public interest and does not violate the requirements of the legislation of the Republic of Kazakhstan on protection of consumer rights.

4. The owner shall have the right to demand the removal from the counterfeit products and their packaging of an illegally placed trademark or appellation of origin, designation similar to them to the extent of confusion, in the cases referred to in paragraph 3 of this article

5. A person who has violated the right of the owner (copyright holder) of the trademark or owner of the right to use the appellation of origin of product when performing work or rendering services, shall be obliged to remove the trademark or the appellation of origin of product, or a designation similar to them to the extent of confusion, from materials, which accompany the

performance of work or provision of services, including documentation, advertising, signage.

6. The owner, when proving the fact of the offense, shall have the right, instead of damages, to demand compensation from the violator in the amount determined by the court, based on the nature of the violation, the market value of the homogeneous (original) products on which the trademark, the appellation of origin of the product or a designation similar to them to the extent of confusion, are placed with the consent of the owner.

Chapter 13. Concluding provisions

Article 45. Payment for services of an expert organization

The services of an expert organization in the field of protection of trademarks, appellations of origin of products shall be payable in accordance with Article 3-1 of this Law.

Article 46. Patent attorneys

1. A competent citizen of the Republic of Kazakhstan, permanently residing in its territory , having higher education and at least four years of work experience, having passed attestation and registered in the register of patent attorneys, shall be entitled to be a patent attorney. Registration in the register of patent attorneys shall be carried out upon passing the attestation by the candidate, confirmed by the issued certificate of the patent attorney.

Attestation of candidates for patent attorneys shall be carried out in the form of testing for knowledge of the legislation of the Republic of Kazakhstan in the field of protection of intellectual property.

The procedure for attestation of candidates for patent attorneys, registration in the register of patent attorneys and making amendments thereto shall be determined by the authorized body. The register of patent attorneys shall be posted on the Internet resource of the authorized body.

2. The following persons shall not be allowed to pass attestation for the position of the patent attorney:

- 1) those who are prohibited to run a business activity in accordance with the laws of the Republic of Kazakhstan;
- 2) those who are employees of the authorized body and the lower organizations as well as their close relatives, husband (wife);
- 3) those who have an outstanding or unexpunged conviction for the commission of crimes according to the procedure established by law;
- 4) those who were excluded from the register of patent attorneys in accordance with this Law.

3. Activity of the patent attorney shall be suspended upon the protocol resolution of the attestation commission:

- 1) based on the application of the patent attorney filed to the

attestation commission;

2) for the period of reference to the group of individuals who are prohibited to run a business activity in accordance with the laws of the Republic of Kazakhstan as well as group of the employees of the authorized body and the lower organizations;

3) in order to clarify the circumstances specified in subparagraph 2) and 6) of paragraph 1 and in paragraph 5 of Article 46-2 of this Law.

In the case specified in subparagraph 3) of this paragraph the activity of the patent attorney shall be suspended till the attestation commission makes the relevant decision within three months.

Activity of the patent attorney shall be resumed by the protocol resolution of the attestation commission if the grounds caused the suspension of his activity were eliminated.

4. The patent attorney as a representative of the applicant performs activities related to conducting the cases with the authorized body and the expert organization on matters of legal protection of objects of the intellectual property. Conducting the cases with the authorized body and the expert organization may also be performed by the applicant and (or) the trademark owner directly.

The individuals living outside the Republic of Kazakhstan or foreign legal entities exercise their rights of the applicant, the owner of trademark, service mark and appellation of origin as well as the interested person in the authorized body and its organizations through the patent attorneys.

Individuals domiciling in the Republic of Kazakhstan but being temporary abroad may exercise their rights of the applicant, the owner of trademark, service mark and appellation of origin as well as the interested person without patent attorney when the correspondence address within the boards of the Republic of Kazakhstan is indicated.

5. The information that a patent attorney receives from the grantor due to performance of his assignment shall be considered as confident upon compliance with the requirements provided by the legislation of the Republic of Kazakhstan on the protection of official and commercial secrets.

Article 46-1. Rights and responsibilities of the patent attorney

1. A patent attorney may carry out the following types of activities in the interests of an applicant (individual or legal entity), an employer who has concluded an employment contract with him or her, or a person who has concluded a civil law contract with him or her or with his or her employer, as follows:

- 1) counseling on the matters of protection of intellectual property right, acquisition or assignment of intellectual property rights;
- 2) performing of works on issuance or execution of applications on registration of trademarks, service marks and appellations of origin on behalf and under instructions of customer, grantor, employer;
- 3) interaction with the authorized body and (or) the expert organization on the matters of protection of rights for trademarks, service marks and appellations of origin including correspondence, preparation and filing an objections against the decisions of examination, participation in the meetings of the expert board of the expert organization;
- 4) assistance in drawing up, reviewing and subsequent sending of the license (sublicense) agreements and (or) the assignment agreements to examination.

2. The authorities of patent attorney shall be ascertained by the certificate.

3. In case if the patent attorney submits the copy of power of attorney on conducting the case related to filing of applications for trademarks (service marks) and appellations of origin and (or) obtaining the protection documents as well as filing an objection to the Appeal Board the patent attorney shall be obliged to submit the original of the power of attorney to the expert organization or the authorized body consequently within three months of the moment of filing the mentioned application or objection. After authentication, the original of the power of attorney shall be returned.

If the power of attorney was drawn up in foreign language its notarized translation to Kazakh and Russian language shall necessarily be submitted.

4. The patent attorney shall be obliged not to accept instructions if he represented or counseled on this case the persons whose interests contradict with the interests of those who filed the request of case conduction or participated in another way in the

consideration as well as if the official who is a close relative of the patent attorney, husband (or wife) and his (her) close relative participates in the consideration.

Article 46-2. Invalidation of patent attorney certificate and cancellation of information in register of patent attorneys

1. The patent attorney shall be excluded from the register of patent attorneys upon the decision of the attestation commission:

- 1) based on the personal application filed to the attestation commission;
- 2) upon the loss of citizenship of the Republic of Kazakhstan or upon relocation and permanent residence outside the territory of the Republic of Kazakhstan;
- 3) in case of break in the professional activity of the patent attorney for more than five years;
- 4) upon entry of judgement of conviction into legal force according to which the patent attorney is convicted of committing a crime;
- 5) in the event of death of the patent attorney or declaration his as missing or dead;
- 6) in case the patent attorney was acknowledged as incapable or partially capable.

2. On the basis of the decision of the attestation commission or the court decision that has entered into legal force, by the decision of the authorized body, the certificate of a patent attorney shall be invalidated and the relevant information on the inclusion of a patent attorney in the register of patent attorneys shall be canceled.

4. The patent attorney excluded from the register of patent attorneys loses his right to conduct the activity of patent attorney from the date of entering the information about this and the certificate on his registration as a patent attorney shall be revoked or nullified.

5. In the event of a complaint from an individual or legal entity regarding the actions of a patent attorney, the authorized body shall establish an appellation commission from an odd number of employees of the authorized body. For the period of consideration of the received complaint by the appellation commission, the validity of the certificate of a patent attorney shall be suspended, which is

noted in the register of patent attorneys.

Based on the results of the consideration of the complaint, the appellation commission shall take one of the following decisions:

- 1) to recommend the authorized body to send a lawsuit to the court to terminate the certificate of a patent attorney;
- 2) to refuse to satisfy the complaint.

The decision of the appellation commission shall be made by a simple majority of votes and drawn up in a protocol. The decision of the appellation commission may be appealed in court.

Article 47. International registration

Individuals and legal entities shall be entitled to submit, through an expert organization, the applications for the international registration of trademarks and appellations of origin. The procedure for consideration of applications for international registration shall be determined by the authorized body in accordance with international treaties ratified by the Republic of Kazakhstan.

Article 48. Rights of foreign individuals, foreign legal entities and stateless individuals

Foreign individuals, foreign legal entities, stateless individuals have rights and responsibilities provided by this Law on the same footing as the legal entities and the individuals of the Republic of Kazakhstan unless otherwise provided for by the legislation of the Republic of Kazakhstan.