LAW
OF THE REPUBLIC OF TAJIKISTAN ON INVENTIONS
SECTION 1.
GENERAL PROVISIONS

This Law shall govern proprietary and related personal non-proprietary relations arising in connection with the creation, legal protection and use of inventions on the territory of the Republic of Tajikistan.

Article 1. Basic terms

The terms used in this Law shall have the following meaning:

application – a set of documents determined by this Law and submitted to the Patent Office for obtaining a title of protection;

patent owner – a natural person or legal entity in whose name a title of protection is granted;

invention – a technical solution allowing to resolve specific problems in industry and other spheres of activity;

patent attorney – a national of the Republic of Tajikistan who, in accordance with the legislation, is granted the right to represent natural persons and legal entities before the Patent Office;

objects of industrial property – inventions, industrial designs and utility models resulting from the human intellectual activities;

prototype of an invention –an analog of an invention closest to it by the sum of its essential features;

Paris Convention - the Paris Convention for the Protection of Industrial Property of 20 March 1883 with subsequent changes,

description of an invention - a document of the application in which the invention is disclosed;

claims of an invention - an application document formed on the basis of the description of an invention and containing the sum of the essential features of an invention;

conditions for patentability – conditions for granting legal protection for inventions provided for by this Law;

analog of the invention – a device for the same purpose characterized by essential features similar to the essential features of the invention;

titles of protection – patents and petty patents granted in accordance with this Law;

Article 2. Legislation of the Republic of Tajikistan on inventions

The legislation of the Republic of Tajikistan on inventions shall be based on the Constitution of the Republic of Tajikistan and shall consist of the Civil Code of the Republic of Tajikistan, this

Law and other legislative acts of the Republic of Tajikistan, as well as international legal acts recognized by the Republic of Tajikistan.

Article 3. State body for the protection of industrial property objects

The State body for the protection of industrial property objects (hereinafter the Patent Office) shall implement a unified State policy in the area of legal protection of industrial property objects, receive applications for industrial property objects, examine those applications, perform

the State registration and official publication of information on industrial property objects, issue titles of protection and also carry out other duties, in accordance with the documents establishing the Patent Office.

An Appeal Board shall be set up, attached to the Patent Office, and shall be a mandatory primary body for the settlement of disputes relating to the legal protection of industrial property objects. The Appeal Board shall carry out its authorized functions on the basis of the legislation of the Republic of Tajikistan and the Appeal Board Statute.

The sources of financing of the Patent Office shall include appropriations out of the State budget, procedural payments, as well as the revenue derived from rendering patent and information services.

Article 4. Titles of protection

The right in an invention shall be protected by the State and shall be certified by a patent or petty patent (hereinafter "titles of protection").

A patent for an invention shall be granted following an examination of the substance of an application for the grant of a patent and shall be valid for 20 years, starting from the date of filing the application with the Patent Office.

A petty patent for an invention shall be granted following a preliminary examination of an application for the grant of a petty patent and shall be valid for ten years from the date of filing the application for an invention with the Patent Office.

A title of protection for an invention shall certify the priority and authorship of, and an exclusive right to use the invention.

Article 5. Legal protection of inventions

The scope of legal protection conferred by a title of protection for an invention shall be determined by the claims. The claims of an invention may be interpreted with the help of a description and drawings.

The effect of a title of protection granted for a production process shall extend to the product directly obtained from the process. The new product shall also be deemed to be obtained from the patented process, in the absence of proof to the contrary.

Legal protection in accordance with this Law shall not be granted to inventions containing a State secret. The procedure for the grant of legal protection for such inventions shall be established by the corresponding legislative act.

SECTION 2.

PATENTABILITY OF INVENTIONS

Article 6. Conditions for patentability of an invention

A technical solution shall be recognized as an invention and granted legal protection, if it is new, involves an inventive step and is industrially applicable.

An invention shall be deemed new, if it does not form part of the prior art.

The prior art shall include any information which, before the date of priority of the invention, has been made available to the public anywhere in the world.

An invention shall be considered to involve an inventive step if it is not obvious from the prior art to a person skilled in the art.

An invention shall be considered industrially applicable, if it can be used in industry, agriculture, healthcare and other fields of human activity

The subjects of an invention may be a device, a process, a substance, a microorganism strain or plant or animal cells and also the use of these subjects with a new purpose.

The following shall not be regarded as inventions within the meaning of the provisions of this Law

- scientific theories and mathematical methods;
- method of organization and management of economy;

- conventional signs, schedules, rules;
- rules and method for performing mental acts;
- algorithms and programs for computers
- projects and lay-out design of constructions, buildings and territories;
- proposals concerning solely the outward appearance of manufactured articles and intended to satisfy aesthetic requirements;

The following shall not be recognized as patentable within the meaning of the provisions of this Law:

- layout designs of integrated circuits;
- plant varieties and animal breeds;
- proposals contrary to public interests, principles of humanity and morality.

The patentability of an invention shall not be prejudiced by the disclosure of information relating to such invention by the applicant (author) or by any other person who received such information, directly or indirectly, from the applicant, as a result of which the substance of the invention entered the public domain, if the application for such invention is filed with the Patent Office within six months of the date of such disclosure. The burden of proof in such case shall rest with the applicant.

SECTION 3.

SUBJECTS OF THE RIGHT IN AN INVENTION

Article 7. Author of an invention

A natural person whose creative work resulted in the invention shall be recognized as the author thereof. Where an invention results from joint creative work of two or more natural persons, those persons shall be recognized as the joint authors thereof. The conditions for exercising author's rights shall be determined by an agreement between them.

Persons shall not be deemed to be joint authors if they did not make a personal creative contribution to the development of an invention or only provided the author(s) with technical, organizational or material assistance or with help in securing the registration of rights in such invention and in its use.

The authorship right shall be an inalienable personal right and shall be protected perpetually.

Article 8. Applicant

The right to file an application for the grant of a title of protection for an invention shall have:

- the author(s) of the invention;

- the employer in the cases provided for by part two of Article 9 of this Law;
- a legal successor(s) of the author(s) or employer.

Article 9. Patent owner

A title of protection shall be granted to

- the author of an invention;
- a person who is indicated by the author of an invention in the application for the grant of a patent;
- legal successors of the above-mentioned persons.

The right to obtain a title of protection for an invention created by an employee in connection with the fulfillment of his employment obligations or a specific task of the employer shall belong to the employer, unless otherwise agreed in the contract between them.

In the event that the employer fails, for four months after being notified of an invention by its author, to file an appropriate application with the Patent Office or to assign the right to file an application to another person, and (or) to notify the author of the employer’s decision to keep secret the invention concerned, the right to file such application and obtain a title of

protection shall belong to the author. The employer shall then have the right to use the invention concerned in his own production operations, subject to compensation payable to the patent owner in an amount to be determined on a contractual basis.

The right to obtain a title of protection for an invention, created by an employee using the experience, material, technical and other resources of the employer, but not in connection with the performance by the employee of professional duties or a specific task set by the employer, shall belong to the employee, unless otherwise agreed by the employer and employee. The employer shall then have the right to use the invention concerned in his own production operations, subject to compensation payable to the patent owner in an amount to be determined on a contractual basis.

Article 10. The right of the author of an invention created in connection with the performance of professional duties

An employee mentioned in part two of Article 9 shall be entitled to remuneration from the employer, commensurable with the gain that the employer derived or could have derived from the proper use of the invention in the event that:

- the employer obtained a title of protection;
- the employer assigned the right to obtain a title of protection to another person,
- the employer decided to keep the information on such invention secret,
- the employer failed to obtain a title of protection on the application filed by the employer due to reasons within his control,

Remuneration shall be paid in the amount and on conditions determined on

the basis of the agreement between the author and the employer.

In the event that the parties fail to reach an agreement on the amount and procedure for payment the dispute shall be settled in the court.

For failure to pay on time the remuneration or compensation determined by the agreement the employer shall be liable in accordance with the legislation of the Republic of Tajikistan.

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SECTION 4.

APPLICATION FOR THE GRANT OF A TITLE OF PROTECTION

Article 11. Filing an application for the grant of a title of protection

An application for the grant of a title of protection for an invention (hereinafter – application) shall be filed by an applicant with the Patent Office.

An application may be filed through a patent attorney registered with the Patent Office.

Natural persons permanently residing outside the Republic of Tajikistan, or foreign legal entities or their representatives shall conduct business on obtaining titles of protection and maintaining them through patent attorneys registered with the Patent Office and authorized by a power of attorney.

Nationals of the Republic of Tajikistan, temporarily residing outside the country shall conduct business on obtaining titles of protection and maintaining them through a patent attorney or directly themselves, provided that they supply an address for correspondence on the territory of the Republic of Tajikistan.

The authority of a patent attorney shall be certified by the power of attorney issued by the applicant. The requirements for a patent attorney, the procedure of his attestation and registration shall be determined by the Patent Office.

Article 12. Application

An application for an invention shall relate to a single invention or a group of inventions, so linked as to form a single inventive concept (requirement for unity of invention).

An application shall contain:

- a request for the grant of a title of protection with an indication of the title of the invention, the author(s) thereof and person(s) in whose name the title of protection is requested, as well as their places of residence or business;

- a description of the invention disclosing it fully enough for a person skilled in the art to carry it out;

- the claims stating the essential features of the invention and based on the description;

- an abstract;

- drawings and other materials where necessary for the understanding of the subject matter of the invention.

A request for the grant of a title of protection shall be filed in the official language, other documents of an application may be submitted in other language.

In order to retain the date of filing of an application established in accordance with Article 14 of this Law the translation in the official language of the documents of the application submitted in other language must be furnished to the Patent Office within three months of the date of their receipt in other language.

The application shall be accompanied by a document, certifying the payment of a fee for filing an application in the prescribed amount, or a document, certifying the exemption from patent fees, or reduction of fees which may be submitted together with the application or within a three month period of the day of receipt of the application in the Patent Office.

Other requirements for the documents of an application shall be established by the Patent Office.

Article 13. Correction of documents of an application at the applicant's initiative 6

An applicant shall have the right to make amendments and clarifications to the application documents without changing the essence of the claimed invention

Corrections and clarifications to an application may also be submitted after the expiry of a three-month period, but not later than a decision on the results of a substantive examination is taken, provided that the corresponding fee has been paid.

Article 14. Date of filing of an application

The date of filing of an application shall be established by the date of receipt at the Patent Office of the following documents:

- a request for the grant of a title of protection;

- a description of the invention;

- drawings, if reference is made thereto in the description.

Where the indicated documents are not submitted at the same time, the filing date of the application shall be established by the date of filing of the last submitted document.

Where there is a breach of the requirements of Art.12 of this Law the application shall be considered not to have been filed.

Article 15. Conversion of applications

An applicant who filed an application for the grant of a patent for invention shall have the right within a three year period of the date of filing of the application to submit a request for the grant of a petty patent

Before the decision of the preliminary examination conducted in accordance with Article 21 of this Law is made an application for the grant of a petty patent may be converted into an application for the grant of a patent for invention.

Upon the abovementioned conversions the priority of the first application shall be retained.

Article 16. Confidentiality in the processing of an application

In the processing of an application the Patent Office shall not allow access for any person to the application before the publication thereof, unless requested or authorized by the applicant.

SECTION 5.

PRIORITY OF AN INVENTION

Article 17. Conditions for establishing priority

The priority of an invention shall be established by the date of filing of the application with the Patent Office

The priority of an invention may be determined by the date of receipt of additional materials if they are submitted by the applicant as a separate application, provided that it has been filed before the expiry of a three month period following the date of receipt by the applicant of a notification from the Patent Office to the effect that the additional materials cannot be taken into consideration since they are recognized as modifying the essence of the claimed invention.

Priority may be established by the date of filing by the same applicant, with the Patent Office, of the earlier application, disclosing the invention if the application for which such priority is sought is filed not later than within twelve months from the filing date of the earlier application for the invention. In this case the earlier application shall be deemed to have been withdrawn.

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Priority may be established on the basis of several earlier applications if each application complies with the conditions set forth in part 3 of this Article.

Priority may not be established by the filing date of the application for invention for which earlier priority had been sought.

Priority of an invention for a divisional application shall be established by the date of filing by the same applicant with the Patent Office of the initial application disclosing said invention and if the divisional application has been received before a decision has been taken not to grant a title of protection, where the possibility for appeal has been exhausted, and if a decision to grant a title of protection has been received – prior to the date of registration of the invention in the State Registers of Inventions.

If the examination process reveals that identical inventions have the same date of priority, a title of protection shall be granted on the application for which an earlier date of dispatch is proven and on coincidence of these dates on the application with earlier registration number assigned by the Patent Office, unless otherwise agreed between the applicants.

Article 18. Convention priority

Priority may be determined by the filing date of the first application for an invention filed in a State party to the Paris Convention for the Protection of Industrial Property, provided that the application is filed with the Patent Office within 12 months of that date (convention priority). Where owing to circumstances beyond the applicant's control the application claiming convention priority could not be filed within the above time limit, the latter may be extended by a period not exceeding three months.

An applicant wishing to make use of the right of convention priority shall indicate this accordingly when filing an application for an invention or within two months of the date of receipt of the application at the Patent Office, and shall attach a copy of the first application or send it to the Patent Office not later than three months after the date of filing of the application with the Patent Office.

SECTION 6.

EXAMINATION OF AN APPLICATION

Article 19. Formal examination of an application

Upon the expiry of three months from the date of filing of an application the Patent Office shall carry out its formal examination. At the request in writing of the applicant a formal examination may be started before the expiry of the above mentioned period. In that case, the applicant shall forfeit the right, provided for by Article 13 of this Law, to correct and clarify the documents of the application at his own initiative without payment of a fee.

In the course of a formal examination of an application it shall be verified whether all requisite documents are included and meet the requirements in accordance with Articles 11 and 12 of this Law and the question whether the claimed proposal relates to the objects mentioned in parts 6, 7 and 8 of Article 6 of this Law shall be considered.

It shall also be verified whether the claimed invention fits the conditions provided for by part three of Article 5 of this Law.

If, in accordance with Article 13 of this Law, the applicant submits supplementary materials for the application the examination shall verify whether they modify the subject matter of the claimed invention.

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Supplementary materials shall be held to modify the substance of the invention applied for if they make for the inclusion in the claims of such invention of such features as were absent from the original materials of the application. Any supplementary materials modifying the substance of the invention applied for shall be ignored for the purposes of examining the application, but may be filed by the applicant as a separate application for the invention.

If the application for an invention is made in accordance with all established requirements the applicant shall be notified of a positive decision of the formal examination.

Where a filed application is found to be inconsistent with any requirements applicable to its documents, the applicant shall be given a notice requesting that amended or missing documents be submitted within two months of the receipt date of such notice. If the applicant fails to submit the requested documents within such time period or to apply for its extension, the application shall be deemed withdrawn.

Where an application is found to be inconsistent with the unity of invention requirement, the applicant shall be requested to make it clear, within two months of the receipt date of the appropriate notice, which of the proposals applied for is to be examined and, if necessary, to update documents comprising the application. The other proposals covered by the original application may be filed as divisional applications.

If the applicant fails to make it clear, within two months of receipt of the notice of non-compliance with the unity of invention requirement, which of the technical solutions is to be examined and to submit updated documents, the examination shall be carried out in respect of the technical solution that comes first in the claims, as well as other proposals constituting a single general inventive concept with it, if any.

In the event of disagreement with the examination decision the applicant shall have the right, within three months of the date of receipt of the decision, to lodge an appeal with the Appeal Board of the Patent Office. The appeal shall be considered within two months.

Article 20. Substantive examination of an application

At the request of an applicant (or third parties) which may be submitted at any time within three years of the date of filing of an application for the grant of a patent for invention and also at the request of the owner of a petty patent, which may be submitted during the whole period of validity of the petty patent, the Patent Office shall carry out a substantive examination of the application.

If a request for substantive examination is not filed within a three year period the application which has not claimed a petty patent shall be considered withdrawn.

During the process of a substantive examination of an application which includes information search in respect of the claimed invention to determine the state of the art, priority

of the invention shall be established and compliance of the claimed invention with the requirements for patentability of the invention under Article 6 of this Law shall be verified.

In the course of a substantive examination of the application the Patent Office shall have the right to request from the applicant supplementary material including amended claims. The supplementary materials requested by the examination shall be furnished, without modification of the essence of the invention, within two months of the date of receipt of the request by the applicant.

Any supplementary documents introducing new matter to modify the substance of a filed invention shall be subject to the procedure prescribed by parts four and five of Article 19 of this Law.

If the Patent Office finds in the process of its substantive examination of an application that the filed invention as expressed by the claims proposed by the applicant meets the conditions for patentability set forth in Article 6 of this Law, a decision to grant a patent shall be made.

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Where a claimed invention is found, within the scope of legal protection sought, to be inconsistent with the conditions for patentability a decision shall be made to refuse the grant of a patent.

An applicant shall have the right to acquaint himself with the materials indicated in the examination request, in the examination decision or in the search report. The Patent Office shall send copies of the requested materials to him within two months of the date of receipt of the request.

In the event of disagreement with the decision to refuse the grant of a patent the applicant shall have the right to lodge an appropriate appeal with the Appeal Board within three months of the date of receipt of the decision. The appeal shall be considered by the Appeal Board within six months of the date of its receipt.

In the event of disagreement of the applicant with the decision of the Appeal Board he may within six months from the date of receipt of the decision appeal to the Court.

If the applicant fails to respect the time limits for the furnishing of materials at the examiner's request and for filing an appeal with the Appeal Board, such time limits may be reinstated by the Patent Office at the applicant’s request, submitted not later than twelve months from the day of the expiry of the time limit, on confirmation of good reasons for the delay and payment of the prescribed fee.

Article 21. Preliminary examination of an application for the grant of a petty patent

A preliminary examination of an application for the grant of a petty patent for an invention shall be carried out following the completion of a formal examination with a positive result.

During the process of a preliminary examination, the priority of an invention shall be established and its compliance with the requirements for novelty and industrial applicability shall be verified.

In verifying the compliance of the claimed invention with the requirements for novelty, the state of the art. shall include only:

- the analogs and prototypes, cited by the applicant in the application materials;
- applications for inventions and utility models not withdrawn and filed previously by other persons in the Republic of Tajikistan;
- inventions patented in the Republic of Tajikistan and registered utility models.

In the course of a preliminary examination, the Patent Office shall have the right to request from the applicant supplementary materials including amended claims. The supplementary materials requested by the examination shall be furnished, without

modification of the essence of the invention, within two months of the date of receipt of the request.

The procedure set forth in parts four and five of Article 19 of this Law shall be extended to the part of the supplementary materials that modifies the essential features of the invention

If as a result of a preliminary examination of an application the Patent Office establishes that the claimed proposal within the scope of legal protection sought by the applicant meets the conditions for novelty as determined in part three of this article and the conditions for industrial applicability as defined in Article 6 of this Law a decision to grant a petty patent shall be made

A petty patent shall be granted at the responsibility of the applicant.

Where a claimed invention is found to be inconsistent with the conditions for patentability a decision shall be made to refuse the grant of a petty patent.

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An applicant shall have the right to acquaint himself with the materials cited in the examination request, in the examination decision or in the search report. The Patent Office shall send copies of the requested materials to him within two months of the date