

# Law on Patent Agents

(No. 237 of May 17, 1991)

The Federal Assembly of the Czech and Slovak Federal Republic has enacted this law:

## Section 1

The subject of the law

The law regulates the status as well as the rights and duties of patent agents.

## PART ONE

### PATENT AGENT

## Section 2

A patent agent provides professional assistance to natural and legal persons in matters concerning industrial property by, especially, representing them in proceedings before the Federal Office for Inventions (hereinafter "Office") and/or other administrative authorities and giving them expert counsel.

## Section 3

(1) Persons recorded in the register of patent agents (hereinafter "register") kept by the Chamber of Patent Agents (hereinafter "Chamber") only can be licensed to operate as patent agents under this law.

(2) The exercise of [Section 2](#) activities in accordance with relevant statutory provisions<sup>1</sup> is left intact by this law.

## Section 4

(1) The Chamber shall record in the register anybody who fulfills these conditions:

- a) he is a national of the Czech and Slovak Federal Republic and has permanent residence on its territory,
- b) he has full legal capacity,
- c) he has a clean criminal record,
- d) he has requisite university education,
- e) he will pass the professional exam,
- f) he will take this oath before the Chamber chairman:

"I promise on my conscience and civic honor I will observe the constitution, other laws, conscientiously fulfill the duties of a patent agent, and maintain

secrecy about whatever facts I may learn in connection with the exercise of this activity".

(2) The Chamber shall not record in the register an Office employee.

### **Section 5**

(1) The content and organization of the professional exam will be decided by the Office after consulting the Chamber. The professional exam is usually held twice a year and always at least once a year, and it is public.

(2) The Office appoints the chairman and four members of the exam commission, two of them being proposed by the Chamber.

(3) Everyone applying to be recorded in the register must be admitted to the professional exam provided he has requested so and has at least five years practice in the field of industrial property.

(4) By passing the professional exam the applicant demonstrates his knowledge of patent engineering, articles of law, and international treaties concerning industrial property, as well as practical knowledge requisite for the exercise of activities of a patent agent.

(5) To prove the professional exam was passed, the Office shall issue the applicant with a certificate.

### **Section 6**

(1) The Chamber shall allow the oath according to [Section 4/1/f](#) to be taken within one month after the presentation of the exam-passing certificate.

(2) Within 15 days after oath-taking, the Chamber shall issue the patent agent with a certificate of his having been recorded in the register.

### **Section 7**

(1) Recorded in the register are the name, surname, establishment and, potentially, residence of the patent agent, the infliction of disciplinary measures, if any ([Section 32](#)), suspension of his activities as a patent agent ([Section 8](#)), and his erasure from the register ([Section 9](#)).

(2) The Office publishes in the Official Bulletin of the Federal Office for Inventions the list of patent agents recorded in the register.

### **Section 8**

(1) The Chamber shall suspend the exercise of activities of a patent agent

- a) pending his penal service or pending a ban on his exercise of activities as a patent agent,
- b) if he has become an Office employee.

(2) The Chamber can suspend the exercise of activities of a patent agent

- a) pending a final ruling terminating his criminal trial if he has been charged with a deliberate criminal offense,
  - b) pending a final ruling terminating a proceeding if a proceeding has been started to attest his legal capacity.
- (3) If the grounds upon which the exercise of activities was suspended have become void, the Chamber shall lift the suspension of activities; if the exercise of activities has been suspended for more than three years, the patent agent is obliged to take the professional exam again.

## **Section 9**

- (1) The Chamber shall erase from the register a patent agent who
- a) has died or been declared dead,
  - b) has been deprived of legal capacity or whose legal capacity has been restricted,
  - c) has been effectively convicted of a deliberate criminal offense committed in connection with the exercise of activities of a patent agent,
  - d) has been afflicted with the disciplinary measure of being erased from the register ([Section 31](#)),
  - e) has so requested in writing.
- (2) The Chamber can erase from the register a patent agent who has been effectively convicted of a criminal offense other than those specified by [subsection 1/c](#).
- (3) The Chamber shall erase from the register a patent agent whom it shall subsequently find to have defaulted on some of the conditions according to [Section 4](#).

## **Section 10**

An applicant for the occupation of a patent agent whom the Chamber has not recorded in the register or a patent agent whom the Chamber has erased from the register, except for erasures according to [Section 9/1/d](#), or a patent agent whose exercise of activities as a patent agent has been suspended by the Chamber has a right to seek a remedy in court.

## **PART TWO**

### **RIGHTS AND DUTIES OF PATENT AGENTS**

#### **Section 11**

(1) A patent agent is bound by the constitution, laws, other generally binding provisions of law, and, within their confines, by orders of the represented person.

(2) A patent agent is obliged to protect the rights and legitimate interests of the represented person. He is also obliged to act honestly and conscientiously, consistently employ every means of law, and take recourse to everything which in the light of his convictions and orders from the represented person he regards as being contributory to his benefit.

#### **Section 12**

(1) A patent agent is obliged to maintain secrecy about any facts he has learned in connection with the occupation of representing. He can be unburdened of this duty only by the represented person with a written statement; however, the agent must maintain secrecy even if unburdened of this duty by the represented person in case it is in the interest of the represented person.

(2) The duty to maintain secrecy does not apply to the court-imposed obligation to thwart or report the commission of a criminal offense.

(3) The secrecy duty applies also to one who has been erased from the register or one whose exercise of activities has been suspended.

(4) The secrecy duty according to [subsections 1 to 3](#) applies as well to persons whom a patent agent has under employment or other such contract ([Section 16](#)).

#### **Section 13**

(1) Everybody has a right to be represented by a patent agent.

(2) A patent agent is obliged to refuse representation if

a) he has represented another party in the same matter whose interests are in conflict with the interests of the person requesting representation,

b) the opposite side is represented by a patent agent with whom he jointly exercises the occupation of a patent agent ([Section 21](#)).

#### **Section 14**

(1) A patent agent can withdraw from a representation contract if there has been a breach of trust between him and the represented person, if the

represented person does not adequately cooperate, or if the represented person has without serious reason failed to pay an adequate advance on the remuneration for representation ([Section 17](#)); a patent agent shall do so whenever he has subsequently discovered facts listed in [Section 13/2](#).

(2) A patent agent is obliged to perform all acts suffering no delay for the period of two months from the day he withdrew from a representation contract provided the represented person has not undertaken other measures.

### **Section 15**

A patent agent may within the bounds of his authorization let himself be represented by another patent agent; such representation is impossible against the will of the represented person.

### **Section 16**

(1) A patent agent can hire under an employment or other such contract further persons (hereinafter "staff").

(2) Employment relationships between the patent agent and his staff are regulated by relevant statutory provisions.[2](#)

### **Section 17**

A patent agent carries out his activities for a remuneration and has a right to demand from the represented person an adequate advance on his remuneration.

### **Section 18**

(1) A patent agent is liable to represented persons for damages he has caused them through his representation. A patent agent is liable for damages caused by his representation even if the damages have been caused by his agent or by his staff; this leaves intact the liability of these persons for damages under valid regulations.

(2) A patent agent shall free himself from responsibility under [subsection 1](#) if he shall prove the damages could not have been prevented even if he expended every effort that could be asked of him.

### **Section 19**

(1) Before going into business in accordance with the provisions of [Section 2](#), a patent agent is obliged to conclude a contract to insure him against liability for damages such as might arise in connection with his activities; if the patent agent employs a staff, he is also obliged to conclude a contract to insure him against liability for damages suffered by his staff during

fulfillment of labor duties or in direct relation thereto and for which the patent agent is liable under the Labor Code.

(2) Insurance against liability for damages such as may arise in connection with the activities of a patent agent must last throughout the time such activities are exercised; insurance against damages incurred by the staff must last throughout the time the staff is employed by the patent agent.

### **Section 20**

A patent agent is obliged to report to the Chamber his establishment and/or his residence, changes thereof, and data listed in provisions of [Section 8/1/b](#) and [2](#) and [Section 9/1/c](#) and [2](#).

### **Section 21**

(1) Patent agents can exercise the activities according to [Section 2](#) jointly; patent agents regulate legal relationships arising from their joint exercise of activities with a written contract.

(2) Each patent agent is liable to the represented person separately; if, however, a jointly represented person is involved and no other option has been agreed, patent agents are liable to the represented person jointly and inseparably.

## **PART THREE**

### **SELF-ADMINISTRATION AND DISCIPLINARY RESPONSIBILITY OF PATENT AGENTS**

#### **Section 22**

(1) Herewith is established the Chamber of Patent agents with headquarters in Brno.

(2) The Chamber as a legal person is a self-administered organization grouping all patent agents.

#### **Section 23**

The Chamber has these authorities:

- a) the conference of patent agents,
- b) the board,
- c) the supervisory commission,
- d) the disciplinary commission.

## **Section 24**

- (1) The highest Chamber authority is the conference of patent agents (hereinafter "conference").
- (2) All the patent agents recorded in the register have a right to participate in conference proceedings.
- (3) The conference is convened by the board at least once every three years. The board is obliged to convene the conference within two months every time at least a third of all patent agents so requests in writing or if the supervisory commission so requests.
- (4) A patent agent can authorize another patent agent in writing to represent him at a conference; a represented patent agent is regarded as if he attended the conference.
- (5) A conference makes a quorum if a majority of all patent agents attends. A resolution is passed by a simple majority of attending patent agents.

## **Section 25**

- (1) The conference does the following, in particular:
  - a) elects by direct and secret vote, out of the ranks of patent agents, the chairman and vice-chairman, and members of the board, supervisory commission, and disciplinary commission, to three-year terms; it also recalls by secret vote the members of those authorities,
  - b) approves the Chamber's organizational code, electoral code and disciplinary code,
  - c) approves the level of contributions for the activities of Chamber authorities,
  - d) approves rewards compensating the time spent in the discharge of functions in Chamber authorities,
  - e) discusses and approves Report on activities of other Chamber authority,
  - f) can cancel or change a board decision.
- (2) The chairman represents the Chamber on the outside and acts on its behalf in all matters; he also makes necessary decisions during the time between board sessions and directs Chamber employers within the limits determined by the organizational code.
- (3) If a citizen of the Czech Republic is Chamber chairman, a citizen of the Slovak Republic is vice chairman, and vice versa.

## **Section 26**

- (1) The board decides:
  - a) recordings into and erasures out of the register,
  - b) remedies according to [Section 33](#),

c) all matters which under this law are entrusted to the Chamber, provided they are not decided by other Chamber authorities.

(2) The board also:

- a) convenes the conference,
- b) proposes two members of the exam commission to the Office according to [Section 5/2](#),
- c) administers Chamber property,
- d) protects and asserts the interests of patent agents,
- e) regularly informs patent agents about Chamber activities,
- f) takes whatever measures are necessary for Chamber activities,
- g) keeps the register of patent agents,
- h) carries out other activities under this law which do not fall within the competence of other Chamber authorities.

(3) The board meets as a rule once every three months; board meetings are convened by the Chamber chairman.

### **Section 27**

The supervisory commission:

- a) checks up on fulfillment of conference resolutions and board activities; for that purpose, the supervisory commission must be allowed access to all Chamber records,
- b) supervises proper performance of the activities of patent agents,
- c) elects out of its ranks the chairman, who directs commission activities; the supervisory commission chairman initiates disciplinary proceedings.

### **Section 28**

The disciplinary commission:

- a) carries out disciplinary proceedings and decides disciplinary measures according to the law,
- b) elects out of its members the chairman, who directs commission activities.

### **Section 29**

Functions in Chamber authorities are honorary.

### **Section 30**

(1) Organization of the Chamber, its authorities, the jurisdiction of these authorities, and the membership of the Chamber board, supervisory commission, and disciplinary commission are elaborated in greater detail in the Chamber's organizational code.



(2) Electoral details are fixed by the Chamber's electoral code and details of disciplinary proceedings by the Chamber's disciplinary code.

## **Disciplinary responsibility**

### **Section 31**

(1) For a grievous or repeated breach of duties imposed by this law, the disciplinary commission can inflict on a patent agent, unless a criminal offense is involved, some of these disciplinary measures:

- a) a written censure,
  - b) a fine of up to 10.000 CSK
  - c) erasure from the register for up to five years.
- (2) Proceeds from fines belong to the Chamber.

### **Section 32**

(1) The infliction of disciplinary proceedings is decided by the Chamber's disciplinary commission in a disciplinary proceeding initiated by the supervisory commission chairman.

(2) The supervisory commission chairman can make a proposal to start disciplinary proceedings within two months from the date he learned of a disciplinary trespass by a patent agent, or no later than one year from the date the disciplinary trespass happened.

(3) A decision inflicting a disciplinary measure must be in writing and contain a verdict, argumentation, and listing of remedies.

### **Section 33**

(1) Both patent agent and supervisory commission chairman can appeal a decision by the Chamber disciplinary commission within fifteen days from its delivery; the appeal has a dilatory effect.

(2) Appeals are ruled on by the Chamber board, which either sustains or repeals the assailed decision. In case an assailed decision is repealed by the Chamber board, the Chamber disciplinary commission is bound by the Chamber board's decision.

### **Section 34**

Final rulings by the Chamber board inflicting erasure from the register as a disciplinary measure are re-examined in the light of relevant statutory regulations<sup>3</sup> by request from the patent agent whom the decision concerned, by the Supreme Court of the Czech and Slovak Federal Republic; the

proposal can be filed within a time limit set by relevant statutory regulations<sup>4</sup>.

## **PART FOUR FINAL, TRANSITIONAL AND REPEALING PROVISIONS**

### **Section 35**

The authorization to represent persons who don't have an establishment or residence on the territory of the Czech and Slovak Federal Republic in proceedings before the Office, granted according to Section 11 of Decree 107/1972 of the Office of Inventions and Discoveries, concerning foreign relations in matters of inventions and industrial designs, and the authorization to represent these persons in trademark proceedings according to Section 27/3 of Trademark Law 174/1988 and according to [Section 15 of Law 159/1973](#), concerning protection of the Appellation of Origin of Products, lose validity six months after the date on which this law took effect.

### **Section 36**

The authorization to represent persons in proceedings before the Office and perform services and work designed to enforce protection of industrial property according to Law 105/1990 concerning Private Entrepreneurship of Citizens, loses validity six months from the date on which this law took effect.

### **Section 37**

(1) Applicants for entry in the register whose written applications were delivered to the Chamber within six months from the date this law took effect shall be recorded by the Chamber in the register after taking the oath, provided they meet the conditions stipulated by [Section 4/1/a-c](#), have earned requisite university education, and have at least five years practice in the field of industrial property; exceptions are granted by the Chamber.

(2) An applicant recorded in the register according to [subsection 1](#) is obliged to take the professional exam under [Section 4/1/e](#) no later than 12 months from his entry in the register.

(3) If an applicant does not meet the duty under [subsection 2](#), he will be erased from the register.

(4) Natural persons authorized to represent persons according to [Section 70/1 of Law 527/1990 on Inventions, Industrial Designs and Rationalization Proposals](#) and according to Section 27/3 of Trademark Law 174/1988, will

be recorded by the Chamber in the register upon presentation of an authorization granted by the Office.

### **Section 38**

(1) Pending establishment of the Chamber authorities, their jurisdiction is discharged by a preparatory committee appointed by the Office president.

(2) The preparatory committee convenes the Chamber founding conference by Dec. 31, 1991.

### **Section 39**

By agreement with the Chamber, the Office shall issue a decree on the rewarding of patent agents.

### **Section 40**

Should present laws [5](#) imply legal and natural persons who have no residence or establishment in the Czech and Slovak Federal Republic must be represented in proceedings before the Office by an organization or an organization member thereto authorized, or by a representative under relevant statutory regulations, or by a patent agent authorized thereto by this Office, the implication signifies a representative under relevant statutory regulations<sup>1</sup> and in accordance with this law.

### **Section 41**

This law takes effect on the day of July 1, 1991.

1 Law of the Czech National Council on Advocacy (No.128/1990 of the Collection)

Law of the Slovak National Council on Advocacy (No.132/1990 of the Collection)

Law of the Czech National Council on Commercial Lawyers (No.209/1990 of the Collection)

Law of the Slovak National Council on Advocacy (No.129/1991 of the Collection)

2 E. g. Law 65/1965, Labor Code, pursuant to later regulations, CSFR Government Decree 121/1990 (employment relations in the private entrepreneurship of citizens), pursuant to later regulations, Federal Ministry

of Labor and Social Affairs Decree 135/1990 (reward for labor in the private entrepreneurship of citizens).

3 Sections 244-250 of the Code of Civil Procedure

5 Section 15 of Law 159/1973, concerning Protection of the Appellation of Origin of Products.

Section 27/3 of Trademark Law 174/1988.

Section 70/1 of Law 527/1990, on Inventions, Industrial Designs and Rationalization Proposals