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Principles of Legal Regulation of Industrial Property Act

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RT I 2003, 18, 98
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Amended by the following acts

Passed	Published	Entry into force
16.12.2003	RT I 2003, 82, 555	01.05.2004
10.03.2004	RT I 2004, 20, 141	01.05.2004
09.03.2005	RT I 2005, 18, 104	08.04.2005
15.06.2005	RT I 2005, 39, 308	01.01.2006
24.01.2007	RT I 2007, 12, 66	01.01.2008
10.12.2008	RT I 2008, 59, 330	01.01.2009
17.12.2008	RT I 2009, 4, 24	01.03.2009
09.11.2011	RT I, 29.11.2011, 1	01.01.2012
07.12.2011	RT I, 28.12.2011, 1	01.01.2012
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, titles of ministers are replaced, starting with the version in force from 1 July 2014, pursuant to subsection 107 ³ (4) of the Government of the Republic Act.
20.02.2019	RT I, 19.03.2019, 4	29.03.2019
20.02.2019	RT I, 19.03.2019, 5	01.04.2019, partially 09.09.2019

Chapter 1 GENERAL PART

§ 1. Scope of application of Act

(1) This Act regulates the status of industrial property registers (hereinafter register) established pursuant to industrial property protection acts (hereinafter Industrial Property Act), the registrar of such registers, the status and financing of the registrar, the status and financing of the Industrial Property Board of Appeal (hereinafter Board of Appeal), and regulates the maintenance of registers and the extra-judicial contestation of the decisions of the registrar and legal protection of objects of industrial property rights before the Board of Appeal.

(2) For the purposes of this Act, the following are objects of industrial property rights:

- 1) inventions registered pursuant to the Patents Act, the Utility Models Act or the Implementation of Convention on Grant of European Patents Act (RT I 2002, 38, 233);
- 2) layout-designs of integrated circuits registered pursuant to the Layout-Designs of Integrated Circuits Protection Act;
- 3) trade marks and service marks (hereinafter trade mark) registered pursuant to the Trade Marks Act;
- 4) industrial designs registered pursuant to the Industrial Design Protection Act.

(3) The Industrial Property Acts referred to in subsection (2) of this section are specific Acts with regard to this Act.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

§ 2. Nature of legal protection of industrial property

(1) The objects of industrial property rights specified in subsection 1 (2) of this Act acquire legal protection as a result of registration pursuant to a corresponding Industrial Property Act or, in the case provided for in an Industrial Property Act, as a result of recognition of exclusive rights created on another basis.

(2) Exclusive right to a registered object of industrial property rights belongs to the person who is entered in the register as the owner.

(3) Legal protection of industrial property consists in the recognition and protection of the exclusive rights of the owner of an object of industrial property rights with legal means. No person has the right to initiate misdemeanour or criminal proceedings against another person for the protection of the exclusive right of an owner or file a claim for compensation for damage caused as a result of an infringement of the exclusive right without a claim from the owner or without the owner's knowledge and permission.

§ 3. Definitions

For the purposes of this Act:

1) "application" means a registration application filed pursuant to an industrial property protection Act in order to have legal protection granted to an object of industrial property rights. Where patent protection is applied for, "application" shall mean a patent application;

2) "applicant" means a person or the legal successor of a person who has filed an application to have legal protection granted to an object of industrial property rights;

3) "owner" means a person in respect of whom the last entry as the owner of an object of industrial property rights which is subject to legal protection has been made in a register;

4) "Industrial Property Act" means a specific Act which provides for the legal protection of objects of industrial property rights;

5) "international agreements" means industrial property conventions and other international agreements which apply to Estonia;

6) "Board of Appeal" means the Industrial Property Board of Appeal in accordance with Chapter 4 of this Act.

Chapter 2 REGISTERS

Division 1 General Provisions

§ 4. Purpose of registers

(1) The main purpose of the registers is the registration and making public, in the public interest, of objects of industrial property rights and owners thereof.

(2) The purpose of the registers is also to inform the public about applying for legal protection to objects of industrial property rights, the grant and validity of legal protection, the transfer of rights and other acts related to objects of industrial property rights.

§ 5. Registers

Official names of the registers are as follows:

- 1) register of patents;
- 2) register of utility models;
- 3) register of European patents valid in Estonia;
- 4) register of layout-designs of integrated circuits;
- 5) register of trade and service marks;
- 6) register of industrial designs.

[RT I 2009, 4, 24 - entry into force 01.03.2009]

§ 6. Basis of maintenance of registers

(1) Registers shall be maintained pursuant to this Act, the corresponding Industrial Property Acts and other Acts. Where an issue relating to the legal protection of industrial property is not regulated by law or international agreements, guidance shall be taken from the practice of implementation of European law or national law in European countries.

(2) The provisions of the Public Information Act regarding databases apply to the registers and maintenance thereof together with the specifications provided for in this Act or the Industrial Property Act.

[RT I 2007, 12, 66 - entry into force 01.01.2008]

§ 7. Registrar

The registers are maintained by the Patent Office.

§ 8. Composition of registers

(1) Each register comprises a database and registry files.

(2) A database consists of records. A record contains information pertaining to all register acts related to an application and the object of industrial property rights which is granted legal protection on the basis of the application from the opening of the record upon acceptance of the application for processing until the closing of the record upon the extinguishment or revocation of legal protection. Records are identified by application numbers.

(3) Each record includes a registry file. All documents referred to in a record are kept in the registry file. Documents that are related to the processing of an application and are intended for internal use by the Patent Office and any business secrets related to an object of industrial property rights which have been separated from an application at the request of the applicant and, in the cases provided by law, documents containing personal data not subject to disclosure may temporarily also be kept in the registry file as long as is necessary, provided that confidentiality thereof is guaranteed.

(4) A registry file is kept as a set of digital documents (hereinafter digital registry file). The paper documents received by the Patent Office are scanned and added to the digital registry file opened for the respective record. The Patent Office may destruct the paper documents which have been scanned and added to digital registry files, six months after the documents were added to the digital registry files, unless the person submitting the documents has requested that the documents be returned or it has appeared to be necessary to retain the documents for a longer period of time.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

§ 9. Working language

(1) The language of the registers is Estonian. Documents in foreign languages shall be submitted to the Patent Office and Board of Appeal together with a translation into Estonian.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The Patent Office and the Board of Appeal have the right to postpone performance of the obligation to submit translations of documents in a foreign language or not to request the submission of a translation if the due date for the submission of a translation of the given document is not specified in the corresponding Industrial Property Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Where subsection (2) of this section applies, the person who submitted a document in a foreign language shall submit the translation at the request of the Patent Office, Board of Appeal, court or interested party within one month of the date of submission of the request. Upon failure to submit a translation, the document is deemed not to have been submitted.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) At the motivated request of the person who is required to submit a translation, the Patent Office or the Board of Appeal may extend the time limit for submission of the document.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 10. Access to registers

[RT I 2004, 20, 141 - entry into force 01.05.2004]

(1) As of the date on which the Patent Office makes an application public, the record and the registry file shall be available to the public, taking into account the restrictions provided for in an Industrial Property Act. Depending on an Industrial Property Act, the date on which the Patent Office makes an application public shall be the publication date of the patent application, publication date of the notice of the decision concerning registration of a trade mark or publication date of the notice of entry of registration data of an industrial design, a utility model or a layout-design of an integrated circuit in the official gazette of the Patent Office.

[RT I 2004, 20, 141 - entry into force 01.05.2004]

(2) Information in the database pertaining to or documents in a registry file concerning an application which has not been made public by the Patent Office shall not be used as the basis for commencing misdemeanour or criminal proceedings or used as evidence when conducting proceedings in a misdemeanour or criminal matter or used to stop a presumed offence or to file a claim for compensation for damage caused as a result of a presumed infringement of an exclusive right.

[RT I 2004, 20, 141 - entry into force 01.05.2004]

(3) Access to applications withdrawn or deemed to be withdrawn or rejected before they have been made public by the Patent Office, to classified patent applications and to information in the record pertaining to or documents in a registry file concerning a classified patent is prohibited to all persons, with the exception of the applicant, the holder of the classified patent and an authorised employee of the Patent Office.

[RT I 2009, 4, 24 - entry into force 01.03.2009]

§ 11. Inviolability of registers

(1) Original paper documents in registry files shall be deposited in the Patent Office and it is prohibited to remove them from the premises of the Patent Office. Original paper documents in registry files may only be seized in the course of criminal proceedings in order to verify the authenticity of a document or signature. The document which is being verified shall be replaced with a copy for the duration of the seizure.

[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

(2) The processing of data in the database or documents in registry files, including making copies thereof, for commercial purposes without the permission of the registrar is prohibited.

Division 2 Maintenance of Registers

§ 12. Register acts

(1) Register acts are acts related to the maintenance of a register.

(2) The following are types of register acts:

- 1) opening of a record and entry of application data in a register;
- 2) entry of data pertaining to procedural acts in a register;
- 3) entry of data pertaining to the grant of legal protection to an object of industrial property rights (registration data) in a register;
- 4) entry of amendments to registration data in a register;
- 5) entry of new registration data as a result of the division of a registration in a register;
- 6) entry of data pertaining to the maintenance or renewal of a registration in a register;
- 7) entry of data pertaining to a licence or pledge in a register;
- 8) publication of information entered in a register and issue of protection documents;
- 9) release of data from a register;
- 10) closing of a record (deletion of a registration from the register).

(3) Register acts are provided for in this Act, Industrial Property Acts and regulations of the Government of the Republic and ministers established on the basis thereof.

§ 13. Procedural acts

(1) Procedural acts are acts performed with an application received by the Patent Office after acceptance of the application for processing until a decision concerning the grant of legal protection is made, the application is rejected, the application is withdrawn or deemed to be withdrawn.

(2) Procedural acts are prescribed by the corresponding Industrial Property Act and international agreements and legal acts established on the basis thereof.

§ 14. Data entered in register and types thereof

(1) Data to be entered in a register are prescribed by Industrial Property Acts, international agreements and this Act and other legislation established on the basis thereof.

(2) Data shall be entered in a database in the form of entries and notations.

§ 15. Entries

(1) Data, as determined by an Industrial Property Act, international agreements or legal acts established on the basis thereof, pertaining to the creation, changing and extinguishment of rights in respect of an object of industrial property rights, procedural and register acts related thereto and documents which reflect such acts have the legal effect of an entry.

(2) Types of entries related to procedural and register acts are:

- 1) entries of application data;
- 2) entries to amend application data;
- 3) entries of registration data;
- 4) entries to amend registration data;

- 5) entries of data pertaining to licences and pledges;
- 6) entries concerning the renewal of registrations, validity or term of validity of the legal protection of objects of industrial property rights;
- 7) entries to delete registrations;
- 8) entries concerning the publication of notices of procedural and register acts related to the creation, changing and extinguishment of rights in respect of objects of industrial property rights in the official gazette of the Patent Office.

(3) Documents which reflect procedural and register acts and concerning which entries shall be made in a register are:

1) notices, inquiries and decisions concerning the setting of terms which are issued to applicants by the Patent Office;

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

2) notices, explanations and requests received in response to letters from the Patent Office as specified in clause 1) of this subsection;

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

3) requests pertaining to the progress of the processing of an application, filed on the initiative of an applicant;

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

4) requests pertaining to the amendment of registration data, registration of a licence or pledge, renewal of a registration or termination of legal protection.

§ 16. Notations

(1) Data concerning facts, as determined by an Industrial Property Act, international agreements or legal acts established on the basis thereof, which shall be taken into consideration in the processing of an application or performance of register acts or which the registrar deems necessary to make public in the public interest have the legal effect of a notation.

(2) Notations are a preliminary notation, objection, prohibition and comment.

(3) A preliminary notation shall be entered in a database on the basis of a notice or request of an applicant, owner or another person in order to secure the making of an entry concerning a right provided for in an Industrial Property Act or another Act in the future. A preliminary notation shall be made, among other things, concerning the receipt of an application or a request for the division of a registration.

(4) A notice concerning the filing of an appeal, request, challenge or action received from an applicant, owner, the Board of Appeal or a court shall be entered in a database as an objection in order to inform the Patent Office and the general public about possible amendments to the entry in the register.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) A prohibition shall be entered in a database on the basis of a notice, request, decision, judgment or ruling of an applicant, owner, another person or court in order to secure a right provided for in an Industrial Property Act or another Act or to prevent an offence. A prohibition shall be made, inter alia, in the cases provided for in an Industrial Property Act if publication of the name of the author is prohibited, in order to restrict or prohibit disposal of an object of industrial property rights in connection with the registration of a licence or pledge or in connection with the bankruptcy of the owner if the object of industrial property rights is included in the bankruptcy estate.

(6) The Patent Office shall enter a prohibition in a database on its own initiative if facts relating to a procedural act or an entry affect the course of subsequent procedural acts or if legal grounds which precludes the making of certain entries has arisen.

(7) A comment shall be entered in a database on the basis of a request of an applicant, owner or another person or on the Patent Office's own initiative if disclosure thereof is in the public interest. The transfer of the processing of an application and performance of register acts from a competent official to another and information regarding the identification of the official shall also be entered in the database as a comment.

§ 17. Persons who submit data to register

(1) Data shall be submitted to a register by applicants, owners, other persons, the Board of Appeal and courts within the competence provided for in an Industrial Property Act.

(2) Data submitted by an unentitled person shall be forwarded to an applicant or owner for a position if such data are significant for the processing of an application or validity of the legal protection of an object of industrial property rights. A comment shall be entered in the database concerning the submission and forwarding of the data.

§ 18. Liability for correctness of data

A person who submits data shall be responsible for the correctness thereof. Persons who submit false information shall be liable for wrongfully caused damage.

§ 19. Submission of confidential information

(1) In the cases provided for in an Industrial Property Act, a person who submits data may specify submitted information as confidential.

(2) Confidential information must be clearly specified by the person who submits the information.

(3) Information subject to public disclosure, such as the following, shall not be specified as confidential information:

- 1) information needed to define the nature of an object of industrial property rights, the scope of legal protection and bases for the grant thereof;
- 2) information pertaining to an applicant, as of making the application available to the public pursuant to an Industrial Property Act;
- 3) information pertaining to an owner;
- 4) information pertaining to a licensee and the extent of rights granted to the licensee and the term of validity thereof;
- 5) information pertaining to a pledgee and the nature, amount of and term for performance of a claim secured by the pledge.

(4) Confidential information shall not be preserved in a register, except information pertaining to authors in the cases provided by law. Such information shall be disclosed with the permission of the person who submitted the information, destroyed once it is no longer needed in connection with processing or returned to the person who submitted the information.

(5) Confidential information shall be maintained in secrecy until permission is received for the disclosure of the information, until the information is destroyed as it is no longer needed in connection with processing or returned to the person who submitted the information.

[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

§ 20. [Repealed - RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 21. Data protection requirements

The register shall be maintained in such manner as to ensure the integrity, authenticity and preservation of register data and the protection of register data from access of unauthorised persons and from unauthorised alteration. Register entries, including amending entries, shall be authorised.

[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

Division 3 General Procedure for Performance of Register Acts

§ 22. Competent person

(1) Register acts are performed by an authorised official of the Patent Office. Authorisation shall be granted by the job description in accordance with the statutes of the Patent Office and statutes of the structural unit.

(2) If the performance of a register act is transferred from an official to another, a comment shall be entered in the register pursuant to subsection 16 (7) of this Act.

§ 23. Receipt of documents

(1) An inscription shall be made on each document received on paper, indicating the actual date of receipt of the document by the Patent Office. An inscription may contain additional information concerning the record which the document is pertaining to.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

(2) If a document is submitted on paper and is not bound, an inscription shall be made on each page; if a document is bound, an inscription shall be made only on the first page.

§ 24. Verification of documents

(1) The verification of a document shall begin with the identification of the person who submitted the document and the purpose of submission thereof. If it is impossible to identify the person who submitted a document, the document shall be disregarded. If it is impossible to identify the purpose of submission of a document, an

inquiry shall be sent to the person who submitted the document for clarification to be given and verification of the document shall be suspended.

(2) After identification of the person who submitted a document and the purpose of submission thereof, it shall be verified whether the person has the right to submit such a document, except the right of a person who filed an application to apply for legal protection to an object of industrial property rights. In the case of documents filed through a representative, the scope and validity of the representative's authorisation to perform an act pursuant to the provisions of an Industrial Property Act shall be verified. If the person who submitted a document has no right to submit such documents, the person shall be notified thereof and verification of the document shall be suspended. In the specified case, the provisions of subsection 17 (2) of this Act apply.

(3) If the right to submit a document exists, compliance with the formal requirements established for the document shall be verified. The person who submitted a document shall be notified of any formal deficiencies in the document and processing of the document shall be suspended. If a digital document is submitted in a format allowing the alteration of data set out therein, the document shall be converted to a format where such alteration of data is precluded.

(4) The date of receipt of a document and relevant information pertaining thereto shall be entered in the database in the form of an entry or notation in accordance with the provisions of §§ 15 and 16 of this Act.

(5) A document shall be processed with regard to its content pursuant to the corresponding Industrial Property Act and regulations established on the basis thereof.
[RT I 2004, 20, 141 - entry into force 01.05.2004]

§ 25. Opening of record and entry of application data in register

(1) A record shall be opened upon acceptance of an application for processing.

(2) Upon the opening of a record, the following entries shall be made in the database:

- 1) entry of the application number;
- 2) entry of the filing date of the application;
- 3) entry of data set out in the request for legal protection;
- 4) entry concerning the documents submitted.

(3) A registry file shall be opened upon the opening of a record.

§ 26. Entry of data pertaining to procedural acts in register

(1) The following entries or notations pertaining to procedural acts shall be made in a database:

- 1) concerning procedural acts performed;
- 2) concerning documents received and issued;
- 3) concerning terms set by the Patent Office.

(2) Register entries specified in subsection (1) of this section shall be made pursuant to the provisions of the corresponding Industrial Property Act.

§ 27. Entry of data pertaining to grant of legal protection to objects of industrial property rights in register

(1) An entry concerning the grant of legal protection to an object of industrial property rights (registration entry) shall be made in a register on the basis of a decision of a competent official of the Patent Office.

(2) Upon the grant of legal protection, an object of industrial property rights shall be assigned a unique number (registration number) and the term of legal protection with other information prescribed by an Industrial Property Act shall be entered in the register.

§ 28. Entry of amendments to registration data in register

(1) The following shall be entered in a database concerning amendments to registration data:

- 1) data of a request for an entry;
- 2) new data or data pertaining to a new document;
- 3) data of the notice concerning amendments, issued to the person who submitted a request for an entry and the publication date of the notice concerning amendments if so prescribed by an Industrial Property Act;
- 4) data of the notice concerning refusal to make an entry which is issued to the person who submitted a request for an entry if the making of the entry is refused.

(2) In the case of changes arising from the division of a registration, a corresponding comment and the number of the new registration made on the basis of the separated part shall be entered in the database.

§ 29. Entry of new registration data resulting from division of registration in register

(1) Each registration created as a result of a division shall be assigned a new registration number and a new record shall be opened in the register concerning such registration.

(2) The data of a new registration shall be submitted on the basis of the earlier registration. The new registration shall contain a reference to the earlier registration.

(3) If the division of a registration is accompanied by the transfer of the object of industrial property rights, the provisions of the Industrial Property Act concerning the transfer of objects of industrial property rights apply.

§ 30. Entry of data pertaining to maintenance or renewal of registration in register

(1) An entry concerning the maintenance or renewal of a registration shall be made in the register provided that the conditions prescribed by an Industrial Property Act are met.

(2) Data of the request for an entry, the amount of state fee paid and the date of payment thereof shall be entered in the database.

§ 31. Registration of licence or pledge in respect of object of industrial property rights

(1) If an object of industrial property rights is encumbered with a pledge, information concerning the pledgee, the monetary amount of the pledge, amount of and term for performance of a claim secured by the pledge shall be entered in the register.

(2) A pledge shall be deleted from the register upon termination of the claim secured by the pledge or discharge of the pledge. If a pledge is discharged, the provisions concerning the pledging of industrial property apply taking into consideration the specifications arising from the nature of the entry.

(3) If a licence is issued in respect of an object of industrial property rights, data pertaining to the licensee and the nature, scope and term of the licence shall be entered in the register accompanied by other conditions entry of which in the register is deemed necessary.

[RT I 2004, 20, 141 - entry into force 01.05.2004]

§ 32. Publication of information entered in register

Information entered in a register shall be published in the official gazette of the Patent Office pursuant to the procedure prescribed by an Industrial Property Act.

§ 33. Closing of record

(1) A record and the registry file pertaining thereto shall be closed if:

- 1) an application is withdrawn, deemed to be withdrawn or rejected or registration of the object of industrial property rights is refused;
- 2) the term of legal protection of the object of industrial property rights expires or the registration is deleted from the register pursuant to an Industrial Property Act;

(2) Closed records shall be preserved permanently.

(3) Closed records shall be public unless a record was closed before the application was made public pursuant to an Industrial Property Act.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

§ 33¹. Appeal against register acts, refusal to perform or delay in performance of register acts

(1) An interested party may file an appeal against the performance of a register act or refusal to perform a register act by the Patent Office with the Board of Appeal within two months after the date of performance or refusal to perform the register act.

(2) The person requesting performance of a register act may file an appeal against an unjustified delay in performing a register act by the Patent Office with the Board of Appeal within two years of requesting the register act but not earlier than four months after requesting the register act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

Chapter 3

PATENT OFFICE

§ 34. Status of Patent Office

(1) The Patent Office is the government authority that exercises executive power and implements the policies of the Government of the Republic in the field of legal protection of industrial property and is the central office in the field of legal protection of industrial property within the meaning of paragraph (1) of Article 12 of the Paris Convention for the Protection of Industrial Property (RT II 1994, 4/5, 19), taking into consideration the provisions of paragraph (1) of Article 2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (RT II 1999, 22, 123).

(2) In the performance of its functions, the Patent Office represents the state.

§ 35. Functions of Patent Office

(1) The functions of the Patent Office are as follows:

1) the acceptance and processing of applications pursuant to Industrial Property Acts or international agreements, including conduct of expert assessments in the cases prescribed by Industrial Property Acts or international agreements, making of decisions concerning the grant of legal protection to objects of industrial property rights, maintenance of industrial property registers, issue of official publications and protection documents;

2) the performance of other functions in the field of legal protection of industrial property assigned by law or international agreements.

(2) Pursuant to international agreements, the Patent Office shall:

1) organise international co-operation in the field of legal protection of industrial property;

2) participate in the work of the World Intellectual Property Organization, the European Union Intellectual Property Office and the European Patent Organisation;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

3) co-operate with the institutions of the legal protection of industrial property of other countries.
[RT I 2004, 20, 141 - entry into force 01.05.2004]

§ 35¹. Fee-charging services of Patent Office

(1) The Patent Office shall conduct standard searching and special searching for patents for a fee within the European Patent Network.

(2) The procedure and fee rates for the searching set out in subsection (1) of this section shall be established by the minister responsible for the area by a regulation.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(3) The upper limit of the fee for a standard search set out in subsection (1) and established on the basis of subsection (2) of this section shall be 3000 euros and the upper limit of the fee for a special search shall be 4000 euros.
[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

§ 36. Independence of Patent Office

(1) The Patent Office shall be independent in the performance of the functions specified in § 35 of this Act, including in making of decisions concerning the grant of legal protection to objects of industrial property rights and use of decision-making methodology. The Patent Office shall comply with court judgments and the decisions of the Board of Appeal.

(2) Supervisory control shall not restrict the independence of the Patent Office in the performance of functions imposed on the Patent Office by law or an international agreement.

§ 37. Budget and financing of Patent Office

(1) The Patent Office is financed from the state budget and earmarked funds of the World Intellectual Property Organization, the European Union Intellectual Property Office and the European Patent Organisation.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

Chapter 4

BOARD OF APPEAL

Division 1 General Provisions

§ 38. Status of Board of Appeal

- (1) The Board of Appeal is an extra-judicial independent body.
- (2) Processing at the Board of Appeal constitutes a mandatory pre-trial procedure.
[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

§ 39. Competence of Board of Appeal

- (1) In the cases provided by law, the Board of Appeal resolves:
 - 1) appeals filed to contest decisions, register acts, refusal to perform register acts or delay in performance of register acts by the Patent Office;
 - 2) disputes between a third party and an applicant or owner based on revocation applications, requests for declaration of nullity of an exclusive right or for declaring an exclusive right extinguished, requests for revocation of legal protection afforded to an object of industrial property rights or other requests (hereinafter each referred to as request).
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1¹) An act performed by the Patent Office in the course of processing of an application, or a delay in performing such act may be contested only by filing an appeal against the decision made upon termination of the processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The Board of Appeal acts in accordance with this Act, Industrial Property Acts, international agreements and regulations of the Government of the Republic and ministers. Where an issue relating to the legal protection of industrial property is not regulated by law or international agreements, guidance shall be taken from the practice of implementation of European law or national law in European countries.

(3) Damage caused by the unlawful action of the Board of Appeal shall be compensated for by the state.

§ 40. Formation and panel of Board of Appeal

(1) The Board of Appeal shall be formed at the Patent Office.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1¹) In this Act, Industrial Property Acts and regulations established on the basis thereof, a reference to the Patent Office does not include the Board of Appeal, unless otherwise specified in the respective Act or regulation.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The minister responsible for the area shall establish the statutes of the Board of Appeal that provide for the following:
[RT I, 28.12.2011, 1 - entry into force 01.01.2012]

- 1) the procedure for filing an appeal or revocation application;
- 2) rules of procedure of the Board of Appeal, and
- 3) the procedure for remuneration of the members of the Board of Appeal.

(3) The Board of Appeal shall consist of at least eight members. The members shall have completed an academic higher education and they shall be experts in the field of industrial property. Half of the members shall have an academic degree in law. Members of the Board of Appeal, including the chairman and deputy chairman, shall be appointed by the minister responsible for the area.
[RT I, 28.12.2011, 1 - entry into force 01.01.2012]

(4) In the absence of the chairman of the Board of Appeal, the deputy chairman shall substitute for the chairman of the Board of Appeal.

§ 41. Working language

(1) The working language of the Board of Appeal is Estonian.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Documents which are not in Estonian shall be submitted to the Board of Appeal together with a translation into Estonian pursuant to subsection 9 (3) of this Act. If the translation of a document is not submitted by the due date, the Board of Appeal is entitled to disregard the document.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 42. Working conditions of Board of Appeal

(1) The working conditions of the Board of Appeal, including working premises and clerical support, shall be provided by the Patent Office.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The administrative expenditure of the Board of Appeal and expenses related to the resolution of appeals and requests shall be covered from the state budget out of the funds allocated to the Patent Office for these purposes.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Documents of the Board of Appeal shall be permanently stored in the archives of the Patent Office.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

Division 2 Appeal and Request

[RT I, 19.03.2019, 5 - entry into force 01.04.2019]

§ 43. Filing of appeal or request

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) An appeal or request together with documents appended thereto shall be addressed to the Board of Appeal and filed in accordance with the procedure established pursuant to subsection 40 (2) of this Act, taking into account the time limits provided for in the corresponding Industrial Property Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1¹) A state fee shall be paid for filing an appeal or request in the amount specified in the State Fees Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) If an appeal or request is filed after the expiry of a term, the chairman of the Board of Appeal may restore the term based on a written request of the appellant or of the person filing the request, provided that the lapse of the term was due to good reason.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 44. Requirements for appeals and requests

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) An appeal shall set out:

1) the name and address of the person filing the appeal (hereinafter appellant) and the e-mail address if the appellant wishes to receive notices from the Board of Appeal by electronic means;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

2) the name of the representative of the appellant if the appellant has a representative;

3) information pertaining to the contested decision, register act, refusal to perform a register act or delay in performance of a register act by the Patent Office;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

4) the appellant's reasons for considering the decision, register act, refusal to perform a register act or delay in performance of a register act by the Patent Office to be unlawful;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

5) the claim of the appellant;

6) a list of annexes to the appeal;

7) the signature of the appellant or representative of the appellant.

(1¹) The following shall be appended to an appeal:

1) a power of attorney if the appeal is filed via a joint representative;

2) evidence supporting the facts which constitute the grounds for the appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) A request shall set out:

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

- 1) the name and address of the person filing the request and the e-mail address if the person filing the request wishes to receive notices from the Board of Appeal by electronic means;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 2) the name of the representative of the person filing the request if the person has a representative;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 3) information pertaining to the contested object of industrial property rights;
 - 3¹) a reference to an earlier right constituting the grounds for the request if the person filing the request relies on an earlier right in the request;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
 - 3²) a reference to the legal grounds of the request;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 4) [repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 5) the claim of the person filing the request;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 6) a list of annexes to the request;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 7) the signature of the person filing the request or of the person's representative.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2¹) A request may include the proof of claim of the person filing the request.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) A power of attorney shall be appended to a request if the request is filed via a joint representative.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) Evidence supporting the facts which constitute the grounds for the request may be appended to the request.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 45. Registration of appeals and requests and elimination of deficiencies

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Within fifteen days, the chairman of the Board of Appeal shall verify, based on the information set out in an appeal or request, whether the appeal or request falls within the competence of the Board of Appeal, whether the term for filing the appeal or request is complied with and whether the appeal or request meets the requirements for contents and form.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) If the chairman of the Board of Appeal finds that an appeal or request contains deficiencies which can be eliminated, the appellant or the person who filed the request shall be notified thereof immediately in writing and a reasonable term of up to one month shall be set for elimination of deficiencies. For the purpose of this subsection, deficiencies which can be eliminated include, inter alia, failure to pay the state fee and a missing representative where a representative is required.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) The Board of Appeal may extend the term for the elimination of deficiencies of an appeal at the reasoned written request of the appellant or the person who filed the request.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 46. Correction and supplementation of appeal or request

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) An appellant or the person who filed a request may, until the beginning of final processing, correct or supplement the appeal or request on the basis of a reasoned written request provided that such corrections or supplements do not extend the grounds or contents of the claim as set out in the appeal or request on the filing date thereof.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Where the scope of legal protection of the object of industrial property rights is restricted during the processing of the Board of Appeal, the Board of Appeal shall continue processing of the appeal or request based on the restricted scope of legal protection.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 47. Withdrawal and rejection of appeal or request

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) An appellant or the person who filed a request may withdraw the appeal or request by submitting a corresponding written request. The appeal or request shall be withdrawn as of the date of receipt of the corresponding request by the Board of Appeal.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) An appeal or request shall be deemed to be withdrawn if the appellant or the person who filed the request fails to respond within the term specified in subsections 45 (3) and (4) of this Act.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) An appeal or request shall be rejected by a decision made by the chairman of the Board of Appeal sitting alone and a copy of the decision shall be sent immediately to the appellant or the person who filed the request if:
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

1) the appeal or request does not fall within the competence of the Board of Appeal;

2) the appeal or request is not filed within the prescribed term;

3) the appeal or request does not meet the requirements, the state duty has not been paid for filing thereof, or the person who filed it has no required representative, or the person who filed it fails to eliminate the deficiencies within a specified term;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

4) [repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

5) the Board of Appeal has made a decision or a court has made a judgment concerning the same object on the same basis between the same parties and said decision or judgment is in force.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3¹) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) The appellant or the person who filed the request is entitled to a refund of the paid state fee:
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

1) in the case specified in subsection (1) of this section, if a request for the withdrawal of an appeal or request is received by the Board of Appeal before the appeal or request is accepted for processing;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

2) if the appeal or request does not fall within the competence of the Board of Appeal, is not filed by the due date and the chairman of the Board of Appeal rejects it pursuant to subsection (3) of this section.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(6) [Repealed – RT I 2009, 4, 24 – entry into force 01.03.2009]

Division 3

Processing at Board of Appeal

§ 48. Acceptance of appeal or request for processing

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) If the chairman of the Board of Appeal finds that an appeal or request falls within the competence of the Board of Appeal, has been filed within the term and meets the requirements for contents and form, the chairman shall decide to accept the appeal or request for processing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The acceptance of an appeal or request for processing shall be formalised as a conclusion. A conclusion shall be dated and signed by the chairman of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) The appellant or the person who filed the request shall be immediately notified of the acceptance of the appeal or request for processing. A notice concerning the acceptance of an appeal or request for processing shall be published on the website of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 48¹. Transmission and service of appeal and request

(1) Having accepted an appeal for processing, the Board of Appeal shall transmit the appeal to the other participant in the processing and propose the participant to submit his or her written position within one month of the date of making the proposal.

(2) Having accepted a request for processing, the Board of Appeal shall serve the request on the other participant in the processing and shall inform him or her of the starting date of preliminary processing.

(3) If the request is filed against a person without a residence, seat or an operating commercial or industrial enterprise in Estonia and no required representative, the Board of Appeal shall transmit the notice concerning the filing of the request to such person, providing him or her with a term of at least two months for notifying the Board of Appeal about his or her representative. After the Board of Appeal is notified about the representative, the Board of Appeal shall service the request on the other participant in the processing.

(4) The service of a request is governed by the provisions of Part 6 of the Code of Civil Procedure, considering the specifications concerning the processing of the Board of Appeal.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 48². Cooling-off period of request

(1) The preliminary processing of a request is not started before the lapse of two months from the service of the request on the other participant in the processing (hereinafter the cooling-off period). Said period can be extended to up to twelve months in total if both participants in the processing submit a respective request before the lapse of the cooling-off period.

(2) The other participant in the processing shall notify the Board of Appeal before the lapse of the cooling-off period in writing whether he or she contests the request.

(3) If the other participant in the processing has notified the Board of Appeal of contesting the request, the Board of Appeal may terminate the cooling-off period at the request of the participant in the processing and commence preliminary processing before the lapse of the period specified in subsection (1) of this section.

(4) The person who filed the request is entitled to a refund of one-half of the state fee paid upon filing the request if the processing is terminated before the lapse of the cooling-off period for the reason specified in clause 54 (3) 1), 2) or 3 of subsection 54 (5) of this Act.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 48³. Commencement of preliminary processing of request

(1) After the lapse of the cooling-off period, the Board of Appeal shall provide the person who filed the request with a term of two months for submission or supplementation of reasons and evidence of the request.

(2) The Board of Appeal shall transmit the reasons and evidence specified in subsection (1) of this section to the other participant in the processing and make a proposal to the other participant in the processing to submit a written position within two months of making the proposal.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 48⁴. Use of accelerated processing and rejection of request without justifying decision

(1) Where a request is served on another participant in the processing in any other way than publicly, but the other participant in the processing does not notify the Board of Appeal before the lapse of the cooling-off period that he or she contests the request, or where the notice specified in subsection 48¹(3) of this Act is sent to the other participant in the processing in accordance with an international agreement to which Estonia is a party, but the other participant in the processing does not notify the Board of Appeal about his or her representative by the due date, the Board of Appeal shall provide the person who filed the request with the term specified in subsection 48³(1), and shall start final processing after the lapse of said term. In such case the Board of Appeal shall grant the request without justifying its decision in the part in which it is not manifestly unjustified.

(2) If the person who filed the request fails to submit the reasons and evidence of the request within the term specified in the request or in subsection 48³(1) of this Act, the request shall be rejected for being unfounded by a decision made by the chairman of the Board of Appeal sitting alone.

(3) If the other participant in the processing does not submit his or her written position within the term specified in subsection 48³(2) of this Act, the Board of Appeal shall enable the person who filed the appeal to submit additional written positions within one month, and shall thereafter commence the final processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 49. Direction of preliminary processing

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) Within five days as of the acceptance of an appeal or revocation application for processing, the chairman of the Board of Appeal shall appoint a competent member of the Board of Appeal to conduct preliminary processing (hereinafter person conducting preliminary processing) whose task is to provide the Board of Appeal

with an overview of the factual information and legal facts pertaining to the appeal or revocation application and positions of the participants in the processing.

(2) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) [Repealed - RT I 2005, 18, 104 – entry into force 08.04.2005]

(4) In the course of preliminary processing, the chairman of the Board of Appeal sitting alone shall make decisions of the Board of Appeal, unless otherwise provided for in this Act. A decision shall immediately be sent to the participants in the processing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) Unless otherwise provided for in this Act, the chairman of the Board of Appeal may extend the procedural term concerning the participants in the processing which derives from law or has been provided by the Board of Appeal, based on a reasoned written request of a participant in the processing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(6) If a procedural term concerning a participant in the processing which derives from law or has been provided by the Board of Appeal lapses, the chairman of the Board of Appeal may restore the term based on a written request of the participant in the processing provided that the lapse of the term was due to good reason and the request for restoration of the term is filed within two months after the end of the term and the participant in the processing performs the unperformed procedural act within two months after the reason for the failure to adhere to the term ceases to exist.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 50. Participants in processing before Board of Appeal

(1) The appellant and the Patent Office are the participants in the processing of an appeal by the Board of Appeal.

(2) The person who filed a request and an applicant or owner are the participants in the processing of a request by the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2¹) The Board of Appeal may involve in a processing a person who is not specified in subsection (1) or (2) of this section if the rights or obligations of such person may be determined by the decision of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Participants in the processing have the right to perform the following acts either in person or, pursuant to the provisions of an Industrial Property Act, through a representative:

- 1) submit a written position on an appeal or request;
- 2) file additional documents and requests and provide explanations;
- 3) pose questions to other participants in the processing;
- 4) request removal of a member of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 50¹. Notification by Board of Appeal

(1) The Board of Appeal shall submit notices regarding an appeal or request to the representative of a participant in the processing, and in case there is no representative then to the participant in the processing.

(2) Within the meaning of subsection (1) of this section, a representative is deemed to be a person who has submitted an appeal or request as a representative of the participant in the processing, or who has performed other acts in the processing of the Board of Appeal or who has been entered in the register as the representative of the applicant or owner, unless the representative or the principal has informed the Board of Appeal otherwise in writing.

(3) If a person has several representatives, notices shall be submitted to the most recently reported representative; in case of several representatives reported on the same day, the representative who is a patent attorney shall be preferred. If persons jointly performing acts have different representatives, notices shall be submitted to all the representatives.

(4) In case of a participant in the processing who has informed the Board of Appeal about his or her e-mail address, and in case of a patent attorney, their consent for submission of notices regarding an appeal or request by electronic means is presumed, unless they have informed the Board of Appeal otherwise in writing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 51. Written positions of participants in processing

(1) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Written positions shall be addressed to the Board of Appeal and shall contain the name and address of the person submitting the position, a reference to the appeal or request and shall be reasoned.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) A written position submitted by a participant in the processing shall be immediately forwarded to the other participant in the processing.

(3¹) The Board of Appeal shall provide a participant in the processing with a term of one month for responding to the written position or additional document of the other participant in the processing by a written position.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3²) The Board of Appeal may, on its own initiative or at the request of the other participant in the processing, provide a participant in the processing with a term for responding to a question.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3³) When the participant in the processing who was provided with a term for submitting a written position or responding to questions, has submitted the written position or response to the Board of Appeal or has given notice of its wish not to submit the same, the term shall be deemed to have lapsed.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) The fact that a participant in the processing fails to submit a written position or respond to a question of the Board of Appeal shall not hinder continuation of the processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 52. Submission of additional documents

(1) The Board of Appeal may require additional documents from a participant in the processing on its own initiative or at the request of the other participant in the processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Participants in the processing shall submit the required additional documents within the term provided by the Board of Appeal.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2¹) When the participant in the processing who was provided with a term for submitting an additional document, has submitted the additional document or has given notice of its wish not to submit the same, the term shall be deemed to have lapsed.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Additional documents shall be immediately forwarded to the other participant in the processing.

(4) The fact that a participant in the processing fails to submit additional documents within the term provided by the Board of Appeal shall not hinder continuation of the processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 52¹. Proof of use of trade mark

(1) If a participant in the processing has filed an objection based on the non-use of an earlier trade mark, the Board of Appeal shall provide the person who filed the request with a term of two months for submission of evidence regarding the use of the trade mark or for giving reasons for the non-use of the trade mark. The Board of Appeal shall not continue processing before the lapse of said term.

(2) If the person who filed the request has submitted the evidence or reasons specified in subsection (1) of this section to the Board of Appeal or has given notice of his or her wish not to submit the same, the term provided to him or her shall be deemed to have lapsed.

(3) If the person who filed the request fails to submit evidence concerning the use of the earlier trade mark or provide reasons for the non-use of the trade mark within the term provided under subsection (1) of this section, or if the submitted evidence or reasons are manifestly irrelevant or insufficient, the request shall be rejected in the part which relies on the earlier trade mark, by a decision made by the chairman of the Board of Appeal sitting alone.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 53. Combining of separate claims which are related

(1) The chairman of the Board of Appeal has the right to make a decision sitting alone to combine several separate claims which are related.

(2) If several separate, related claims are combined in one proceeding, a separate decision may be made on each claim if this expedites the hearing of the matter.

(3) In a combined processing of several claims against one respondent a partial decision shall not be made if the respondent contests this with good reason.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

§ 54. Suspension, resumption and termination of processing

[RT I 2005, 39, 308 - entry into force 01.01.2006]

(1) The chairman of the Board of Appeal has the right to make a decision sitting alone, on his or her own initiative or at the request of a participant in the processing, to suspend the processing of an appeal or request on the basis of the provisions of the Code of Civil Procedure concerning suspension of a proceeding or at the joint request of the participants in the processing. If the chairman of the Board of Appeal refuses to grant the request of a participant in the processing for suspension of the processing, the chairman shall make a corresponding decision.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) If the circumstances which caused the suspension cease to exist, the chairman of the Board of Appeal sitting alone shall decide on the resumption of processing.

(2¹) In the case of suspension of processing, the running of all procedural terms is suspended and, upon the expiry of the suspension of processing, such terms start to run again from the beginning. Any procedural acts performed during the period when processing is suspended are null and void.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) The processing of an appeal or request shall be terminated by a decision made by the chairman of the Board of Appeal sitting alone and the decision shall immediately be sent to the appellant or the person who filed the request if:

- 1) the appellant or the person who filed the request withdraws the appeal or request;
- 2) the participants in the processing settle the dispute by a compromise pursuant to § 54² of this Act;
- 3) the contested object of industrial property rights has been deleted from the register or the respective application has been waived;
- 4) there is no person filing the request, or the person filing the request and the applicant or owner are one and the same person;
- 5) there are any of the grounds specified in subsection 47 (3) or 58 (5) of this Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) If the other participant in the processing notifies the Board of Appeal of not contesting the appeal or request or of admitting the claim filed against him or her in the processing, the appeal or request shall be granted without justifying the decision by the chairman of the Board of Appeal sitting alone.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 54¹. Final positions of participants in processing

[RT I 2005, 18, 104 - entry into force 08.04.2005]

(1) The Board of Appeal shall not make a proposal to the participants in the processing to submit their final positions before one month after the receipt of the positions of the participants in the processing. Participants in the processing shall submit their final positions within one month as of making of the proposal.

[RT I, 29.11.2011, 1 - entry into force 01.01.2012]

(2) A proposal for the submission of final positions shall be made first to the appellant or the person who filed the request. The Board of Appeal shall forward the final positions of the appellant or the person who filed the request immediately to the other participant in the processing together with a proposal to submit his or her final positions. A participant in the processing who has not submitted his or her written positions to the Board of Appeal shall not be allowed to present his or her final positions.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Upon the submission of final positions, a participant in the processing has the right to submit a proposal to the Board of Appeal for oral procedure (hereinafter meeting) to be conducted in respect of an appeal or request; in such case the participant shall justify the need for a meeting.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) Final positions may only refer to the facts which have earlier been relied on by the participants in the processing and to the evidence which had been submitted to the Board of Appeal before the proposal to submit final positions was made.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) The fact that a participant in the processing has failed to submit final positions shall not hinder commencement of final processing and the making of a decision.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

§ 54². Compromise

(1) The participants in the processing may settle a dispute processed by the Board of Appeal by compromise.

(2) Compromise shall be approved by the decision whereby the processing of the appeal or request is terminated, made by the chairman of the Board of Appeal sitting alone.

(3) If compromise is made in processing of a request before the commencement of the final processing, one-half of the state fee paid upon filing of the request is refunded.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 55. Final processing

(1) The chairman of the Board of Appeal shall commence final processing within fifteen days after the lapse of the terms provided to the participants in the processing for submission of final positions, and shall determine the panel of the Board of Appeal processing the appeal or request, and appoint the presiding member of the Board. If it is necessary to hold a meeting, the chairman of the Board of Appeal shall determine the time and place of the meeting.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Commencement of final processing shall be formalised as a conclusion. A conclusion shall be dated and signed by the chairman of the Board of Appeal.

(3) In final processing, an appeal or request shall be processed by a panel of three members of the Board of Appeal. The person who conducted preliminary processing shall be one of the members of the panel.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) Participants in the processing shall be immediately notified of the commencement of final processing and the panel of the Board of Appeal processing the appeal or request and, in the case a meeting is held, of the time and place of the meeting. A notice concerning final processing shall be published on the website of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 56. Holding of meeting and time of meeting

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) The Board of Appeal may hold a meeting in processing on its own initiative or at the request of a participant in the processing if it contributes to the just and efficient resolution of the matter. A meeting shall be held not later than thirty days after the date on which the time and place of the meeting were determined and the participants in the processing shall be notified of the meeting at least fifteen days in advance. These time limits may be waived with the consent of all the participants in the processing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The Board of Appeal may adjourn a meeting if a participant in the processing submits a reasoned request for the adjournment of the meeting.

(3) If a meeting is adjourned, the new meeting shall be held not later than thirty days after the date of the previous meeting, and the participants in the processing shall be notified of the time and place of the new meeting at least fifteen days in advance. These time limits may be waived with the consent of all the participants in the processing. A notice of the new meeting shall be published on the website of the Board of Appeal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed - RT I 2005, 18, 104 – entry into force 08.04.2005]

§ 57. Meeting

(1) A meeting of the Board of Appeal shall be chaired by the presiding member of the panel. Minutes shall be taken of the meetings.

(1¹) Meetings of the Board of Appeal are public. The chairman of the Board of Appeal may declare a meeting to be closed on the grounds for declaring a proceeding closed under the Code of Civil Procedure.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) A meeting shall include the following:

- 1) identification of the persons present and verification of their authorisation;
- 2) submission and resolution of requests for removal and any other requests of the participants in the processing;
- 3) [repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 4) presentation of the positions of the participants in the processing and their discussion;
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]
- 5) posing of questions by the participants in the processing and the Board of Appeal and responses thereto.

(3) The failure of a participant in the processing or his or her representative to appear at a meeting does not constitute an impediment to the processing of an appeal or request if the participant in the processing has been notified of the time and place of the meeting and the panel of the Board of Appeal and the participant in the processing has not given notice of any material circumstances which prevent his or her presence in the processing.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed – RT I 2005, 18, 104 – entry into force 08.04.2005]

(5) If the participants in the processing have given their explanations to the Board of Appeal and answered the questions, the hearing of the appeal or request shall be terminated and the participants in the processing shall be notified of the date by which the Board of Appeal shall make a decision.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 58. Removal of member of Board of Appeal

(1) A member of the panel of the Board of Appeal is required to remove himself or herself if there are circumstances giving reason to doubt his or her impartiality. Unless otherwise provided for in this Act, the provisions of § 10 of the Administrative Procedure Act apply to removal.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) If there are grounds for removal provided for in subsection (1) of this section, a participant in the processing may request removal of a member from the panel of the Board of Appeal that is hearing the appeal or request. Requests for removal may be submitted within ten days of the date on which the panel of the Board of Appeal is announced. A request for removal may also be submitted during a meeting before the commencement of the hearing of the appeal or request.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) A request for removal shall be reviewed by the panel of the Board of Appeal processing the appeal or revocation application. If a request for removal is granted, the specified member of the panel of the Board of Appeal shall be removed from the panel of the Board of Appeal processing the given appeal or request and replaced with another member of the Board of Appeal. If the replacement of a member is impossible at the meeting, the meeting shall be adjourned and a new time and place shall be set for the meeting.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) If all members of the panel of the Board of Appeal are removed, the chairman of the Board of Appeal shall appoint a new panel to process the appeal or request.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) If the resolution of an appeal or request with a quorum is impossible, the chairman of the Board of Appeal sitting alone shall make a decision to terminate the processing. The appellant is entitled to file an appeal against the decision of the Patent Office and the person who filed the request is entitled to file an action against the other participant in the processing with Harju County Court within thirty days after the decision to terminate the processing is made by the Board of Appeal. The court shall hear an appeal in proceedings on petition and decide, inter alia, on the refund of the state fee.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 59. Making of decisions of Board of Appeal

(1) The participants in the processing and unauthorised persons shall not be present during the making of a decision of the Board of Appeal, and the course of discussion shall not be recorded in minutes.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1¹) The Board of Appeal shall make decisions:

- 1) as a decision taken by a panel of three members in the final processing;
- 2) in the cases specified in this Act, as a decision of the chairman of the Board of Appeal sitting alone.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Decisions taken by a panel of the Board of Appeal are passed by majority vote within three months of the start of the final processing upon resolution of a request, and within two months of the start of the final processing upon resolution of an appeal. In case of holding a meeting, the Board of Appeal shall make a decision within two months after holding the meeting. It is prohibited to abstain from voting.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Decisions of the Board of Appeal shall be prepared in writing. Collegial decisions shall be signed by all members of the panel of the Board of Appeal. If a member of the panel of the Board of Appeal maintains a dissenting position, he or she has the right to add the dissenting position to the decision.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) Unless otherwise provided for in this Act, the decision specified in subsection (1¹) of this section which is not contestable under § 63–64¹ of this Act shall set out:

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

1) the name of the Board of Appeal and the type of decision;
2) a reference to the appeal or request and the person who signed it and his or her representative, and in case of a collegial decision also a summary of the appeal or request;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

3) a summary of the presented evidence and grounds;
4) the claim of the appellant or the person who filed the request;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

5) a reference to the legal grounds for the decision;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

6) the grounds for the decision;

7) the conclusion;

8) information on the procedure and term for appeal against the decision;

9) the date and place the decision is made.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

(5) A decision of a panel of the Board of Appeal shall be reasoned and be based on the facts established and evidence taken and submitted in the course of the processing. The Board of Appeal shall not make a decision on a claim which has not been filed.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 60. Evidence

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) Unless otherwise provided for in this Act, the Board of Appeal in accordance with its competence shall treat evidence and proof, including the procedure for submission and taking of evidence, pursuant to the provisions of the Code of Civil Procedure.

(2) The Board of Appeal shall explain the necessity of submitting additional evidence and applications to the participants in the processing if it is necessary for just resolution of the matter.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 61. Contents of decision of Board of Appeal

(1) The Board of Appeal shall dismiss an appeal or request or grant an appeal or request in full or in part.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) The Board of Appeal shall make decisions pursuant to the provisions of this Act and Industrial Property Acts.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2¹) Unless otherwise provided for in an Industrial Property Act, the Board of Appeal is entitled to:

1) in case an appeal filed against a decision of the Patent Office is granted in part or in full, annul the decision of the Patent Office in part or in full and order the Patent Office to continue processing taking into consideration the circumstances specified in the decision of the Board of Appeal;

2) in case an appeal concerning a register act, refusal to perform a register act or delay in performance thereof is granted, order the Patent Office to continue processing or perform the register act taking into consideration the circumstances specified in the decision of the Board of Appeal;

3) in case a request is granted in part or in full, declare an exclusive right partially or fully null and void or extinguished, revoke the legal protection afforded to an object of industrial property rights or ascertain the existence of circumstances which serve as a basis for making or amending a register entry.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2²) If an appeal is granted, the state fee paid for filing of the appeal shall be refunded. If an appeal is granted in part, the Board of Appeal shall determine the amount of the state fee to be refunded.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 62. Communication of decisions of Board of Appeal

(1) A decision of the Board of Appeal shall be communicated by publishing the decision on the website of the Board of Appeal. The date of publication of the decision on the website shall be deemed to be the date of communication of the decision.

(2) A decision of the Board of Appeal shall be sent immediately to the participants in the processing.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Within two months after communication of a decision, the Board of Appeal may correct arithmetical, linguistic or technical errors in its decision on its own initiative or at the proposal of a participant in the processing, by a correction notice to be appended to the decision, without changing the contents of the decision.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 63. Entry into force of decision of Board of Appeal in case of appeal

(1) An appellant has the right to file an appeal against the decision of the Board of Appeal with Harju County Court within two months after the publication of the decision of the Board of Appeal. The court shall hear an appeal in proceedings on petition, involving the Patent Office as the person to whom the matter pertains. An appellant shall notify the Board of Appeal immediately of the filing of an appeal.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) If an appeal specified in subsection (1) of this section is not filed, the decision of the Board of Appeal shall enter into force after two months from its publication and shall be subject to execution.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) If an appeal specified in subsection (1) of this section is filed, but the court does not accept it for processing, refuses to hear the appeal or terminates the proceedings without a decision, the decision of the Board of Appeal shall enter into force at the time of entry into force of the corresponding court ruling unless otherwise provided for in the court ruling.
[RT I 2009, 4, 24 - entry into force 01.03.2009]

§ 64. Entry into force of decision of Board of Appeal in case of request

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(1) A participant in the processing in respect of a request who is not satisfied with a decision of the Board of Appeal and who wishes to continue the dispute between the participants in the processing by way of an action has the right to file an action within two months after publication of the decision of the Board of Appeal. A plaintiff shall notify the Board of Appeal immediately of the filing of an action.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) If an action specified in subsection (1) of this section is not filed, the decision of the Board of Appeal shall enter into force after two months from its publication and shall be subject to execution.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) If an action specified in subsection (1) of this section is filed, but the court does not accept it for processing, refuses to hear the action or terminates the proceedings without a decision, the decision of the Board of Appeal shall enter into force at the time of entry into force of the corresponding court ruling unless otherwise provided for in the court ruling.
[RT I 2009, 4, 24 - entry into force 01.03.2009]

§ 64¹. Entry into force of decision made sitting alone

(1) If a participant in the processing disagrees with a decision made by the chairman of the Board of Appeal sitting alone as specified in subsection 47 (3), 48⁴(2), 52¹(3) or 54 (1), (2), (3) or (5) of this Act, the participant in the processing may file an appeal with Harju County Court within one month after the communication of the decision. The court shall hear an appeal in proceedings on petition. The participant in the processing filing the appeal shall notify the Board of Appeal immediately of the filing of an appeal.

(2) If an appeal specified in subsection (1) of this section is not filed, the decision made by the chairman of the Board of Appeal sitting alone shall enter into force after one month from its communication.

(3) If an appeal specified in subsection (1) of this section is filed, but the court does not accept it for processing, refuses to hear the appeal or terminates the proceedings without a decision, the decision made by the chairman

of the Board of Appeal sitting alone shall enter into force at the time of entry into force of the corresponding court ruling unless otherwise provided for in the court ruling.

(4) A decision made sitting alone which is not specified in subsection (1) of this section shall enter into force as of making the decision.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

Chapter 5

IMPLEMENTING PROVISIONS

§ 65. Transitional provisions

(1) On the basis of this Act, information contained in state registers established on the basis of Industrial Property Acts is deemed to be information entered in general national registers.

(2) This Act applies to further processing of appeals and revocation applications filed with the Board of Appeal before 1 May 2004, unless otherwise provided for in this Act.

(2¹) The Board of Appeal shall perform procedural acts pursuant to the law in force at the time of performing the procedural acts, unless otherwise provided for in this Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) [Repealed – RT I 2005, 18, 104 – entry into force 08.04.2005]

(4) [Repealed – RT I 2005, 18, 104 – entry into force 08.04.2005]

(4¹) The chairman of the Board of Appeal shall, by 1 May 2005, appoint a person conducting preliminary processing of applications for declaration of invalidity of the registration of a trade mark filed with the Board of Appeal on the basis of §§ 24 and 24¹ of the Trade Marks Act in force until 1 May 2004.

(5) Subsection 52 (2) of this Act does not apply if the Board of Appeal has, before 1 May 2004, established a term for the filing of additional documents.

(6) The Trade Marks Act in force until 1 May 2004 and the provisions regulating hearing of revocation applications apply to revocation applications filed with the Board of Appeal before 1 May 2004 on the basis of § 19 of the Trade Marks Act in force until 1 May 2004 and to applications for declaration of invalidity of the registration of a trade mark filed with the Board of Appeal on the basis of §§ 24 and 24¹ of the Trade Marks Act in force until 1 May 2004.

[RT I 2005, 18, 104 - entry into force 08.04.2005]

(7) In case processing has commenced before 1 April 2019, the Board of Appeal shall make a decision also on the basis of evidence submitted or taken in accordance with the procedure which was in force before said date.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(8) If a procedural term specified in subsection 9 (3), 45 (3) or 51 (3¹) of this Act started before 1 April 2019, the procedural term shall be calculated pursuant to the wording of this Act that was in force at the start of the term.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(9) In case of a decision of the Board of Appeal made before 1 April 2019, the term for its contestation and entry into force shall be calculated pursuant to the wording of this Act that was in force at the time when the decision was made.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 65¹. Transitional provisions concerning introduction of digital registry file

(1) As to the register of trade and service marks and the register of industrial designs, subsection 8 (4) of this Act is applied to the registry files opened since 1 January 2017.

(2) Subsection 8 (4) of this Act is not applied to the register of patents, register of utility models, register of European patents valid in Estonia and register of layout-designs of integrated circuits.

(3) The Patent Office may continue maintaining a registry file opened as a set of paper documents (hereinafter registry file on paper) before the date specified in subsection (1) of this section, as a registry file on paper, or may switch to maintaining a digital registry file by opening a digital registry file pertaining to the record and by adding all the documents included in the registry file on paper to the digital registry file. If both a registry file of paper as well as a digital registry file have been opened for a record, the digital registry file is deemed to pertain to the record.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

§ 66. Entry into force of Act

This Act enters into force on 1 May 2004.
[RT I 2003, 82, 555 - entry into force 01.05.2004]