

DRAFT

PATENT LAW OF GEORGIA

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1

This Law regulates property and personal non-property relations formed in connection with the creation, legal protection and usage of industrial property objects - inventions, utility models and industrial designs.

ARTICLE 2

1. "Sakpatenti" - National Intellectual Property Center of Georgia.
2. International Bureau - International Bureau of World Intellectual Property Organization.
3. Paris Convention - the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended at Stockholm on July 14, 1967 and on September 28, 1979.
4. Patent Cooperation Treaty (PCT) - multilateral international treaty, signed on June 19, 1970 revised on September 28, 1979, amended on February 3, 1984.
5. Object of industrial property - objects referred to in the Article 1 (2) of the Paris Convention.
6. Patent - protective document granted in respect to this Law.
7. Register - Industrial Property State Register, collection of data, which includes contents of all registrations regarding inventions, utility models and industrial designs and all those amendments concerning the legal status of the patent and its owner.
8. Application - collection of documents necessary for granting of a patent, made in respect to the approved requirements.
9. An application in order to obtain the patent, which is determined on the basis of the filing date of the first application.
12. Applicant - a natural person or legal entity claiming for a patent.
13. Patent owner - a natural person or legal entity registered in the State Register, which enjoys the patent rights.
14. Patent Attorney - in the sphere of industrial property an authorized person acting in the name of another person.
15. License - a right granted by the patent owner to the use of the invention, utility model and industrial design, drawn up by the agreement.

ARTICLE 3

For an invention, utility model and industrial design is granted a patent, which confirms the authorship and grants the patent owner the exclusive right to the invention, utility model, or industrial design.

ARTICLE 4

1. In the name of the foreign patent owner can be granted an importation (confirmation) patent.

2. The importation patent is granted for the invention patented abroad, examination on which was conducted pursuant to the criteria of patentability.

3. The importation patent gives the patent owner the exclusive right to use, or produce or sell production, but it does not give the right to prohibit the third party to import the similar product from abroad.

ARTICLE 5

1. Patent validity term on the invention ~~20~~ 25 years as from the day application is filed with Sakpatenti.

2. The validity term of the importation patent is determined by the validity term of foreign basic patent, but no longer than ~~10~~ 15 years as from the date of filing with Sakpatenti.

2. A patent may be undisclosed for 20 years term, which can be extended by

5. The existing state of the art is defined by all those data, that have become commonly known on the basis of written or oral descriptions, public maintenance or other sources before the date of filing the application for a patent, or if the Convention priority is claimed - before the date of this priority.

6. At determination of invention novelty in the state of the art along with the other information sources must also be included applications for inventions and utility models filed with Sakpatenti provided that they have the earlier priority. The novelty is defined only on basis of considering one information source.

7. At determination of an inventive level in state of the art, the applications for inventions and utility models pending with Sakpatenti shall not be included.

8. The substances and mixtures known from the existing state of the art may be recognized as patentable if they are used assignment unknown for the state of the art.

ARTICLE 14

1. A patent is granted for a utility model which relates to improvement of devices, substances and methods and which is susceptible of novelty and industrial application.

2. The utility model is regarded novel, if its essential features is not known from the existing state of the art.

3. The industrial applicability of the utility model implies the capability of its production, or making use of it in the sphere of industry, agriculture, public health, etc.

4. State of the art is determined by all those data that have become widely known by written, or verbal description, also by applying it in Georgia and which refer to devices, substances or methods having similar application.

5. At determination of novelty of the utility model in the state of the art shall be included apart from the other information sources all the applications for utility models filed earlier with Sakpatenti provided that they have earlier priority.

ARTICLE 15

1. By a patent can be protected an industrial design which represents a new artistic-constructive exterior of the article and complies the criteria of novelty and industrial applicability.

2. The industrial design is novel, if the nature of its essential features, which define aesthetic peculiarities of the article, is not commonly known before the industrial design priority date in written or verbal description, public usage or in any other way.

3. At determination of industrial design novelty all the applications for the industrial designs filed with Sakpatenti and having earlier priority, shall be taken into account.

5. The industrial design shall be considered novel if its essential features, which define aesthetic peculiarities of the article, are not commonly known before the industrial design priority date in written or verbal description, public usage or in any other way.

available directly or indirectly from the prior art), which in other case would effect the patentability of the object presented in the application, shall not have influence on:

- patentability of the invention, if the information was revealed during 12 months

CHAPTER IV. INVENTOR AND PATENT OWNER

ARTICLE 19

1. As an author of an invention, utility model or industrial design shall be considered a natural person, in result of creative work of which was made an invention, utility model or an industrial design.
2. Authorship is a permanent protected unalienable right.
3. At demand of the author Sakpatent is obliged not to publish his name.
4. If an invention, utility model, or industrial design was created in result of joint activities of several persons, then each of them shall be regarded as co-authors;
4. Relations among co-authors are determined on the basis of their agreement.

ARTICLE 20

1. The right to obtain a patent is entitled only to an author or his successor;
2. The right to obtain a patent for an invention, utility model or industrial design made in result of creative work of several persons is entitled to each of them.

ARTICLE 21

1. For an invention, utility model or design made by an employee, which is connected with official duties or conducting special task and implies an inventive activity, the right to obtain patent is entitled to the employer, unless agreed upon otherwise.
2. If creation of an invention, utility model or industrial design is not related to conduction of the official duties or special tasks of an employer, then the employee is entitled to obtain a patent. In this case, the employer has the exclusive right to a license and to the purchase of a patent from the date of filing the application.
3. If an invention, utility model or industrial design are created under State order, or in the process of fulfillment of the work stipulated by the agreement put among the organizations, then the right to a patent is retained under the conditions referred to in the order or an agreement.

ARTICLE 22

1. An employer is obliged to notify the employer of the invention, utility model or industrial design created by him in a written statement.
2. If an employer, who has been notified about the invention, utility model or industrial design created at the fulfillment of official duties or a special task, within three months period from the date of notification receipt does not file an application for a patent, then the employee is entitled to acquire a patent by himself.

ARTICLE 23

1. If two or more applications for one ~~an~~ the same invention, utility model or

the applicant fails to fulfill the conditions of these requirements, the application shall not be considered filed.

5. If in the description of the invention or utility model the drawings are referred to, which are not presented in the application, Sakpatenti requires from the applicant to submit them. If the applicant satisfies the requirements, then the date of filing of the application will be the day of receiving the omitted drawings. If the applicant fails to fulfill the requirement, the date of filing of the application will be the receiving day of the application and any reference to the drawings will be considered withdrawn.

6. In regard with the applicants wish the reproduction, description and drawings of the industrial design can be changed with the article of the design.

ARTICLE 26

1. Each application, within one month from the filing date, shall be attached by the document confirming the payment of the established fee of the formal requirements examination.

2. If the application is filed by a patent attorney, then the application documents within one month from the date of application filing shall be attached by the power of attorney issued by an applicant in his name.

3. If the application is filed by an assignee of the author, then the application documents within one month from the date of filing the application, shall be attached by a document confirming a power of attorney.

ARTICLE 27

1. An application for obtaining a patent shall be presented in the state language, other application documents - in any other languages.

2. An applicant in the case of filing an application documents in other languages, within two months from the date of their presentation to Sakpatenti, must provide the Georgian translation.

3. The description of the invention and utility model shall be filed in respect of the established rule and in full form as enable the skilled person of the corresponding sphere to realize it.

4. Claims of an invention and utility model must be compiled by the established rule; must represent its essence and must be based on the description. The claims of the invention can consist of one or more claims. The claims of an utility model must consist of one claim.

5. The reproduction of an industrial design must be in accordance with the established rule.

1. An application shall be considered filed with Sakpatenti from the day of presenting the following application documents:

a) for the invention and utility model - an application of a prescribed form, description, claims and drawings, if they are necessary for explaining the essence of the invention and utility model;

b) for the industrial design - an application of a prescribed form, a reproduction of an industrial design.

2. In the case of application filing by mail application shall be considered filed from the day the application documents were handed to the post-office of Georgia.

ARTICLE 29

1. An application claiming a patent for an invention and utility model must concern to only one invention, or utility model, but may comprise a group of inventions united together under one inventive idea.

2. An application claiming a patent for an industrial design must relate to one industrial design, but may comprise one or several articles (options) a group (a set) of articles, if they are united by one artistic-constructive idea.

ARTICLE 30

1. An applicant has the right:

a) to divide the pending application into component parts by filing a divisional application;

b) to change the description, claims and drawings of the pending application;

c) to convert the application for an invention to an application for a utility model and vice versa.

2. The subject of divisional application considered in the points "a" and "b" and amendments must be covered by the application filed earlier. Under this condition the date of earlier application is retained.

3. Filing of the divisional application, introduction of amendments and alteration of an application is permitted before making a decision on granting a patent.

ARTICLE 31

1. An applicant, who wants to enjoy the priority right of the earlier application filed with the member State of Paris Convention on Protection of Industrial Property, is obliged to present within twelve months from the indicated date an application for an invention and utility model, and for an industrial design - within six months.

2. If the applicant for some reason fails to file the application with Sakpatenti claiming the conventional priority within the indicated term, the term can be extended but no longer than for two months.

3. The applicant, who wants to enjoy the Convention priority right, must indicate about it at filing the application with Sakpatenti or within two months term from filing date, and must attach the copy of first application, confirmed by a Patent Office of a

corresponding country, or present it to Sakpatent within no later than three months from the filing date.

1. The examination as to form takes place within two months from the confirmation of the application filing date.

2. The record-keeping on the application is terminated if it does not meet the requirements of formal examination.

ARTICLE 36

1. If it is proved that the application for an invention meets the examination as to form, then Sakpatenti conducts the search to determine the state of the art for the invention described in the application, on basis of which conducts the examination on novelty and makes a documentary conclusion.

2. Sakpatenti provides for the search within six month in the case of payment of the established fee.

3. The application for the invention which the applicant has not paid the established fee, shall be regarded as application for the utility model.

ARTICLE 37

1. Sakpatenti sends a documentary conclusion about state of the art. An applicant within two months from the receipt of the conclusion and present a new wording of

On the basis of the decision of granting a patent for the invention Sakpatenti, in the case of payment of established fee by ~~the~~ ~~rule~~, shall publish the data in the Official Bulletin.

ARTICLE 40

If it is proved, that the application for a utility model meets the examination as to form, then the examination as to the novelty is carried out within a month by considering the registered applications and patents ~~to~~ ~~grant~~ by Sakpatenti. Whereas, the examination as to the novelty is conducted during one month.

ARTICLE 41

If it is proved, that an application of utility model satisfies the requirements of the examination as to the novelty, then Sakpatenti ~~take~~ ~~s~~ a decision on granting a patent for utility model.

ARTICLE 42

On the basis of a decision on granting a patent for utility model, Sakpatenti in the case of payment of established fee by ~~the~~ ~~rule~~, publishes data and description in the Official Bulletin.

ARTICLE 43

If it is proved, that an application for an industrial design satisfies the examination as to form, then Sakpatenti takes a decision on granting the patent.

ARTICLE 44

On the basis of a decision on granting a patent for an industrial design Sakpatenti in the case of payment of the established fee ~~by~~ ~~rule~~, shall publish the data in the Official Bulletin.

ARTICLE 45

1. After publication of the data on ~~grant~~ ~~ing~~ of a patent Sakpatenti registers an invention, utility model or industrial design in State Register of Industrial Property and issues patent in case of payment of the fixed fee set by the rule.

2. Sakpatenti establishes the form of ~~the~~ ~~rule~~ and the data to be recorded in the State Register.

3. Any person has the right to familiarize ~~one~~ ~~self~~ with the State Register in respect to the established rule.

4. In order to maintain ~~the~~ ~~patent~~ valid annual fees ~~defin~~ ~~ed~~ by set rule are to be paid.

ARTICLE 46

1. Sakpatenti takes a ~~negati~~ decision on granting of a patent for the entire invention and utility model, or for its part, if the application:

a) relates to such subjects, which according to Article 17 are not regarded as an invention and utility model;

b) relates to an invention and utility ~~one~~ on which according to Article 18 the patent is not granted;

c) does not satisfy the criteria of patentability requirements as to the novelty;

d) includes claims which does not correspond to the description;

e) by its description and claims does not provide for conducting the search considered by Article 36;

f) includes claims of an invention presented by one independent claim, in which more than one invention is described ~~and~~ not be036es 1n1(e ..1(on an 1n11s8(t)- seq)-

1. For examination as to form of the patent application, granting a patent and its maintenance and for other activities having legal importance, the established fees must be paid. The quantity, term of payment and return is defined by established rule.
2. The fees are revised periodically by

c) the use of an invention, utility model and industrial design on vehicle of any country, at their temporary or casual presence within the territory of Georgia, if the similar advantages are guaranteed by the corresponding country for Georgia as well. In this case, an invention, utility model and industrial design shall be applied only to marine, air and land transport facilities of similar type and not for production purposes;

d) the use of an invention, utility model and industrial design at natural calamity, catastrophe, epidemic and other emergency. (2004) 2y, t uaion. (2004) ns.,)] TJ 9.65595 -1.1671 TD03 Tc
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The patent shall be considered invalid in the case of submitting at Sakpatenti by the patent owner a written ~~re~~ application on patent.

ARTICLE 63

1. A patent shall be considered ~~in~~ if the following is ascertained:
 - a) the subject of ~~pat~~ is not patentable;
 - b) the patent does not describe an ~~in~~, utility model and industrial design completely as to make its utilization possible;

3. In the case of open licensing regime announcement the amount of a patent fee is reduced two times.

4. The patent owner can apply to Sakpatenti for cancellation of an open licensing regime at any time. If the licensing agreement has not been concluded, or it is no longer valid, or each of the license holders give their consent, then Sakpatenti satisfies the mentioned request.

ARTICLE 67

1. The compulsory or official license can be granted for an invention, utility model and industrial design. The compulsory and official license is granted under the decision of the Compulsory Licensing Committee at the Ministry of Economy.

2. The compulsory license may be only granted at the request of any party after four years from the date a patent was granted.

3. The compulsory license can be claimed if within the above mentioned term an invention, utility model has been used within the territory of Georgia, or whether they have been used insufficiently, also if their usage is impossible without infringing the earlier patent.

4. The compulsory license can be issued only in the case, if prior to this the interested party tried to obtain the permission from the patent owner or his assignee on basis of reasonable conditions and terms, his efforts have not been successful.

5. The official license is a kind of compulsory license and is granted only in case of demand from the State Bodies, if it proves the necessity of a patent use for the national defense, humane health protection, or the economic interests of the country. An official license is granted before expiration of the four years period stated in the second paragraph of this Article.

6. The granting of the official license at the request of a patent owner can be postponed, under the condition that the patent owner shall take the responsibility to satisfy government and public requirements by his own production.

7. The use of a patent on the basis of official license can be conducted both by the State and the private person, which shall be named by the competent body demanding a license or court.

8. The decision on granting of the compulsory/official license sets spheres of its application, validity term, rights and duties of a licenser and licensee and the amount of remuneration.

ARTICLE 68

1. All types of licenses shall be legalized in a form of written agreement and be registered at Sakpatenti. The agreement shall be registered within no later than two months from the date of its conclusion.

2. The substantial changes in the license, if there is a wish of the parties, can be registered at Sakpatenti regarding the established rule not later than in a month after the amendments are made.

3. The data granted license and amendments are published in the Official Bulletin.

CHAPTER IX. ADVANTAGES AND PRIVILEGES OF INVENTORS

ARTICLE 69

1. The author of an invention, on any stage of the pending application is entitled to give the invention his name or a special title.

2. On the basis of the petition of the Society of Inventors and Rationalizers an applicant may be exempted from payment of the fees, with the exception of annual fees paid for patent maintenance.

ARTICLE 70

Other advantages and privileges for authors of inventions are regulated by legislation of Georgia, which is in force.

CHAPTER X. PATENT ATTORNEY

ARTICLE 71

1. A person, who does not have a permanent residence in the territory of Georgia, or a foreign legal entity, or his representative conducts relations with Sakpatenti through a

ARTICLE 75

1. The appeal about the infringement of the rights proceeded from a patent can be drawn by a patent owner.

2. The holder of the exclusive license has right to appeal against the infringement of the rights proceeded from the patent, patent owner himself, during the reasonable time from receipt of the notification on infringement does not present an appeal to the Court.

ARTICLE 76

Production, utilization, or including it in civil circulation or other use of a patented invention, utility model and industrial design without the permission of a patent owner or exposure of its essence on purpose (with the exception of the author) prior to publication

2. The international application with the indication of Georgia and which has been published in respect with the Article 21 of PCT, has equal rights provided by the Article 38 of this Law.

ARTICLE 80

1. For the persons, who are not the citizens of Georgia, or have no domicile in Georgia, Sakpatenti acts as a "receiving office" for international applications.

2. With Sakpatenti as a "receiving office" an international application shall be filed in English or Russian language. Whereas, the postage fee for sending it to the authorized international organizations or offices shall be paid to Sakpatenti within a month from the filing date of the international application.

ARTICLE 81

1. Sakpatenti acts as "designated office" regarding those international applications in which Georgia is indicated for obtaining a national patent for an invention or utility model.

2. Sakpatenti acts as an "elected office" regarding those international applications in which Georgia is indicated for obtaining a national patent for an invention or utility model, if the inventor selects Georgia under the provisions of Chapter II of PCT.

CHAPTER XIII. TRANSITIONAL PROVISIONS

ARTICLE 82

For the applications, which are pending for the moment of entering in force of this Law, record-keeping as well as granting a patent must be conducted in respect to the Statutes "On Inventions" and "On Industrial Designs" approved by the decisions of Cabinet of Ministers of Georgia No 302 on March 16, 1992 and No 303 on March 15, 1992.

ARTICLE 83

Before this Law comes into force for the applications filed with Sakpatenti the amount of fees and rules for their payment for patent examination proceedings, for granting a patent for invention and utility model and during first two years for maintenance, and for granting a patent for industrial design and during first five years for maintenance are laid down by the Regula

1. This law shall enter into force from September 1, 1997.

2. When this Law comes in force the ~~Stat~~ "On Inventions and Utility Models" approved by the decisions No 302 on March 16, 1992 and No 303 on March 15, 1997 of the Cabinet of Ministers of Georgia and ~~Regio~~ns for "Fees on Patenting Inventions", "Fees on Patenting Utility Models" and "Fees on Patenting Industrial Designs" approved by the decision No 664 on June 23, 1992 of Government of Georgia.

3. The Commission for Compulsory Licensing shall be established at the Ministry for Economy.

ARTICLE 85

The patents granted before this Law comes into force by legal status equals to the patents granted under this Law.

Minsiter of Economy

L.Papava

Director General of Sakpatenti

D.Gabunia