

**LAW No. 427 of 16th JULY 1999
OF THE REPUBLIC OF KAZAKHSTAN**

PATENT LAW OF THE REPUBLIC OF KAZAKHSTAN

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AMENDMENTS AND ADDITIONS INTRODUCED BY:

Q) translation of the original;

1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property. (Articles: 1, 3, 4 replaced, 4-1 introduced, 5, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 35, 36 replaced, 37). Effective 25th July 2004;

2) Law No. 90 of 22nd November 2005 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property Rights. (Articles: 35 replaced, 36). Effective date n/a;

3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property. (Articles: 1 replaced, 5, 6, 13, 16, 17, 18, 19, 21, 22, 22-1 introduced, 23, 24 replaced, 26). Effective date n/a;

4) Law No. 179 of 10th July 2009 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Intellectual Property. (Articles: 10 replaced, 34); and

5) Law No. 452 of 5th July 2011 of the Republic of Kazakhstan Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Revision of the Competence of Authorised State Bodies and of the Government of the Republic of Kazakhstan to Pass Regulatory Legal Acts establishing Requirements to Audited Entities. (Article 4). Effective date n/a

L) last update by Law No.537 of 12 January 2012 . Concerning the Introduction of
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2. The scope of the authorised body shall be as follows:
 - 1) the participation in the implementation of the state policy in the sphere of the legal protection of inventions, useful models, industrial samples;
 - 2) issuing of protection documents concerning inventions, useful models, industrial samples;
 - 3) supervision of activities of physical persons and legal entities using industrial property items;
 - 4) compilation of protocols and handling administrative violation cases, imposition of administrative punishments;
[repealed by 5]
 - 5) performance of other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan. *[introduced by 5]*

Article 4-1. Expert Organisation

introduced by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. An organisation of experts — organisation subordinated to the authorised body, carrying out activity in spheres recognised as the state monopoly (rendering services in the sphere of protecting inventions, useful models, industrial samples).
2. The scope of an organisation of experts shall be as follows:
 - 1) acceptance of applications for inventions, useful models, industrial samples;
 - 2) conducting expert examination of inventions, useful models, industrial samples;
 - 2-1) examination of concessions contracts of protection documents and assignment of rights to receive them, as well as licensing agreements (sublicensing agreements);
 - 3) maintenance of the state registers of protected inventions, useful models, industrial samples;
 - 4) publication of information on inventions, useful models, industrial samples; *[introduced by 1]*
 - 5) exercise of other functions entrusted to it by the Republic of Kazakhstan legislation.

Article 5. Legal Protection of Items of Industrial Property

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property; and

3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property

[repealed by 3]

1. Rights to the invention shall be protected by an innovation patent or a patent, ones to the useful model and industrial sample shall be protected by a patent.

[repealed by 3]

2. The innovation patent for the invention shall be issued after the conducting of the expert examination of the application for issue of an innovation patent for the invention. The patent for the useful model shall be issued according to results of the expert examination of the application for issue of a patent for the useful model. *[introduced by 3]*

The patent for the invention and industrial sample shall be issued after the conducting of the formal expert examination and expert examination of the application as to substance. *[introduced by 3]*

The innovation patent and the patent shall certify priority, authorship and exclusive right to the industrial property item. The innovation patent shall be issued at the risk and under the responsibility of the applicant in relation to the world novelty and invention level. *[introduced by 3]*

3. Invention *[modified by 3]* patent on invention shall be valid during three *[modified by 3]* years from the date of submission of the application *[excluded by 1]* with possible extension of the validity term *[excluded by 1]* pursuant to the patentee petition, but not more than for two *[modified by 3]* years.

Patent on invention shall be valid during twenty years from the date of submission of the application. *[excluded by 1]*

The term of validity of patent on invention the use thereof in accordance with legislation requires the authorisation of the authorised body may be prolonged by the Kazpatent pursuant to the patentee petition, but not more than for five years.

Patent on utility model shall be valid during five years from the date of submission of the application *[excluded by 1]* with possible extension of the validity term *[excluded by 1]* pursuant to the patentee petition, but not more than for three years.

Patent on industrial design shall be valid during fifteen years from the date of submission of the application *[excluded by 1]* with possible extension of the validity term pursuant to the patentee petition, but not more than for five years.

The order extending the validity of the innovation patent and patent for the invention, the patent for utility model and industrial design shall be determined by the authorized body.

4. The scope of the legal protection granted by the protection document on invention and utility model shall be defined by their formula, and in the case of protection by the patent on the industrial sample *[modified by 3]* – by the totality of its essential features as indicated in pictures of the item (model) and listed among the substantial features of a given industrial sample. *[added by 1]* In order to interpret the formula of the invention, utility model the description and drawings may be may be used. *[modified by 1]*

The effect of the protection document issued for the method of manufacturing of a product shall also apply to the product directly obtained by this method.

In this respect, the new product shall be considered as manufactured by the protected method, unless proved otherwise.

5. The right to obtain the protection document, the rights ensuing from the registration of an application, the right to hold the protection document, and the rights ensuing from the protection document may assigned fully or partially to other person.

6. The legal protection in accordance with the present Law shall not be granted to items of industrial property recognised by the state as secret. The procedure for handling the secret items of industrial property shall be determined by the Government of the Republic of Kazakhstan.

CHAPTER 2. TERMS OF PATENTABILITY OF INDUSTRIAL PROPERTY ITEMS

Article 6. Terms of Patentability of Invention

Amended by 3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property

1. The legal protection shall be granted to an invention provided it is new, has the inventive level and is applicable in industry.

2. It shall not be recognised as a circumstance which affects the patentability of the utility model the public disclosure of information related to the utility model, by its applicant (author) or any other person who directly or indirectly received from him this information, including the demonstration of the utility model as an exhibit at the official or officially recognised international exhibition organised in the territory of the state which is a member of the Paris Convention, provided the application for the utility model is submitted not later than six months from the date of its disclosure or placement in the exhibition. In this respect the liability to prove this fact shall be borne by the applicant.

3. Decisions related to items indicated in paragraph 3 of Article 6 of the present Law shall not be protected as utility models.

Article 8. Terms of Patentability of Industrial Design

1. The artistic and design solution which determines the outward appearance of item shall be referred to industrial design. The industrial design shall be granted the legal protection provided it is new and original.

The industrial design shall be recognised as the new design when the totality of its essential features presented in pictures of the industrial design and given in the list of the essential features are not known from the information generally available in the world prior to the date of priority of the industrial design.

When establishing the novelty of the industrial design there shall also be considered, subject to their prior priority, the applications for industrial designs (except for revoked) submitted in the Republic of Kazakhstan by other persons, and industrial designs patented in the Republic of

2. When several physical persons have participated in the creation of the item of the industrial property they shall be considered to be its authors (co-authors). The procedure for the use of the rights which belong to the co-authors shall be determined by agreement between them.

A physical person shall not be recognised as an author who has not introduced personal creative contribution to the creation of the object of industrial property, but has rendered to the author only technical, organisational or material assistance, or has only promoted the registration of the right to it and its use.

3. The copyright shall be an inalienable personal right, and it shall be protected for an indefinite period of time.

4. The author shall have the right to assign to the object of industrial property his name or special name, provided that the rights of third parties to trade marks protected in the Republic of Kazakhstan are not violated.

5. The authors of the most important and widely used inventions can be presented for the nomination "Honored Inventor of the Republic of Kazakhstan." The rules of acknowledgement as "Honored Inventor of the Republic of Kazakhstan"

4) description made with the completeness that is sufficient to expose the point, determination of a category and evaluation of the fitness of the invention in activity of the employer.

The employer shall be obliged to accept and register the notice concerning the making of the work invention submitted by the author on the day of submission of it, about what the authors shall be notified in the written form.

If the description and other data which are necessary to formulate an application are incomplete, then the employer shall have the right to require from the employee additional materials on the work invention, who will submit additional materials within one month from the date of receipt by him of the request. In this case the duration of the term specified in paragraph 7 of this Article shall suspend and renew upon the receipt of the requested information.

5. If the employee has not notified the employer that has the right to receive a protective document concerning the making of the work invention, then the term specified in paragraph 7 of this Article shall begin from the date when the employer becomes aware of the making of it.

If the fact of making of the work invention is established by the employer, then he shall be obliged to notify the author of the work invention in the written form concerning it. In this respect if the right to receive a protective document in relation to the work invention is held by the employer, the employer shall be obliged to notify the author concerning the beginning of the formulation by him of the appropriate application, and the author shall be obliged under the request of the employer to submit in the written form additional information that is necessary to formulate the application concerning the work invention, and a list of all the authors of the work invention.

6. When having lost interest to receive a protective document in relation to the work invention after the submission of the application for issue of them or to maintenance the protective document in force, the employer shall be obliged to grant timely and free-of-charge to the author the right to receive a protective document or the received protective document.

7. If the employer, within four months from the date of notification of him by the author concerning the made item of industrial property, has not submitted an application, has not ceded the right to receive a protective document to another person and has not f hve

2. The following shall be recognized as the use of item of industrial property:

for payments. In this respect the amount of payments shall be established not lower than the market price of the licence as defined in accordance with the established practice.

The right to use the item of industrial property obtained on the basis of the present paragraph may be assigned only with the assignment of the protection document on this item of industrial property in connection therewith this right is granted.

In the case of granting in accordance with this paragraph of a compulsory license to the patent holder of protection document the right to use on which was granted on the basis of indicated license shall also have a right to receive a license to use the dependent invention in connection therewith compulsory license was granted.

6. The patentee may assign the protection document to any natural or legal person. The contract on assignment shall be subject to obligatory registration by the authorised body.

Registration of the contract on protection document assignment and the contract on assignment of the right to receive the protection document shall be carried out by the results of examination materials, conducted by expert organization.

Regulation on registration of the contract of assignment shall be applied to order of registration of the contract of assignment of rights to receive a protection document, unless otherwise provided by legislation of the Republic of Kazakhstan.

An application form is submitted to the expert organization to register a contract of assignment.

The application shall include:

1) original contract of assignment in four copies, the subject of which is homogeneous items of industrial property, equipped with a title page. Each copy of the contract is stitched, sealed with a paper seal, which shall be recorded on the number of bound and numbered pages, shall bear the stamp and signature of authorized officials of both parties or the applicant.

Notarized copies of the contract may be submitted instead of original contract of assignment;

2) Power of Attorney in the case of an application through the offices of patent agent or other representative;

3) a document confirming payment of state duty.

National applicants, except for the above documents, shall provide the decision of governing bodies of the holder of protection document or the exclusive rights, the general meeting of shareholders or founders on the issue of the contract conclusion and providing the authority to sign the contract by the head of the enterprise.

The application and other required documents shall be submitted in Kazakh and Russian. Foreign names and names of legal persons shall be indicated in the Kazakh and Russian transliteration. If the documents are submitted in another language, the application shall include notarized translation into Kazakh and Russian.

The application must relate to one contract of assignment.

Natural persons living outside the Republic of Kazakhstan, or foreign legal persons submitting materials of the contract to the authorized body on their own behalf, exercise the rights relating to the registration of the contract through a registered patent agent of the Republic of Kazakhstan.

Citizens of the Republic of Kazakhstan, temporarily residing abroad, exercise the rights relating to the registration of the contract, without a patent agent but with indication of address for correspondence within the territory of the Republic of Kazakhstan.

7. After submission of documents for registration expert organization within fifteen working days from the date of receipt of an application conducts a preliminary examination to check the presence of the required documents and their compliance with the requirements. In case of absence of the document proving payment of the examination, the applicant shall be billed for payment. In

this case, deadlines shall be calculated from the date of receipt of payment by the expert organization.

Based on the materials of contract of assignment accepted for consideration substantive examination shall be carried out within twenty days, during which materials of the contract of assignment shall be studied in accordance with the present legislation of the Republic of Kazakhstan.

8. Removable reasons that prevent registration of the contract of assignment:

- 1) no payment for the keeping in force of the protection document;
- 2) provisions in the contract of assignment which are contrary to the civil legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

9. In case of violation of the requirements for registration of documents or reasons specified in paragraph 8 of this article, preventing registration of the contract of assignment, expert organization shall send a request to the applicant with a proposal within three months from the date of its sending to submit the missing or corrected documents or make necessary amendment. In this case deadlines specified in paragraph 7 of this article for the substantive examination shall be calculated from the date of submission of the missing or corrected documents.

10. Expert organization shall issue a decision to refuse to register the contract of assignment in the presence of the following grounds:

- 1) termination of the protection document validity in respect of which the contract is concluded;
- 2) failure to respond to the request of the expert organization timely within three months;
- 3) the lack of all the necessary information and documents.

Within two working days after the conclusion of the expert organization shall send the decision to the authorized body indicating the reasons for refusal.

11. In case of a positive result of the examination the expert organization within five working days shall send to the authorized body decision indicating that there is no reason preventing the registration of the contract of assignment.

The decision on registration or refusal of registration of the contract of assignment shall be made by the authorized body within five working days from receipt of the expert organization opinion.

12. After the decision on registration of the contract authorized body shall:

- 1) draw an annex to the protection document for an item of industrial property;
- 2) stamp the front page of the contract certifying its registration with indication of the date of registration and its registration number;
- 3) include information about the contract in the register of contracts;
- 4) send two copies of a registered contract and annex to the protection document to the address for correspondence specified in the application;
- 5) send the control copy of the contract and its decision to the expert organization to publish information on the registration of the contract.

The third and fourth copies of the contract shall be kept in the authorized body and expert organization as control copies.

Expert organization on registered contracts shall publish information on registered contracts in the Gazette, including number and date of registration of the contract, the name or full details of the contracting parties, the subject of the contract, validity of the contract and the territory of the contract.

Any person may obtain an extract from the register of registered contracts of assignment relating to information on registered contracts of assignment that are open for publication.

Familiarization of third parties with the text of the contract and obtaining an extract from it shall be allowed only with the written consent of the contracting parties.

In case if an authorized body makes the decision to refuse a registration of the contract of assignment on the basis of the conclusion of the expert organization all the documents shall be returned to the address specified in the application.

13. The contract of assignment of protection document and the contract of assignment of the right to receive it shall

obliged, pursuant to the demand of the patentee, to terminate its further use. However, such a person shall not be obliged to reimburse to the patentee the losses incurred by him as a result of such use.

3. An item of industrial property which is placed as an exhibit at the official or officially recognised international exhibition shall be granted temporary legal protection from the date of its placement on the exhibition until the date of first publication of information on the issue of the protection document, provided that an application on this item was submitted *[excluded by 1]* not later than six months from the date of its placement on the exhibition.

4. A person, who uses the item of industrial property during the period indicated in paragraph 3 of the present Article, shall pay the monetary compen

Submission of materials for registration must be carried out no later than six months from the date of signing the contract.

Notarized copies of the contract may be submitted instead of original contract;

2) Power of Attorney in the case of an application through the offices of patent agent or other representative;

3) a document confirming payment of state duty.

National applicants, except for the above documents, provide the decision of governing bodies of the licensor (sub-licensor) on the issue of the contract conclusion and providing the authority to sign the contract by manager of the enterprise in case of an application on behalf of the entity.

The application and other required documents shall be submitted in Kazakh and Russian. Foreign names and names of legal persons shall be indicated in the Kazakh and Russian transliteration. If the documents are submitted in another language, the application shall include notarized translation into Kazakh and Russian.

The application must relate to one licensing agreement.

Natural persons living outside the Republic of Kazakhstan, or foreign legal persons submitting materials of the contract to the authorized body on their own behalf, exercise the rights relating to the registration of the contract through a registered patent agent of the Republic of Kazakhstan.

Citizens of the Republic of Kazakhstan, temporarily residing abroad, exercise the rights relating to the registration of the contract, without a patent agent but with indication of address for correspondence within the territory of the Republic of Kazakhstan.

4-2. The provisions set forth in paragraphs 7-12 of Article 11 of this Law shall be applied in signing of licensing agreement.

The licensing agreement (sub-licensing agreement) shall enter into force on the date of its registration by the authorized body.

5. The patentee may submit to the authorised body *[modified by 1]* the application on granting to any person the right to obtain the licence for the use of items of industrial property (open licence).

The person, who expressed the wish to obtain the indicated licence, shall be obliged to conclude the contract for payment with the patentee with its obligatory registration by the authorised body *[modified by 1]*

Amended by 1) Law No. 586 of 9th July 2004

other languages. When other documents of the application are submitted in other language, the application shall be attached by their translation to the State or Russian languages. The translation must be submitted within two months after the receipt by the an organisation of experts [modified by 1] of the application which contains documents in another language. Under the condition of the relevant payment this deadline may be extended, but not more than by two months.

In the case of a failure to submit the translation within the established deadline the application shall be recognised as unsubmitted.

3. The authorised body and expert organisation must not allow access to the application to third persons before the publication of information on issue of the documents of title, except for cases where there is a request or permit of the applicant or a claim of the criminal prosecution bodies or court. [introduced by 3]

Article 17. Application for Issue of Protection Document on Invention

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property; and

3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property

1. An application for the issue of the protection document on invention (henceforth – the application for invention) must relate to one invention or a group of inventions interrelated to such an extent that they form the single inventive conception (requirement of the unity of the invention).

2. An application for invention shall contain the following documents: [added by 3]

1) application for the issue of the protection document with the indication of the authors of the invention in the name of whom the protection document is sought, as well as their place of residence or location;

2) description of the invention which discloses it with the fullness sufficient for carrying out by an expert in the relevant area of knowledge;

[repealed by 3]

3) a formula of invention which determines the invention item and expresses its substance. The formula must be clear, exact and be based on the description; [introduced by 3]

4) drawings and any other materials if they are needed for the understanding of the essence of the invention;

5) abstract;

6) power of attorney in the case of keeping the clerical work through the representative;

[repealed by 3]

The application for invention shall be attached by a document which confirms the payment for submission, in particular for conducting of a formal expert examination, [inserted by 3] of application in the established amount and document confirming the basis for the reduction of its amount which may be submitted together with the application or during two months from the date of the application receipt.

Under condition of the relevant payment this deadline may be extended, but not more than for two months.

When documents on payment are not submitted within the established deadline the application shall be considered as unsubmitted.

[repealed by 3]

3. The date of presentation of the application for the invention shall be fixed according to the date of arrival to the expert organisation of the documents of the application as indicated in subparagraphs 1), 2) and 4) of the first part of paragraph 2 of this Article, and if said documents are

presented not at the same time, then it shall be fixed according to the date of arrival of the last one out of the presented documents. *[introduced by 3]*

4. Procedure for compilation, formulation and consideration of the application for the invention, the entry of data into the state register of inventions of the Republic of Kazakhstan, as well as the issuance of protection document shall be estab

An applicant, who wish to use the right of convention priority, shall be obliged to indicate it when submitting the application or within two months from the date of the application receipt by the an organisation of experts *[modified by 1]* and attach a notarised *[inserted by 1]* copy of the first application, or submit it not later than six months from the date of the application receipt by the Kazpatent. In the case of a failure to submit the indicated document the applicant shall lose the right to convention priority. In this case the priority shall be established by the date of submission of the application to the an organisation of experts *[modified by 1]*.

3. The priority may be established by the date of receipt of additional materials when they are formulated by the applicant as an independent application submitted prior to the expiration of the three months deadline from the date of forwarding to the applicant of the notification of the an organisation of experts *[modified by 1]* on the impossibility to take into consideration the additional materials in connection with their recognition as changing the essence of the declared decision, and

[repealed by 3]

1. The applicant shall have the right to introduce to the documents of the application

In the event that the applicant shall not submit within the indicated deadline the requested documents or petition on the extension of the established deadline the application shall be considered revoked.

4. With respect to the application submitted with the violation of the requirement of the unity of the invention the applicant shall be requested within three months deadline from the date of forwarding to him of the relevant notification to communicate which invention must be considered, and, if needed, to introduce specifications to the documents of the application. Other inventions entered into materials of the original application may be formulated by separate *[modified by 1]* applications. The priority of the isolated applications shall be established in accordance with paragraph 5 of Article 20 of the present Law.

In the event that the applicant within three months deadline from the date of sending to him the notification of the violation of the unity requirement does not communicate which of the inventions must be considered and does not submit specified documents the review shall be carried out of the item indicated first in the claim, as well as other inventions connected with the first to such extent that they satisfy the requirement of the unity of invention.

5. After the completion of the formal expert examination the applicant shall be informed of its result. *[introduced by 3]*

[repealed by 3]

7. After the completion of the formal expert examination with a positive result the expert organisation shall conduct an expert examination of the application as to substance. *[introduced by 3]*

The expert examination of the application as to substance shall comprise establishment of the possibility to attribute the stated proposals to items protected as an invention, to conduct an information search in relation to the stated invention to determine the technology level, examination of the conformity of the stated item (items) with the requirement of the uniformity of invention and the patentability terms established by Article 6 of this Law, and it shall be conducted provided that the payment is made for the expert examination of the application as to substance. *[introduced by 3]*

Article 6 of this Law, the positive resolution shall be issued by the organisation of experts on the patent with the formula of invention to be coordinated with the applicant and with the mention of

part of paragraph 2 of Article 17 of this Law, the date of presentation of the application shall be fixed. Where the application does not meet the requirements of subparagraphs 1), 2) and 4) of the first part of paragraph 2 of Article 17 of this Law, the expert organisation shall inform the applicant of that, and it shall propose to pr

6. The negative conclusion of the expert organisation to an invention patent shall be issued in the cases as follows:

1) if the application is related to items not protected as inventions;

2) if the applicant does not change the formula of invention after the notification that the proposed formula contains features, which are absent in the primary documents of the application or, besides the item protected as invention, it characterises also a proposal, which is not related to items protected as an invention or in relation to which consideration was not conducted in connection with the infringement of the requirement of the uniformity of invention;

3) if the application contains a proposal which does not meet the term of local novelty and industrial application in accordance with paragraph 1 of this Article.

The applicant may present to the authorised body an objection against the negative conclusion of the expert organisation within a six-month period from the date of delivery of it. The objection must be considered by the council of appeals within a two-month period from the date it arrived on.

7. On any stage of consideration of the application the applicant, as well as after the publication of the information on issue of the innovation patent the holder of the patent and third persons may petition for conducting of an information search to determine the technology level in comparison with which the evaluation of the patentability of the invention may be performed. The expert organisation shall conduct no information search in relation to items, which in accordance with paragraph 3 of Article 6 of this Law are not recognised as inventions, what the person petitioned for the information search shall be informed of.

8. Under the petition of the applicant at any stage of consideration of the application or patentee after the issuance of the innovation patent or of third persons, which shall be presented after the publication of information on the issue of the innovation patent, but not later than in three years from the date of submission of the application in case of prolongation of the term of the innovation patent in accordance with paragraph 3 of Article 5 of this Law, the expert organisation shall conduct an expert examination of the application as to substance. The expert examination as to substance shall be conducted providing for the appropriate payment for the expert examination of the application as to substance is made, as well as if the innovation patent is in force where the petition is presented by the applicant or by the patentee.

The expert examination as to substance shall be conducted in accordance with the procedure stipulated by paragraphs 7—10 and 13 of Article 22 of this Law.

Article 23. Expert Evaluation of the Application for Issuing a Patent for [inserted by 3] a Utility Model

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property; and

3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property

[repealed by 3]

1. In relation to the application arrived to the expert organisation there shall be checked the availability of the documents of the application as stipulated in subparagraphs 1) — 4) of the first part of paragraph 2 of Article 18 of this Law, the date of presentation of the application shall be fixed. Where the application does not meet the requirements of subparagraphs 1) — 4) of the first part of paragraph 2 of Article 18 of this Law, the expert organisation shall inform the applicant of that, and it shall propose to present missing documents (data) within three months from the date of delivery of such a notice. Where the applicant has presented no requested documents (data) by the

fixed time, the application shall be considered as invalid, about what the applicant shall be delivered the appropriate notice. *[introduced by 3]*

During conducting of the expert examination there shall be checked the availability of the necessary documents as stipulated by paragraph 2 of Article 18 of this Law, and the compliance with requirements made to them, the priority date of the application and the possibility to attribute the stated proposal to items protected as useful models shall be determined, the uniformity of the useful model shall be examined. *[introduced by 3]*

Review of the conformity of the submitted useful model with the patentability requirements established by paragraph 1 of Article 7 of this Law shall not be carried out. A patent shall be issued for the risk and responsibility of the applicant. *[introduced by 1]*

2. When conducting the *[excluded by 3]* expert evaluation of the application for the utility model provisions contained in paragraphs 2 – 4 and 13 of Article 22 of the present Law shall be applied, respectively.

If as a result of the *[excluded by 3]* expert evaluation it is established that the application refers to items protected as utility models, and documents comply with the established requirements a positive resolution for issuing a patent for the useful model *[modified by 3]* shall be issued by the expert organisation. *[modified by 1]*

[repealed by 1]

The resolution of the expert organization shall be sent to the authorized body to pass a decision on the issuance of the patent within the period of ten days, about which (in case if such decision was made), the applicant shall be notified.

On the basis of the resolution of the expert organisation the authorised body shall make a decision concerning issue or denial of issue of a patent for the useful model.

Within three months from the date of notification on decision made by the authorized body on the patent the applicant shall submit to the expert organization a document confirming the payment for issuance of a patent and publication, as well as the payment of state duty. In case of a

*Introduced by 3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan.
Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the
Republic of Kazakhstan Concerning Issues of Intellectual Property*

1. In relation to the application for the industrial sample the expert organisation shall conduct a formal expert examination and expert examination as to substance.

2. On the stage of the formal expert examination there shall be checked the availability of

5. Where as a result of the expert examination of the application as to substance the expert organisation establishes that the stated proposal in the requested volume of legal protection meets the industrial sample patentability terms as determined by Article 8 of this Law, then the positive conclusion of the expert organisation shall be issued for a patent with a totality of essential features coordinated with the applicant, with indication of the established priority.

On the basis of the conclusion of the expert organisation of the authorised body shall pass a decision concerning issue or denial of issue of a patent for the industrial sample.

6. Where there is established the inconsistency of the stated industrial sample in the legal protection volume requested by the applicant with the industrial sample patentability terms, the negative conclusion of the expert organisation shall be issued.

The negative conclusion of the expert organisation shall be also issued if the application is related to items not protected as industrial samples and in case if the applicant does not change the totality of essential features after the notification that the proposed totality of essential features contains features, which are absent in the primary materials of the application, or, except for the item protected as an industrial sample, it also characterises a proposal, which is not included among items protected as an industrial sample or in relation to which consideration was not conducted in connection with infringement of the requirement of the uniformity of industrial sample.

The applicant may file an objection to the authorized body on the negative conclusion of the expert organization within three months from the date of its sending. The objection shall be considered by the Appellate Council within two months from the date of its receipt.

7. The applicant may be acquainted with all the materials opposed by the expert examination. The expert organisation shall deliver copy materials requested by the applicant within a month period from the date of reception of the request.

8. The term stipulated by paragraphs 3 and 4 of this Article and missed by the applicant may be restored by the expert organisation if there are good reasons and a document is presented concerning payment for restoration of the missing term.

The petition for restoration of the term may be presented by the applicant not later than in six months from the day of expiration of the missing term. Such a petition shall be presented to the expert organisation together with the materials requested by the expert examination or with the objection of the council of appeals.

Article 25. Registration of Item of Industrial Property and Issue of Protection Document

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. The organisation of experts [modified by 1] shall enter to the State Register of Inventions of the Republic of Kazakhstan, the State Register of Utility Models of the Republic of Kazakhstan, the State Register of Industrial Designs of the Republic of Kazakhstan the invention, utility model or industrial design, respectively.

2. The authorised body [modified by 1] shall issue to the patentee the protection document simultaneously with the publication in the bulletin of information on its issue.

In the existence of several persons in whose name the protection document is claimed one protection document shall be issued to them.

3. The authorised body [modified by 1] shall issue the official certificate confirming the authorship to the author of the item of industrial property who is not the patentee.

4. The authorised body [modified by 1] shall establish the pro-forma of the protection document and the author's certificate, the composition of information indicated in it.

Article 26. Publication of Information on Issue of Protection Document

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property; and

3) Law No. 237 of 2nd March 2007 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property

[repealed by 3]

1. The expert organisation shall publish in the bulletin information on issue of the patent for

CHAPTER 6. TERMINATION AND RESTORATION OF PROTECTION DOCUMENT VALIDITY

Article 29. Challenging of Protection Document

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. The protection document during the entire period of the validity may be challenged and recognised as invalid fully or partially pursuant to the objection against its issue in the cases of:

- 1) incompliance of the protected item of industrial property with terms of patentability as established in the present Law;
- 2) existence in the claim of the invention, utility model or in totality of essential features of industrial design of features missing in the original materials of the application;
- 3) issue of the protection document in violation by the applicant of provisions of Article 37 of the present Law;
- 4) inaccurate indication in the protection document of the author (authors), or patentee.

2. Objection against the issue of the protection document pursuant to basis stipulated in subparagraphs 1) – 3) of paragraph 1 of the present Article shall be submitted to the authorised body [modified by 1]. The objection shall be considered by the Appellate Council within six months deadline from the date of its receipt. The person, who submitted the objection, shall be obliged to acquaint the patentee with the objection.

Article 30. Recognition of Protection Document as Invalid and Early Termination of its Effect

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. The protection document shall be recognised as invalid fully or partially on the basis of the decision of the Appellate Council or decision of the court.

2. Effect of the protection document shall be terminated ahead of time:

[repealed by 1]

1) on the basis of the application submitted by a patentee to the authorised body, from the date of publication in the bulletin of information on the premature termination of validity of the protection document. In the event that the protection document is issued for a group of industrial property items and the patentee's application is submitted only with regard to a certain items of the group, the validity of the protection document shall terminate only with regard to the industrial property items specified in the application; [introduced by 1]

2) in non-payment within the established deadline for the maintenance of the protection document in effect from the date of expiration of the established deadline for payment.

3. The organisation of experts [modified by 1] shall publish in the bulletin the information on the protection documents recognised as invalid fully or partially, and also on those which term of effect is terminated ahead of time.

Article 31. Restoration of Effect of Patent. Right to After-Use

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. The effect of a patent terminated pursuant to the basis indicated in subparagraph 2) of paragraph 2 of Article 30 of the present Law may be restored pursuant to the petition of the patentee during three years from the date of expiration of the deadline for the payment for the maintenance of patent in effect, subject to *[excluded by 1]* submission of a document on the payment for the restoration of the patent effect.

The organisation of experts

other (foreign) language, power of attorney shall be translated into Kazakh and Russian and notarized. The original of notarized power of attorney shall be attached to the objections materials or it shall be submitted together with a copy to the Secretary of the Appellate Council to confirm notarization.

4. Objection shall be considered at the board meeting of the Appellate Council within the term prescribed by this Law. This term may be extended at the request of the person who filed the objection and the patentee, but not more than for six months from the date of expiry of the deadline for the consideration of objection.

5. A person filed an objection and the patentee have the right to appeal against the decision of the Appellate Council within six months from the date of the decision.

Article 32-1. Grounds for refusal to consider objection in the Appellate Council

1. Acceptance of objection for consideration shall be refused if:

1) an objection according the legislation of the Republic of Kazakhstan is not subject to consideration in the Appellate Council;

2) an objection is not signed or signed by a person not having an authority to sign it;

3) an objection is submitted with the violation of the specified term and the possibility of its extension and re-establishment is lost;

4) an applicant within the prescribed period did not comply with requirements for content and procedure for submission of objection.

In case of the presence of these circumstances the person submitted the objection shall

Decision shall be taken by a simple majority vote of the Board members of Appellate Council. When votes are equal the Chairman's vote of the board meeting of the Appellate Council shall be decisive.

Upon consideration of objections the following decisions shall be made:

- 1) satisfy the objections;
- 2) partially satisfy the objections;
- 3) postpone consideration of objections;
- 4) dismiss the objection.

5. Within the ten working days from the date of the decision the Board of Appellate Council shall prepare and send the decision to the parties of the Appellate Council. The decision of the Appellate Council shall be in writing and shall consist of an introduction, descriptive part, reasoning and conclusion.

The decision of the Appellate Council shall be signed by all members of the Board of Appellate Council.

Article 33. Consideration of Disputes in Judicial Procedure

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. The following disputes shall be subject to consideration in a judicial procedure:
 - 1) concerning the authorship on item of industrial property;
 - 2) concerning the lawfulness of the issue of protection document;
 - 3) concerning the establishment of patentee;
 - 4) concerning the issue of compulsory licence;

Article 35. The State Duty and Payment for the Operations of an Expert Organisation
Introduced by 2) Law No. 90 of 22nd November 2005 of the Republic of Kazakhstan.

- 3) those who has a conviction;
- 4) those who are excluded from the register of patent agents in accordance with this

Law.

3. Activity of a patent agent shall be suspended by the protocol decision of the

from the date of this application or objection patent agent shall be obliged to submit the original power of attorney, respectively, to the expert organization and the authorized body. After confirming the authenticity of the original power of attorney must be returned.

2) dismiss the complaint.

Decision of appellate commission shall be made by simple majority vote and registered in the minutes. Decision of appellate commission may be appealed in court.

The regulation of the Appellate commission shall be established by the authorized body.

Article 37. Patenting of Item of Industrial Property in Foreign Countries

Amended by 1) Law No. 586 of 9th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Intellectual Property.

1. Submission to foreign countries of an application for an item of industrial property created in the Republic of Kazakhstan may be carried out upon the expiration of three months from the date of submission of the application to the organisation of experts [modified by 1] or earlier – after the completion of the review, conducted in accordance with the procedure established by legislation, of information constituting the state secret.

2. Citizens of the Republic of Kazakhstan residing in its territory, as well as legal entities of the Republic of Kazakhstan shall submit an application for the item of industrial property to international patent organisation through the organisation of experts [modified by 1] provided it does not contradict the relevant international treaty.

3. In the case of submission to foreign countries or international patent organisation of an application for the item of industrial property created in the Republic of Kazakhstan with violation of the procedure of the present Article the protection document on this item of industrial property in the Republic of Kazakhstan shall not be issued.

Article 38. The Rights of Foreign Physical Persons, Legal Entities and Stateless Persons

1. Foreign physical persons, legal entities shall enjoy the rights stipulated by the present Law on a par with physical persons and legal entities of the Republic of Kazakhstan by force of international treaties to which the Republic of Kazakhstan is a party, or on the basis of the principle of reciprocity.

2. Stateless persons residing in the Republic of Kazakhstan shall enjoy the rights stipulated by the present Law and any other acts related to the legal protection of items of industrial property on a par with physical persons and legal entities of the Republic of Kazakhstan, unless otherwise ensues from the present Law and other legislative acts.

President of the Republic of Kazakhstan

N. NAZARBAEV