

KYRGYZSTAN

Patent Law

No. 8 of 14 January 1998 as amended by Laws of the Kyrgyz Republic No. 130 of July 25, 2002 and No. 46 of February 27, 2003

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Section I GENERAL PROVISIONS

Article 1 Relationships Regulated by the Patent Law

This law shall regulate economic as well as related to them, personal non-economic relationships arising in the territory of the Kyrgyz Republic in connection with creation, legal protection and use of inventions, utility models and industrial designs (hereinafter referred to as objects of industrial property).

Article 2 The Authorized State Structure of the Kyrgyz Republic in the field of Intellectual Property

In compliance with this Law, the State Structure of the Kyrgyz Republic in the field of Intellectual Property (hereinafter referred to as Kyrgyzpatent), shall accept applications for the examination of objects of industrial property, conduct examination, the state registration, grant patents, publish official data on objects of industrial property, issue clarifications on the application of this Law and perform other functions in accordance with the Regulation thereon approved by the Government of the Kyrgyz Republic.

Kyrgyzpatent shall manage the National Patent Fund, provide its storage and complex by the way of acquisition and exchange with international organizations and foreign patent agencies.

In order to improve the activity of Kyrgyzpatent on provision of legal protection to the objects of industrial property, the Appellate Council is being established under Kyrgyzpatent, which is the obligatory initial body for examination of disputes arising with respect to the objects of industrial property due to its jurisdiction. The order of consideration objections by the Appellate Council shall be established by Kyrgyzpatent.

The sources of financing the activities of the Kyrgyzpatent shall be means of republican budget, patent fees, payment for services and materials provided by Kyrgyzpatent and other non-budget sources.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 3 Legal Protection of the Objects of Industrial Property

The right to the object of industrial property shall be protected by this Law and shall be confirmed by a patent, which certifies priority, authorship and patent owner's exclusive right for this object of industrial property.

The scope of legal protection provided by a patent for an invention and utility model shall be determined by their formula and that for a patent for an industrial design, by the whole of its essential features shown in the depiction of an article (model) and listed essential features.

Legal protection of the objects of industrial property recognized as a secret by the state shall be regulated by the legislation of the Kyrgyz Republic.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 4 Effective Terms of a Patent

A patent for an invention shall be effective during twenty years as of the date of submission the application to Kyrgyzpatent. At the request of the owner, Kyrgyzpatent may extend the effective period of the patent for an invention related to pharmaceuticals for a term not longer than five years.

The patent for utility model shall be effective within the period of five years as of the date of file of an application with Kyrgyzpatent. At the request of the owner, Kyrgyzpatent may extend the effective period of the patent for an invention for utility model for a term not longer than three years.

Patent for an industrial design shall be effective within ten years as of the date of file of an application with Kyrgyzpatent. At the request of the patent owner, Kyrgyzpatent may extend the effective term of the patent for an industrial design for a term not longer than five years.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Section II CONDITIONS OF PATENTABILITY OF THE OBJECTS OF INDUSTRIAL PROPERTY

Article 5 Conditions of Patentability of an Invention

An object claimed as an invention shall enjoy legal protection if it is new, has an inventive level and applicable in industry.

An invention shall be considered new if it is not known from the standard of technology.

An invention shall be considered as having an inventive level if it does not obviously follow from the standard of technology.

The standard of technology shall include any information, which has become generally available in the world before the priority date of the invention.

While establishing the novelty of an invention, the information on the standard of technology shall include non-withdrawn applications of other persons, submitted to Kyrgyzpatent with an earlier priority, as well as inventions and utility models patented in the Kyrgyz Republic.

An invention shall be considered applicable in industry if it may be used in industry, agriculture, public health service and in other branches of public economy.

No public disclosure of information shall be considered as affecting patentability if it was made by the applicant, author or by any other person who obtained it from him directly under which the information about the substance of an invention became publicly open not earlier than twelve months before the date of file of an application or before the priority date if it is sought. The obligation of proof of this fact lies with the applicant.

The objects of inventions may be a device, method, composition of matter, a strain of microorganism, cells of plants and animals, as well as application of previously known device, method, composition of matter and strain for a new purpose or any other new achievement in the area of technology and technique.

Shall not be deemed as inventions:

(1) scientific theories and methods of mathematics;

- (2) methods of organization and management of economy;
- (3) signs, schedules and rules;
- (4) methods of performance of mental activities;
- (5) algorithms and computer programs as such;
- (6) drafts and schemes for planned structures, buildings and territories;
- (7) decisions regarding only the appearance of articles aimed for satisfaction of aesthetic needs;
- (8) integrated circuits topography;
- (9) varieties of plants and breeds of animals;
- (10) decisions contradicting with public interests, principles of humanity and morals, hazardous to the environment.

The objects listed in items (5), (8), (9), of paragraph 9 shall be protected by separate laws.

The presence of algorithm and software programs in the invention shall not be deemed as a fact influencing the patentability of an invention, if they are considered as a part of an invention.

Article 6 Conditions of Patentability of Utility Model

Devices shall be related to utility models.

The object claimed as a utility model shall be provided with legal protection if it is new and applicable in industry.

Utility model shall be considered new if the whole of its significant features is not known from the level of engineering.

The information on the level of engineering shall include data published on the means designed for the same purpose as the utility model claimed, which have become generally available before the date of priority of the application for utility model, the data on their use in the Kyrgyz Republic, not withdrawn applications for inventions and utility models submitted earlier by other persons as well as inventions and utility models patented in the Kyrgyz Republic.

No disclosure of information related to the utility model shall be recognized as affecting novelty of the utility model if made by the applicant or by any other persons who obtained from him the information directly or indirectly under which the information on the essence of the utility model became public, not earlier than six months before the date of

submission of a application or the priority date if its sought. The burden of proof of that fact lies with the applicant.

A utility model is applicable in industry if it can be practically used.

Objects mentioned in paragraph 9, Article 5 of this Law are not protected as utility models.

Article 7 Conditions of Patentability of an Industrial Design

Industrial designs shall be artistic and structural embodiments of an article, which determine its exterior. At that a term "article" means industrial or home-made good.

An object claimed as an industrial design shall be given legal protection if it is new and original.

An industrial design shall be considered new if the whole of its essential features presented in the depiction of an article (model) and in the list of essential features is not known from the information available to the public before the date of priority of the industrial design.

In the course of establishing the novelty of an industrial design, all not recalled applications for industrial designs filed earlier by other persons in the Kyrgyz Republic and the industrial designs patented in the Kyrgyz Republic shall be taken into consideration.

An industrial design shall be considered as original if its essential features determine creative character of peculiarities of the article.

Features that determine aesthetic and (or) ergonomic peculiarities of the exterior of an article, its form and configuration, ornament and combination of colors are considered to be the essential features of an industrial design.

No disclosure of information which became generally available to the public, related to the industrial design shall be recognized as affecting patentability of the industrial design if such disclosure is made by an applicant, the author, or any other person who has obtained this information from him, under which the information on the essence of an industrial design became public, not earlier than six months before the date of file of an application or the priority date if its sought. The burden of proof

of this fact lies with the applicant.

The following shall not be deemed as industrial designs:

- (1) decisions conditioned by solely technical function of the article;
- (2) architectural units (except for small architectural forms), industrial, hydro technical and other stationary structures;
- (3) printed matter as such;
- (4) objects of unstable shape such as liquid, gas, bulk substances or like that;
- (5) articles that contradict public interests, the principles of humanity and morals.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Section III SUBJECTS OF LAW

Article 8 The Author of the Object of Industrial Property

The natural person by whose creative labor the work is done shall be considered the author of an object of industrial property.

If several natural persons participated in the creation of an object of industrial property, all of them shall be recognized as its authors. The order of using the rights, which belong to the authors shall be determined by agreement between them.

Natural persons who have not made personal contribution in the creation of an object of industrial property but who have provided only technical, organizational or material assistance to the author (authors) or who have only helped to form rights for it and the use thereof shall not be recognized the authors.

The right of authorship shall be inalienable personal right and protected without time limits.

Article 9 The Patent Owner

The right to obtain patent shall belong to:

- (1) the author (authors) of the object of industrial property;
- (2) employer in the cases stipulated in item two of the present Article;
- (3) their successor, including a person obtained appropriate right in the assignment order.

The right to obtain patent for the object of industrial property created by the employee due to execution of his service duties or a specific task of the employer shall belong to the employer, unless otherwise is provided by the agreement between the employer and employee.

If the employer, within four months from the date of notification by the author on the created object of industrial property, does not file an application with Kyrgyzpatent, does not reassign the right to the other person to obtain patent and does not inform the author that the object of industrial property is kept secret, than the right to obtain patent is transferred to the author. In that case, the employer shall have the right to use the object of industrial property in his production paying compensation to the patent owner that is determined on contractual basis.

The right to obtain patent for the object of industrial property created by the employee with the use of experience, material, technical and other means of the employer but not in connection of execution of working duties by the employee or concrete task of the employer shall belong to the employee if otherwise is not specified in the agreement between him and employer. In this case the employer has the right to use the object of an industrial property in his production paying the compensation to the patent owner determined on contractual basis.

Article 10 The Right of the Author to Remuneration

The author who has no right to obtain patent has the right to get remuneration from the employer paid in the amount and under conditions determined on the basis of the agreement between them.

In the event the agreement between the parties on the amount and the order of payment of remuneration or compensation is not reached the dispute shall be considered by the court.

Should the remuneration or compensation provided in the agreement not be paid in time, the employer guilty of that shall bear responsibility pursuant to the legislation of the Kyrgyz Republic.

Other relations arising in connection with the creation of the object of industrial property by an employee shall be regulated by the legislation of the Kyrgyz Republic on work inventions, utility models and industrial designs.

Section IV THE EXCLUSIVE RIGHT TO THE OBJECTS OF INTELLECTUAL PROPERTY

Article 11 The Rights of Patent Owner

The patent owner shall have the exclusive right to protected by the patent for Intellectual Property subject-matters, including the right to prohibit the use of these objects by other persons, except for the cases when such use does not infringe the exclusive right of the patent owner according to this Law.

The exclusive right to protected Intellectual Property subject-matters appears since the date of publication of the information concerning patent issue in the Official Bulletin issued by Kyrgyzpatent.

Relationships regarding the use of an object of industrial property the patent for which belongs to several persons shall be determined by the agreement between them. In the absence of such agreement, each of them may use the protected object at his own discretion but shall have no right to provide an exclusive license for it or assign the patent to the another person without the agreement of other owners.

If an agreement on granting an exclusive license or assignment of a patent is not achieved between patent owners, division of the rights to the object of industrial property may be decided in the court.

Manufacture, application, import, offer for sale, sale and any other introduction to the economic turnover or storage of a product for this purpose that contains objects of industrial property protected by a patent as well as exploitation of the method protected by a patent for an invention shall be considered as the exploitation of an object of industrial property.

The product shall be deemed containing an invention protected by a patent for invention, utility model if it contains every feature of the invention, utility model listed in an independent point of the formula or a feature equivalent thereto, which is known as such in this field of technology at the date of beginning exploitation. The method protected by a patent for an invention shall be deemed applicable if every feature of the invention listed in an independent point of the formula or equivalent to it feature which is known as such in the field of technology on the date of beginning the exploitation is applied.

The product is deemed containing an industrial design protected by a patent

if it includes all of its essential features presented in the depiction of an article (model) and in the list of essential features.

The use of a method protected by a patent shall be also deemed introduction into an economic turnover or storage with the same purpose of a device by functioning or exploitation of which, pursuant to its assignment, the present method is automatically provided.

The use of a method for production of a good protected by a patent shall be also deemed introduction into an economic turnover or storage with the same purpose of a good produced directly by this method. Under this condition the new product is considered to be manufactured by a patented method if otherwise is not proved.

Manufacture, experimental examination or examination of an experimental design of a product is not deemed the use of an object of industrial property.

The patent owner may assign the obtained patent to any natural person or legal entity. The agreement on assignment of a patent shall be registered at Kyrgyzpatent and published in the Official Bulletin of Kyrgyzpatent. The agreement shall not be valid without registration.

Patents and the right to obtain them shall be inherited.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 12 Obligations of the Patent Owner and Compulsory Licenses

If the object of industrial property is not used or insufficiently used by the patent owner or persons to whom the rights for it has been transferred, within three years as of the date of granting a patent, that leads to insufficient supply of the appropriate goods or services at the market of goods and services, any person wishing and ready to use patent of an industrial property, in the event of refusal of the patent owner to conclude licensing agreement with this person on the conditions pursuant to the common practice, has the right to apply to court with an action to provide him a compulsory license for the use of this object.

If the patent owner fails to prove that the non-use or insufficient use of an object of industrial property is conditioned by excusable reasons, the court shall grant the indicated license specifying the scope of use, the amount, time limits and procedures of payment. The amount of payment

must not be lower than the price of the license, which is determined in compliance with the established practice.

The patent owner that can not use an invention without infringing the rights of the other owner of a patent for an invention or for a utility model, who has refused to conclude a licensing agreement based on the conditions that are in compliance with the common practice, has the right to apply to court with an appeal to grant him a compulsory license for the exploitation of an invention or utility model under condition that his invention presents an important technological achievement of the significant economic value with respect to the invention or utility model patent for which belongs to the other person.

If the indicated license is provided, the court must establish the limits for the use of an invention or utility model, patent for which belongs to the other person, in the scope necessary to exploit an invention patented by the person requiring to provide him a compulsory license, as well as the amount, terms and payment order. The amount of payment must be established not less than the price for a license, which is determined in compliance with the common practice.

In the emergency situations (disasters, catastrophes, big accidents), as well as in the interests of the national security, the Government of the Kyrgyz Republic shall have the right to grant a compulsory license coupled to payment of an applicable compensation to a patent owner, in this case the volume and time of exploitation of the patented object of industrial property shall be restricted by the purposes for which it was allowed. Disputes arising due to such exploitation shall be decided by court.

The compulsory license shall always be non-exclusive license, it cannot be reassigned to another person.

Article 13 Actions Not Considered as an Infringement of the Exclusive Right of the Patent Owner

The following is not recognized as an infringement of the exclusive right of the patent owner:

(1) application of the means containing objects of industrial property protected by patents in the construction or during exploitation of transport facilities (sea-going, river, air, land and cosmic) of other countries under condition that said facilities temporarily or accidentally

stay in the territory of the Kyrgyz Republic and are used for the needs of transport facility. Such actions shall not be considered as an infringement of the exclusive right of the patent owner if transport facilities belong to natural persons or legal entities of the countries that provide the same rights to the owners of transport facilities of the Kyrgyz Republic;

(2) conducting scientific research or an experiment with an article containing an object of industrial property;

(3) application of such means during emergency situation (natural calamities, catastrophes, big accidents) with subsequent payment of a commensurate compensation to the patent owner;

(4) application of means containing objects of industrial property protected by patents if these means are introduced into an economic turnover in a legal way in compliance with the rights granted by a patent owner. In this case the person who under the permission of the patent owner acquires a mean containing patented object of an industrial property or manufactured with the use of the patented method, shall have the right to use or dispose this mean without additional permission, unless otherwise is provided by the agreement.

Article 14 The Right of Prior Use and Provisional Legal Protection

Any natural person or a legal entity who before the date of priority of an object of industrial property, regardless from the author, has created and used on the territory of the Kyrgyz Republic a solution similar to the object of an industrial property or made the required preparations shall keep the right to use it free of charge without enlarging the scope of such use.

The right of prior use may be assigned to another natural person or legal entity but together with the production where the use of identical solution has taken place or the required preparations has been made for that purpose.

The claimed invention since the date of publication of the information concerning application to the date of publication of the information concerning patent issue is provided by provisional legal protection in the scope of published formula but no more than the scope determined by the formula contained in the issued patent.

Provisional legal protection shall not be considered if an application was withdrawn or considered as withdrawn or if decision on the refusal in patent issue was made and the possibilities for its appeal are exhausted.

Any natural person or legal entity, using the claimed invention within the provisional legal protection period shall pay an appropriate pecuniary compensation to the patent owner after patent getting. Size of this compensation shall be determined by the agreement between appropriate parties.

Provision of paragraph 5 of this Article are also cover the objects of industrial property since the date of placement of means containing such objects of industrial property at official or officially recognized international exhibition arranged on the territory of member-state of the Paris Convention on Industrial Property Protection, provided that an application for patent grant was filed with Kyrgyzpatent no later than six months since indicated date.

A person beginning the use of the object of industrial property since priority date but before the date of publication of the information concerning application for granting of a patent for invention as well as information concerning registration of utility models or industrial designs must dissolve a further use at the request of an applicant.

However such person must not pay applicant's damages incurred as a result of such use. In case of failure to execute the applicant's request provided by paragraph 7 of this Article the infringer is liable for the infringement of rights of patent owner in accordance with the Law of the Kyrgyz Republic.

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Article 15 Granting the Right to Use the Object of Industrial Property

Any person who is not the patent owner shall have the right to use an object of industrial property protected by a protected document only with the permission of a patent owner on the basis of licensing agreement.

According to the licensing agreement, the patent owner (licenser) takes an obligation to give the right to use a protected object within the scope provided in the agreement to another person (licensee) and the latter takes an obligation to make payments to the licenser provided in the agreement and perform other actions provided in the agreement.

In the case of an exclusive license the licensee shall be given an exclusive right to use an object of industrial property within the limits provided in the agreement, retaining the right to use the object of industrial

property with the licensor in the part, which is not transferred to the licensee.

In the case of non-exclusive license, the licensor while giving the right to the licensee to use an object of industrial property shall retain all the rights which come out from the patent, including the right to transfer the license to a third party.

A license may contain provisions different from the ones indicated in this Article on the basis of mutual agreement between a licensor and a licensee.

A license agreement shall be subject to registration at Kyrgyzpatent and shall not be valid without such registration. The license agreement shall become effective as of the date of its registration at Kyrgyzpatent, and shall be published in the official bulletin of Kyrgyzpatent.

A patent owner may file an application with Kyrgyzpatent to the effect that he is granting the right to use an object of industrial property (open license) to any person under conditions established in the agreement. In this case the fee, in order to keep patent effective, shall be reduced by 50% as of the year following the year of publication of the information about such application by Kyrgyzpatent.

The application of a patent owner on granting the right to an open license cannot be withdrawn.

Disputes on the refusal to conclude an agreement as well as on the condition of the agreement shall be examined in court.

Article 16 Violation of a Patent

The use of an object of industrial property protected by a patent without maintenance of conditions established by the present Law is considered violation of a patent.

The patent owner has the right to require:

- discontinue violation of a patent;
- indemnification of losses caused, including lost profit and compensation of moral damage by a person guilty of violation of a patent;
- exaction of income received by the infringer of a patent instead of indemnification of losses;

- payment of compensation by an infringer in the amount of 10 to 50,000 minimum salaries established by the legislation of the Kyrgyz Republic, determined at the discretion of court instead of indemnification of losses or exaction of income;
- confiscation of products to ones own benefit introduced to an economic turnover or stored for this purpose and considered as infringing a patent as well as means specially directed for the infringement of a patent;
- publication of court decision in order to rehabilitate his/her business reputation.

Demands to the infringer of patents may also be made by the owner of the exclusive license if otherwise is not specified by the licensing agreement or the owner of non-exclusive license, if this is provided by the licensing agreement.

Section V THE RECEIPT OF PATENTS

Article 17 File of an Application for the Grant of a Patent

An application for the grant of a patent shall be filed with Kyrgyzpatent by a person who has the right to receipt patent in accordance with Article 9 of the present Law (hereinafter referred to as an applicant).

An application for the grant of a patent shall be filed in the Kyrgyz or Russian language. The formula of the invention or utility model, the list of essential features of industrial design, the name of the object of industrial property, the name of an applicant and patent owner must be submitted in the Kyrgyz or Russian language. If other documents of the application as well as documents presented during examination of an application are submitted in the other language, the translation into Kyrgyz or Russian shall be attached. The applicant must present the translation into Kyrgyz or Russian no later than three months as of the date of file of an application with Kyrgyzpatent.

At the petition of an applicant the term of presenting indicated documents may be prolonged and reinstated in the event of its violation under the proof of valid reasons and payment of corresponding fee.

An application may be filed through a patent agent registered at Kyrgyzpatent. Natural persons residing out of the Kyrgyz Republic or foreign legal entities or their patent agents shall conduct operations related to obtaining patents as well as protection of object of industrial property through the patent agents registered at Kyrgyzpatent, except the procedures related to establishing date of application filing, fees payment, provision of the copy of previous application, if conventional priority is required, provision of the copy of the application filed earlier, getting of receipts and notifications of Kyrgyzpatent in respect of above-mentioned procedures, fee payment for maintenance of the patent.

The authority of a patent agent shall be attested by a power of attorney issued to him by a person, in whose name the patent is requested.

Kyrgyzpatent shall determine the order of attestation and registration of patent agents and implement it.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 18 Application for the Grant of a Patent for an Invention

Application for the grant of a patent for an invention (hereinafter referred to as the application for an invention) shall be related to one invention or a group of inventions so closely linked with each other that they meet the requirements of the unity of an invention.

The application for an invention must include:

- (1) application for the grant of a patent with the indication of the author (authors) of an invention and the person (persons) in whose name the patent is sought, their place of residence or destination;
- (2) description of the invention disclosing it fully enough to embody it by the specialist in this field;
- (3) the formula of an invention expressing its essence and fully based on the description;
- (4) draughts and other materials if these are necessary for understanding the subject matter/essence of an invention;
- (5) essay.

The application for an invention shall enclose the document that proves payment of fee in the established amount or grounds for the exemption from payment of fee as well as reduction of its amount, which may be provided at submission of an application or within two months under condition of payment of additional fee.

The application is considered to be withdrawn if this document is not provided in the established term.

The date of file of an application with Kyrgyzpatent is set as of the date of receipt of the documents necessary to establish the priority pursuant to the requirement of paragraph 1, Article 21 of the present Law, but if these documents are not presented simultaneously, than it is established on the date of receipt of the last one of the documents presented.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 19 Application for the Grant of a Patent for a Utility Model

An application for the grant of a patent for a utility model (hereinafter referred to as application for the utility model) shall be related to one utility model or a group of utility models so closely linked with each other that they meet the requirement of the unity of utility model.

The application for a utility model must include:

- (1) application for granting of the patent with specification of the author (authors) of the utility model and a person (persons), in whose name the patent is requested, as well as the place of their residence or destination;
- (2) description of the utility model disclosing it fully enough to embody it;
- (3) the formula for a utility model fully based on the description;
- (4) draughts if necessary for understanding the essence of a utility model;
- (5) essay.

The application for a utility model shall be enclosed with the document that proves payment of a due fee in the established amount or grounds for exemption from payment for the file of an application as well as reduction of the amount which may be provided at submission of an application or within two months under condition of payment of additional fee.

The application is considered to be withdrawn if this document is not provided in the established term.

The date of file of an application with Kyrgyzpatent is set as of the date of receipt of the documents necessary to establish the priority pursuant to the requirement of paragraph 1, Article 21 of the present Law, but if these documents are not presented simultaneously, than it is established due to the date of receipt of the last one of presented documents.

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Article 20 Application for the Grant of a Patent for an Industrial Design

An application for the grant of a patent for an industrial design (hereinafter referred to as the application for industrial design) must be related to one industrial design or a group of industrial designs so closely linked with each other that they meet the requirement of the unity of an industrial design.

The application for an industrial design must include:

- (1) application for granting of a patent with specification of the author (authors) of an industrial design and a person (persons), in whose name the patent is requested, as well as the place of their residence or destination;
- (2) set of depiction of an article (model) which give full and detailed

idea of the exterior of an article;

(3) the draught of the whole exterior of an article, ergonomic scheme, confection map, if they are necessary for the disclosure of the essence of an industrial design;

(4) description of the industrial design;

(5) the list of its essential features.

The application for an industrial design shall be enclosed with the document that proves payment of a due fee in the established amount or grounds for the exemption from payment of fee as well as reduction of the amount which may be provided at submission of an application or within two months under condition of payment of additional fee.

The application is considered to be withdrawn if this document is not provided in the established term.

The date of file of an application with Kyrgyzpatent is set as of the date of receipt of the documents necessary to establish the priority pursuant to the requirement of paragraph 1, Article 21 of the present Law, but if these documents are not presented simultaneously, than it is established due to the date of receipt of the last one of the documents presented.

Kyrgyzpatent shall also determine any other requirements to application documents.

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Article 21 Priority of the Object of Industrial Property

Priority of an invention and utility model shall be established on the date of file of an application with Kyrgyzpatent, which contains the following:

(1) application for the grant of a patent for invention, utility model - with indication of applicant;

(2) description of invention, utility model or part of description of invention, utility model, including all essential features of the claimed invention, utility model or draught as an element of mentioned description or a reference to application of any kind filed earlier provided by paragraphs 6 - 10 of this Article. If the application does not contain above-mentioned documents, Kyrgyzpatent shall notify promptly the applicant on necessity of submission of these documents within two months

since the date of receipt of this notification.

Priority of an industrial design shall be established on the date of file of an application with Kyrgyzpatent containing the following:

- (1) application for the grant of a patent for industrial design with indication of the applicant;
- (2) a set of depiction of article (model), a list of essential features of an industrial design. If the application does not contain required documents Kyrgyzpatent shall notify promptly the applicant on necessity of submission of these documents within two months since the date of receipt of this notification.

Priority may be established on the date of filing of the original application in a country-member of the Paris Convention on Protection of Industrial Property (conventional priority) if the application for an invention or a utility model is filed with Kyrgyzpatent during twelve months, and the application for an industrial design, during six months from said date. The day of filing of the original application is not included to calculation of the said terms.

If due to the circumstances beyond control of an applicant the application claiming conventional priority could not be filed within the required term, the time period may be extended but not more than for two months.

An applicant wishing to use the right of conventional priority must indicate this during filing of an application or during two months from the date of file of an application with Kyrgyzpatent and attach a copy of the initial application or present it not later than four months from the date of receipt of the application by Kyrgyzpatent.

Priority may be established on the date of submission the additional materials if they have been prepared by an applicant as an independent application filed before expiration of a three-month-period from the date of receipt a notification from Kyrgyzpatent to the effect that it is not possible to accept additional documents since they are deemed to change the subject matter of the solution claimed.

Priority may be established on the date of submission to Kyrgyzpatent an earlier application of the same applicant disclosing that invention, utility model, industrial design if the application on which the priority is sought has been filed not later than twelve months from the date of

filing of an earlier application for invention and six months in case of earlier application for a utility model, an industrial design. An earlier application shall be considered withdrawn.

Priority may be established on the basis of several earlier filed applications, under condition that the established terms are complied for each of them.

Priority may not be established on the date of file of an application on which an earlier priority was sought.

Priority of the object of industrial property on selected application shall be established on the date of filing an initial application with Kyrgyzpatent disclosing this object of industrial property, if selected application is filed before the decision to refuse to grant a patent on the initial application is made and the opportunity to appeal is exhausted and in the case of granting a patent on that application, before the date of registration of the object of industrial property in the State Register.

If during the examination it is established that identical objects of industrial property have the same priority date, the patent shall be granted on the application for which an earlier mailing date to Kyrgyzpatent is proved, and if these dates coincide, on the application having an earlier registration number of Kyrgyzpatent.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 22 Correction of the Application Documents at the Initiative of the Applicant

During two months from the date of receipt of the application, an applicant shall have the right to introduce amendments and specifications to the documents without changing the essence of the object of an industrial property.

Such amendments and specifications may be submitted on the applications for the objects of industrial property and after expiration of the indicated term, under condition of payment of the fee, but no later than the decision to grant a patent is made.

Article 23 Examination of the Application for an Invention

Kyrgyzpatent shall conduct formal and preliminary examination of an

application.

At the petition of the applicant, which can be filed with Kyrgyzpatent simultaneously with application filing or within 30 months since the date of filing, consideration of the application can be made with or without examination on the essence. If petition is not submitted within said period, the application is considered as withdrawn.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 23-1 Formal Examination of the Application for an Invention

During the formal examination of the application for an invention within two-month-period the constitution and accuracy of required documents provided by Article 18 of this Law are checked as well as accordance of the claimed proposal to the objects for which the legal protection is provided.

If after completion of formal examination it is determined that application is filed for proposal not related to the objects for which the legal protection is provided, the decision on refusal on patent grant is made.

If an application is filed with violations of requirements prescribed to registration and compilation, the applicant shall receive a request with proposal to submit corrected or absent materials within two-month-period since the date of receipt of the request.

If applicant shall not submit requested documents or petition for prolongation of effective terms, the application is considered as withdrawn.

If the application meets all the requirements of formal examination, a notification that the application is accepted for consideration shall be sent to the applicant.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 23-2 Preliminary Examination of the Application for an Invention

While conducting preliminary examination, Kyrgyzpatent within ten-month-period shall check compliance of the prescribed requirements to contents of the application documents, compliance of the claimed invention with the criteria of patentability of the materials of an

application provided by the applicant, non-withdrawn applications with an earlier priority, the fund of issued protected documents of the Kyrgyz Republic, as well as published Eurasian applications and patents and shall establish the priority of the invention and check compliance of the application with requirements for the unity of the invention.

The applicant upon the payment of appropriate fee may submit a petition for conduct of rapid preliminary examination for the application for invention. In the event that before expiration of twelve-month-period since the date of filing of the application with Kyrgyzpatent or when priority is required since the date of priority, the decision on patent grant is made or patent is granted and similar application concerning vindication of earlier priority is filed, the decision on patent grant or patent is canceled.

If the applicant, in accordance with Article 22 of this Law, provided additional materials, in the course of the preliminary examination it shall be checked, that they do not change the essence of the claimed invention.

Additional materials shall change the essence of the claimed invention if they contain features that are supposed to be included into the formula of an invention which have been absent from the initial materials of an application. Additional materials of the part, which change the essence of the claimed invention, shall be taken into account in the course of consideration of an application and may be registered by the applicant as an independent application.

On applications, which had been filed with violations of the requirements of unity, an applicant shall be offered to inform, within two-month-period, which of the proposals must be considered, and clarify documents of the application.

Other decisions, included in the materials of the initial application, may be formalized as separate applications.

In the event, if the applicant within two months from the date of receipt of the notification on the violation of the requirement of the unity of an invention does not inform which of the proposals should be considered and does not submit specified documents, the first mentioned in the formula proposal shall be considered.

During the preliminary examination Kyrgyzpatent may request from the applicant any additional materials, which are necessary for examination conduct. The additional materials by the request of examination should be submitted within two-month-period since the date of receipt of the request.

In the event, if the applicant fails to provide required materials or the petition for extension of the established term, within the indicated term, the application shall be deemed withdrawn.

On the application, which has passed preliminary examination with a positive result, a decision to grant preliminary patent shall be made which is granted under responsibility of the applicant.

According to the results of preliminary examination in the presence of petition to conduct examination on the essence or in the absence of said petition or petition on patent grant without examination of the application on the essence, the applicant shall receive a notification.

If in the result of the preliminary examination it is established that the claimed proposal is not patentable, a decision on refusal to grant a patent shall be made.

The applicant may file an objection to this decision with the Appellate Council within two months after the receipt of refusal to grant a patent. The Appellate Council must consider the objection within two months as of the date of its receipt.

In the event the applicant does not agree with the decision of the Appellate Council he may appeal to court within six months as of the date of its receipt.

After expiration of 18 months since the date of application filing or if priority is required since the date of priority Kyrgyzpatent shall publish the information related to the application in Official Bulletin with the exception of cases when application is withdrawn or when decision on patent grant or refusal is made. Kyrgyzpatent shall determine the list and completeness of published information.

On the applicant's petition provided that appropriate fee is paid Kyrgyzpatent may publish the information related to application till 18

months since the date of its filing, or if priority is required since the date of priority.

While petition on patent grant without examination on essence is filed after preliminary examination completion, the decision on patent grant is made within two-month-period since the date of receipt of said petition.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 24 Examination of Application for Invention on Essence/Substance

Kyrgyzpatent within 18 months since the date of petition submission shall conduct examination of the application on the essence. An applicant shall be notified about petitions submitted by the third parties.

During conduct of the examination on the essence compliance of the claimed invention to conditions of patentability specified in Article 5 of this Law.

During examination of an application on substance Kyrgyzpatent shall be entitled to request the applicant to submit materials without which examination procedure is not possible, including changed formula of the invention.

Additional documents on the request of examination shall be submitted without changing the essence of the invention during two months from the date of receipt of the request.

The order established by paragraphs 11 and 12 of this Article shall extent to additional documents in the part that changes the essence of an invention.

If in the result of scientific-technological examination of an application on essence Kyrgyzpatent finds that the claimed proposal, within the scope of legal protection required by an applicant, meets the requirements of patentability of the invention, the decision to grant a patent with the formula of an invention suggested and agreed with the applicant is made.

If the claimed proposal does not meet the requirements of patentability within the scope of legal protection required by an applicant, the decision on rejection to grant a patent shall be issued.

The applicant may file an objection against the decision on rejection

to grant a patent with the Appellate Council during three months from the date of its receipt. The objection must be considered by the Appellate Council during four months from the date of its receipt.

Should the applicant not agree with the decision of the Appellate Council he may, within six months from the date of its receipt, appeal to court.

The applicant shall have the right to familiarize himself with all the materials indicated in the decision of examination or in the search report. Copies of the patent materials requested by the applicant shall be sent by Kyrgyzpatent during one month from receipt of the request.

The terms provided in Article 23-1, 23-2 and this Article, except for the terms established in paragraph 15 of Article 23-2 and paragraphs 9 of this Article, elapsed by the applicant, may be reinstated by Kyrgyzpatent in the presence of proof of excusable reasons and payment of the fee.

The petition to reinstate the term may be filed by an applicant not later than twelve months from the date of expiration of the elapsed term.

Both applicant and third parties may submit a petition on informational search conduct on the application for invention to determine technical level in comparison with which valuation of patentability of the invention is made. Kyrgyzpatent determine the order of informational search and information provision.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 25 Examination of the Application for a Utility Model

Examination of the application for utility model shall consist of formal and preliminary examination.

During formal examination of an application for utility model the provisions of Article 23-1 of the present Law shall be applied appropriately.

During preliminary examination of an application for utility model the provisions of paragraphs 1 - 10 and 13 - 15 of Article 23-2 as well as paragraph 13 of Article 24 of the present Law shall be applied appropriately.

If an application for utility model has successfully passed the preliminary

examination, the decision to grant a patent for utility model shall be made.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 26 Reorganization of Applications

Before publication of the information on the application for an invention but no later than date of receipt of the decision on patent grant, an applicant has the right to reorganize the application for invention by filling an appropriate declaration to the application for the utility model.

In the case of indicated reorganizations of applications the priority of the original application is preserved.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 27 Examination of the Application for an Industrial Design

Kyrgyzpatent shall conduct formal and preliminary examination of the application for an industrial design.

According to applicant's petition, which can be submitted simultaneously with application filing or within twelve months since the date of filing, the application consideration may be arranged with or without examination on the essence. If the petition shall not submitted within said terms, the application should be considered as withdrawn.

During formal examination of the application for an industrial design, provisions of Article 23-1 of this Law shall be applied appropriately.

During preliminary examination of the application Kyrgyzpatent within four months shall check compliance of prescribed requirements to the contents of the application documents, compliance of the claimed industrial design to the conditions of patentability according to materials of the application provided by the applicant, fund of issued protected documents of Kyrgyzpatent, non-withdrawn applications with earlier priority, and shall check compliance of the application to requirements of industrial design unity.

During preliminary examination of the application for an industrial design, provisions of paragraphs 3 - 15, 18 of Article 23-2 of this Law shall

be applied appropriately.

According to applicant's or third parties' petition Kyrgyzpatent within twelve months since the date of petition submission shall conduct the examination of the application on the essence. An applicant shall be notified about petitions submitted by the third parties.

During examination of an application on the essence, provisions of paragraphs 2 - 13 of Article 24 of this Law shall be applied appropriately.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 28 Registration of the Objects of Industrial Property, Publication of the Information on Patent Granting and Granting of the Patents

After the decision to grant a patent is made, provided that the fee for registration and granting of a patent is paid, Kyrgyzpatent shall enter in the State Register of Inventions of the Kyrgyz Republic, the State Register of Utility models of the Kyrgyz Republic or the State Register of Industrial Designs of the Kyrgyz Republic the invention, utility model or an industrial design respectively.

In the event that there are several persons in whose names the patent is required, only one patent shall be granted them.

The document certifying payment of the fee for registration and grant of a patent shall be provided within two months as of the date the applicant receives the decision to grant a patent or within three months after the date of expiration of two-month-period under the condition of payment of additional fee.

In the event the document certifying payment of the fee for registration and grant of the patent is not provided in the established order, registration of the object of industrial property, publication and grant of the patent shall not be carried out and the application shall be considered withdrawn.

Kyrgyzpatent shall determine the list and completeness of the information published in the Official Bulletin.

After publication of the information related to patent grant, any person has a right to become acquainted with materials of the application.

Kyrgyzpatent shall determine the patent form and composition of the information provided.

In case of finding the obvious and technical errors, on the request of patent owner and author Kyrgyzpatent shall make appropriate corrections into granted patent without payment of the fee.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 29 Publication of the Information on Registration of the Objects of Industrial Property

(Deleted in accordance with the Law # 46 of the Kyrgyz Republic of February 27, 2003.)

Article 30 Grant of Patents

(Deleted in accordance with the Law # 46 of the Kyrgyz Republic of February 27, 2003.)

Section VI TERMINATION OF THE VALIDITY OF PATENTS

Article 31 Disputes Against Patents

Within the whole period of its validity a patent may be considered invalid in full or in part, due to the objection against its granting in the following cases:

- (1) the protected decision does not meet requirements of patentability as provided by this Law;
- (2) the formula of the invention, utility model or the list of the essential features of the industrial design contain features missing in the initial documents of the application;
- (3) author (authors) or their owners have been incorrectly indicated in the patent.

A person who filed an objection must give his/her reasons for it and submit a document certifying payment of a fee.

An objection against the grant of a patent on the grounds provided in points (1) and (2) of this Article must be examined by the Appellate Council within the term of six months after the date of its receipt; the patent owner must get acquainted with the objection.

A person who filed an objection and the patent owner may participate in its consideration. In this case, the Appellate Council shall not go beyond the reasons, contained in the objection against the grant of a patent.

Should the Applicant not agree with the decision of the Appellate Council on the objection against the grant of a patent, any of the parties may, within the period of six months from the date of making a decision, file an appeal with court.

Article 32 Invalidation and Termination of Patents

The patent shall fully or partly invalidated on the grounds of the Appellate Council decision or court decision entered into effect.

The period of validity of patents shall be terminated, if:

- (1) the period of validation of a patent provided in accordance with this Law is expired;
- (2) the fee, in order to support a patent, is not paid in the established term;
- (3) on the basis of a declaration filed by the patent owner with Kyrgyz patent

if the refusal does not violate the interests of the third parties - since the date of publication of the information related to ahead of schedule termination of the patent validity due to declaration of the patent owner.

Kyrgyzpatent shall publish information on the ahead of schedule termination of a patent in the Official Bulletin.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Section VII RIGHTS AND PRIVILEGES OF THE AUTHORS AND PATENT OWNERS

Article 33 Rights and privileges of Authors

An author shall have the right to assign his name or a specific title to the object of industrial property at any stage of examination of the application.

The authors of most important or widely used inventions may be granted an honorary title "Honored Inventor of the Kyrgyz Republic".

Article 34 State Incentives for Creation and Exploitation the Objects of Industrial Property

In order to stimulate scientific-technological development, strengthen intellectual potentials of the Kyrgyz Republic, promote the development of technical and artistic creation as well as create and exploit the objects of industrial property, The State Intellectual Property Fund of the Kyrgyz Republic (hereinafter referred to as the State Fund) is being established under Kyrgyzpatent.

The State Fund on behalf of the State has the right to obtain the rights of the patent owner for the patented objects of industrial property in order to implement them in future and use in the interests of the State.

The State Fund shall provide its activities in accordance with the regulation approved by Kyrgyzpatent.

The sources of financing of the State Fund shall be means of the republican budget, deductions from the patent fees, collections, means received due to the activities of the Fund and other receipts.

Pursuant to legislation of the Kyrgyz Republic, the State shall establish preferential taxation as well as provide other rights and privileges to the authors and economic entities exploiting objects of industrial property.

Section VIII PROTECTION OF THE RIGHTS OF PATENT OWNERS AND AUTHORS

Article 35 Consideration of Disputes in Court

Disputes related to the application of the present Law shall be examined in accordance with the order established by the legislation of the Kyrgyz Republic.

The courts in accordance with their jurisdiction, shall consider the following disputes:

- (1) authorship to the objects of industrial property;
- (2) granting of a protected document;
- (3) establishing the patent owner;
- (4) issuance of a compulsory license;
- (5) infringement of the exclusive right to use the protected object of industrial property and other economic rights of the patent owner;
- (6) conclusion and execution of licensing agreements for the use of a protected object of industrial property;
- (7) right to the prior use;
- (8) payment of remuneration to the author by the employer pursuant to the agreement stipulated in paragraph 1, Article 10 of this Law;
- (9) other disputes related to the protection of rights.

Article 36 Liability for Infringement of the Authors' Rights

Appropriation of authorship, forced co-authorship, illegal disclosure of the information about the object of industrial property shall entail liability stipulated in the legislation of the Kyrgyz Republic.

Section IX FINAL PROVISIONS

Article 37 Patent Fee

The fees shall be collected for file of an application in order to grant patents for the objects of industrial property, examination and granting of patents for the objects of industrial property, keeping them in effect, extension of validity term and other legally valid acts. The list of actions for which the fee shall be collected, its amount and terms of payment and also grounds for exemption from payment, reduction of the amount or reimbursement of the fee shall be established by the Government of the Kyrgyz Republic.

The fee shall be paid to Kyrgyzpatent by the applicant, patent owner or any natural or legal entity, under agreement with them.

All means entered the account of Kyrgyzpatent in the form of fees, including currency and payment for services and materials shall be used by Kyrgyzpatent for technical provision, creation and exploitation of automated system, complexion of patent information's fund as well as training and stimulation of the personnel.

Article 38 Patenting of the Object of Industrial Property in Foreign Countries

Submission of applications to foreign countries for the objects of industrial property created in the Kyrgyz Republic shall be exercised after expiration of three months as of the date of file of an appropriate application with Kyrgyzpatent.

In the necessary cases, Kyrgyzpatent may allow patenting of the objects of industrial property in foreign countries earlier than the indicated term, after the examination of an application for the presence of information which is of the state secret has been conducted in the order established by Kyrgyzpatent.

In the event of submission of an application to foreign countries or international organizations for the object of industrial property created in the Kyrgyz Republic, with violation of the order established by the present Article, the protected document for this object of industrial property shall not be provided in the Kyrgyz Republic.

Article 39 Rights of Foreign Natural Persons and Legal Entities

Foreign natural persons and legal entities shall have the rights provided in the present Law and other normative legal acts related to legal protection of the objects of industrial property on an equal basis with natural persons and legal entities of the Kyrgyz Republic by virtue of international agreements of the Kyrgyz Republic or on the principle of reciprocity.

Stateless persons residing in the territory of the Kyrgyz Republic shall exercise rights provided by this Law and other acts related to legal protection of the objects of industrial property equally with natural persons and legal entities of the Kyrgyz Republic, unless otherwise follows from this Law and other acts of the legislation of the Kyrgyz Republic.

Article 40 International Agreements

If an international agreement of the Kyrgyz Republic establishes rules other than those contained in this Law, the rules of the international agreement shall be applied.

Article 41 Transitional Provisions

In accordance with alterations and additions made into this Law related to transition to unified protected document (patent) the following was established:

(1) regarding applications for grant of preliminary patent of the Kyrgyz Republic for invention or industrial design, which were filed before entering into effect of the Law providing the transition to unified protected document (patent), the applicant has a right to submit a petition for granting of the patent of the Kyrgyz Republic for invention or industrial design with the examination on the essence or for granting of the patent under applicant's responsibility, provided that appropriate fees are paid. If the applicant does not take appropriate measures, the application shall be considered withdrawn;

(2) regarding effective preliminary patents of the Kyrgyz Republic for invention or industrial design, which five-year-period since the date of application filing is not expired before entering into effect of the Law providing transition to unified protected document (patent), the owner of preliminary patent has a right to submit a petition on granting of the patent of the Kyrgyz Republic for invention or industrial design with examination on the essence. In case of absence of such petition, preliminary patent of the Kyrgyz Republic shall be reregistered as a patent of the Kyrgyz Republic under the applicant's responsibility for residuary terms;

(3) effective preliminary patents of the Kyrgyz Republic for invention

or industrial design, which five-year-period since the date of application filing is expired before entering into effect of the Law providing transition to unified protected document (patent), shall be reregistered as patents of the Kyrgyz Republic under the applicant's responsibility for residuary terms;

(4) regarding applications for granting of the certificate of the Kyrgyz Republic for utility model filed before entering into effect of the Law providing transition to unified protected document (patent), the decision on granting of the patent of the Kyrgyz Republic for utility model is made, provided that all appropriate fees are paid;

(5) effective certificates of the Kyrgyz Republic for utility models shall be reregistered as the patent of the Kyrgyz Republic for utility model.

Kyrgyzpatent shall determine the terms and order of above-mentioned procedures.

(Version of the Law of the Kyrgyz Republic of February 27, 2003 # 46)

Article 42 Entering into effect of the Present Law

The Patent Law of the Kyrgyz Republic enters into effect since the moment of its publication. ("Erkin-Too" of February 4, 1998 # 10-11).