

Patent Law*
(of January 14, 1998)

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Title I

General Provisions

Relations Governed by this Law

1. This Law governs the economic relations and the associated personal moral relations arising on the territory of the Kyrgyz Republic from the creation, legal protection and use of inventions, utility models and industrial designs (hereinafter referred to as “industrial property subject matter”).

State Agency of Intellectual Property of the Kyrgyz Republic

2. The State Agency of Intellectual Property of the Kyrgyz Republic (hereinafter referred to as “Kyrgyzpatent”) shall, in accordance with this Law, receive applications for protection of industrial property subject matter, carry out the examination and official registration thereof, grant titles of protection, make official publication of the data relating to industrial property subject matter, lay down rules for the implementation of this Law and perform other functions in accordance with the ordinance concerning Kyrgyzpatent adopted by the Government of the Kyrgyz Republic.

Kyrgyzpatent shall be responsible for keeping the national patent collection and for making additions to it through acquisition and through exchange with international organizations and foreign patent offices.

In order to strengthen the activities of Kyrgyzpatent in the field of legal protection of industrial property subject matter, there shall be established at Kyrgyzpatent an Appeal Board as the compulsory first instance body for disputes relating to industrial property subject matter, that it shall hear in accordance with its competence. The procedures for hearing opposition before the Appeal Board shall be established by Kyrgyzpatent.

The activities of Kyrgyzpatent shall be financed from budget appropriations, patent fees, remuneration obtained by Kyrgyzpatent in exchange for services and documents it provides and by other extrabudgetary funds.

Legal Protection of Industrial Property Subject Matter

3. Rights in industrial property subject matter shall be protected by this Law and shall be certified by a preliminary patent or a patent for an invention or for an industrial design or by a certificate for a utility model (hereinafter referred to as “titles of protection”), attesting to the priority date and authorship of the invention, industrial design or utility model and the exclusive right of the owner of the title of protection (hereinafter referred to as “the patent owner”) with respect to the industrial property subject matter.

A preliminary patent or certificate shall be granted after a preliminary examination.

A patent shall be granted after a substantive examination.

The scope of the legal protection afforded by a preliminary invention patent, an invention patent or a utility model certificate shall be determined by the claims and the scope

of the legal protection afforded by a preliminary design patent or a design patent shall be determined by the sum of its essential features as shown in the reproductions of the article in which the design is incorporated (model) and set out in the list of essential features.

The legal protection of industrial property subject matter considered secret by the State shall be governed by the legislation of the Kyrgyz Republic.

Term of Preliminary Patents, Patents and Certificates

4. A preliminary invention patent shall have effect for seven years as from the filing date of an application with Kyrgyzpatent.

An invention patent shall have effect for 20 years as from the filing date of an application with Kyrgyzpatent.

A utility model certificate shall have effect for five years as from the filing date of an application with Kyrgyzpatent. At the request of the owner of the certificate, its term may be extended by Kyrgyzpatent for a maximum of three years.

A preliminary design patent shall have effect for seven years as from the filing date of the application with Kyrgyzpatent.

A design patent shall have effect for 10 years as from the filing date of the application with Kyrgyzpatent. At the request of the patent owner, its term of validity may be extended by Kyrgyzpatent for a maximum of five years.

Title II

Conditions of Patentability of Industrial Property Subject Matter

Conditions of Patentability of Inventions

5. Subject matter for which a patent has been sought shall enjoy legal protection if it is new, involves an inventive step and is industrially applicable.

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

An invention shall be deemed to involve an inventive step if it does not derive obviously from the state of the art.

The state of the art shall consist of any kind of information that has become generally available anywhere in the world before the priority date of the invention.

When the novelty of an invention is determined, the state of the art shall also be held to include all applications filed by other persons with Kyrgyzpatent and that have not been withdrawn and whose priority date is earlier and all inventions and utility models patented in the Kyrgyz Republic.

An invention shall be deemed industrially applicable if it can be used in industry, agriculture, public health and other sectors of the economy.

Disclosure of information relating to the invention that would otherwise affect its patentability shall not do so when the information has been made available to the public not earlier than 12 months preceding the filing date or, where priority is claimed, the priority date of the application by the applicant or creator or by any other person having obtained the information directly or indirectly from them. The burden of proof of the foregoing shall be on the applicant.

The subject matter of an invention may be a device, a process, a substance, a microorganism strain or a culture of plant or animal cells, and also the use of a known device, process or strain for a new purpose, or any other new achievement in any technical or technological field.

The following shall not be recognized as inventions:

- (i) scientific theories and mathematical methods;
- (ii) methods of economic organization and management;
- (iii) symbols, schedules and rules;
- (iv) methods for performing mental acts;
- (v) algorithms and computer programs as such;
- (vi) projects and plans for structures and buildings and for land development;
- (vii) solutions concerning solely the outward appearance of manufactured articles and intended to satisfy aesthetic requirements;
- (viii) topographies of integrated circuits;
- (ix) plant varieties and animal breeds;
- (x) solutions that are contrary to the public interest, humanitarian principles or morality, or which are damaging to the environment.

The subject matters referred to in items (v), (viii) and (ix) of the ninth paragraph of this Article shall be protected by separate laws.

The patentability of an invention shall not be affected by the presence in that invention of algorithms and computer programs if the latter form an integral part of the invention.

Conditions of Patentability of Utility Models

6. A utility model shall be constituted by a device.

Subject matter for which a utility model certificate is sought shall enjoy legal protection if it is new and is industrially applicable.

A utility model shall be deemed new if the sum of its essential features does not form part of the state of the art.

The state of the art shall comprise information published anywhere in the world concerning devices having the same purpose as the utility model under the application and which have become generally available before the priority date of the application, information on the use of such devices in the Kyrgyz Republic, applications for invention patents and utility models filed before that date by others in the Kyrgyz Republic, and not withdrawn, and inventions and utility models protected in the Kyrgyz Republic.

Disclosure of information relating to the utility model that would otherwise affect its patentability shall not do so where the information has been made available to the public not earlier than six months preceding the filing date or, where priority is claimed, the priority date of the application by the applicant or creator or by any other person having obtained the information directly or indirectly from them. The burden of proof of the foregoing shall be on the applicant.

A utility model shall be deemed industrially applicable if it can be used in practice.

The subject matter referred to in the ninth paragraph of Article 5 of this Law shall not be protected as utility models.

Conditions of Patentability of Industrial Designs

7. An industrial design shall be constituted by any solution that is both artistic and technical adopted for the outward appearance of an article.

The subject matter for which a design patent is sought shall enjoy legal protection if it is new, original and industrially applicable.

An industrial design shall be deemed new if the sum of its essential features, shown in the reproductions of the article in which it is incorporated (model) and set out in the list of essential features, was not known from generally available information anywhere in the world before its priority date.

When the novelty of an industrial design is determined, due regard shall be had to earlier applications filed by other persons in the Kyrgyz Republic, and not withdrawn, and to industrial designs that have been patented in the Kyrgyz Republic.

An industrial design shall be deemed original if its essential features determine the creative nature of the specific aspects of the article in which it is incorporated.

The essential features of an industrial design shall mean those features that determine the aesthetic and/or ergonomic aspects of the outward appearance of an article, its shape and its configuration, decoration or combination of colors.

An industrial design shall be deemed industrially applicable if it can be reproduced in quantity.

Disclosure of information relating to the industrial design that would otherwise affect its patentability shall not do so where the information has been made available to the public not earlier than six months preceding the filing date or, where priority is claimed, the priority date of the application by the applicant or creator or by any other person having obtained the information from them. The burden of proof of the foregoing shall be on the applicant.

The following shall not be deemed industrial designs:

- (i) solutions that are determined exclusively by the technical function of the manufactured article;
- (ii) architectural works (with the exception of minor architectural forms) and industrial, hydraulic and other stationary structures;
- (iii) printed matter as such;
- (iv) subject matter of unstable shape such as liquids, gaseous and dry substances and the like;
- (v) articles contrary to public interest, humanitarian principles or morality.

Title III Owners of Rights

Creators of Industrial Property Subject Matter

8. A natural person whose creative work has resulted in the subject matter of industrial property shall be recognized as the creator thereof.

Where industrial property subject matter is the result of the work of two or more natural persons, those persons shall all be recognized as creators. The conditions for exercising the rights belonging to the creators shall be determined by agreement between them.

Natural persons shall not be recognized as creators if they have not made a personal creative contribution to the industrial property subject matter, but have simply given the creator or creators technical, organizational or material assistance or have helped them to secure legal rights in the industrial property subject matter or in using it.

Authorship of industrial property subject matter shall be an inalienable personal right and shall enjoy protection of unlimited duration.

Patent Owners

9. The right to obtain a title of protection shall belong:

- (i) to the creator or creators of the industrial property subject matter;
- (ii) to the employer in the cases provided for in the second paragraph of this Article;
- (iii) to their successors in title, including persons having obtained a corresponding right by assignment.

Where an employee creates industrial property subject matter within the exercise of his duties or specific tasks entrusted to him by his employer, the right to a title of protection for such industrial property subject matter shall belong to the employer unless otherwise agreed by contract.

If, within four months of the date on which the creator has informed his employer of the industrial property subject matter that has been created, the employer has neither filed an application with Kyrgyzpatent nor has assigned his right to a title of protection to another person nor has notified the creator that he is keeping the industrial property subject matter a secret, the creator shall have the right to obtain a title of protection. In such case, the employer shall be entitled to use the industrial property subject matter in his own manufacture, subject to payment to the patent owner of compensation to be determined by contract.

Where an employee creates industrial property subject matter by means of the experience and the material, technical and other facilities belonging to his employer, but not within the exercise of his duties or specific tasks entrusted to him by his employer, the right to the title of protection for such industrial property subject matter shall belong to the employee unless otherwise agreed by contract. In such case, the employer shall have the right to use the industrial property subject matter in his own manufacture on payment to the patent owner of compensation to be determined by contract.

Right of the Creator to Remuneration

10. Where the creator is not entitled to the grant of a title of protection, he may obtain from his employer remuneration of which the amount and terms of payment shall be determined by agreement between them.

If the parties are unable to reach agreement on the amount and terms of payment of the remuneration or the compensation, the dispute shall be heard by the courts.

In the event of failure to make timely payment of the contractual remuneration or compensation, the employer at fault shall be liable to the penalties laid down by the legislation of the Kyrgyz Republic.

The other relationships that arise from the creation by an employee of industrial property subject matter shall be governed by the legislation of the Kyrgyz Republic on service inventions, utility models and industrial designs.

Title IV **Exclusive Right in Industrial Property Subject Matter**

Rights of the Patent Owner

11. The patent owner shall enjoy an exclusive right in an invention or industrial design protected by a preliminary patent or by a patent or in a utility model protected by a certificate and shall have the right to prohibit others from using the subject matter concerned except where, under this Law, such use does not infringe the exclusive right of the patent owner.

Where there is more than one owner of the same title of protection, their relations with regard to the use of the industrial property subject matter under that title of protection shall be determined by common accord. In the absence of agreement, each owner may use the protected subject matter at his own discretion, but may not grant an exclusive license in that subject matter or assign the title of protection to another person without the consent of the other owners.

If the patent owners fail to reach an agreement on the granting of an exclusive license or on the assignment of the title of protection, the courts may be requested to take a decision on the sharing of the rights in the industrial property subject matter.

The manufacture, application, import, offering for sale, sale or any other form of marketing, or storage for such purpose, of the article incorporating the invention or industrial design protected by a preliminary patent or a patent, or a utility model protected by a certificate, as also the use of a process protected by a preliminary patent or a patent shall be deemed to constitute use of the industrial property subject matter.

An article shall be deemed to contain an invention protected by a preliminary patent or a patent or a utility model protected by a certificate if it incorporates each of the features of the invention or utility model contained in an independent claim or an equivalent feature known as such in a given technical field at the date on which use began. A process protected by a preliminary patent or a patent shall be deemed to have been applied if it utilizes each of the features of the invention contained in an independent claim or an equivalent feature known as such in a given technical field at the date on which use began.

An article is deemed to contain an industrial design protected by a preliminary patent or a patent if it incorporates all the essential features represented in reproductions of the article (model) and set out in the list of essential features.

The marketing, or storage for such purpose, of a device whose operation or use, in accordance with its intended purpose, automatically applies the process concerned shall also constitute use of a process protected by a preliminary patent or a patent.

The marketing, or storage for such purpose, of a product manufactured directly by means of a process for obtaining a product protected by a preliminary patent or a patent shall likewise constitute use of the protected process. A new product shall be deemed to have been manufactured by the patented process unless evidence is provided to the contrary.

The manufacture, experimentation and testing of a product prototype shall not be deemed to constitute use of industrial property subject matter.

The patent owner may assign his title of protection to any natural or legal person. The contract of assignment of the title of protection shall be registered with Kyrgyzpatent and published in the Official Bulletin of Kyrgyzpatent. Failing registration, it shall be deemed null and void.

A title of protection and the right to such title shall be transferable by succession.

Obligations of the Patent Owner and Compulsory Licensing

12. Where the patent owner or any person to whom he has assigned rights in the patent has failed to use or has insufficiently used industrial property subject matter within three years as from the date of grant of the title of protection, with the result of making the offer of the corresponding products or services on the market insufficient, any person wishing to use the protected industrial property subject matter and who is in a position to do so may, in the event of refusal by the patent owner to conclude a licensing contract under conditions corresponding to established practice, institute proceedings for obtaining a compulsory license to use that subject matter.

If the patent owner is unable to show legitimate reasons for failure to use or insufficient use of the industrial property subject matter, the court shall grant the corresponding license and shall set the limits on the use of the subject matter and also the amount, dates and procedure for payment of royalties. The amount of the royalties shall not be less than the value of a license determined in accordance with established practice.

If the patent owner is unable to use his invention without infringing the rights of the owner of another preliminary patent, patent or utility model certificate who has refused to conclude a licensing contract under conditions corresponding to established practice, he may institute proceedings for obtaining a compulsory license to use the invention or utility model on condition that his invention represents a technical solution of significant economic importance in relation to the invention or utility model for which a title of protection belongs to the other party.

When ordering the grant of the corresponding license, the court shall set the limits on the use of the invention or utility model whose title of protection belongs to the other party in such a way as to permit use of the invention whose patent belongs to the person seeking to obtain a compulsory license, as also the amount, dates and procedure for payment of royalties. The amount of the royalties shall not be less than the value of a license determined in accordance with established practice.

The Government of the Kyrgyz Republic may, in exceptional circumstances (natural disasters, catastrophes, serious accidents) or for reasons of national security, order the grant of a compulsory license on payment to the patent owner of appropriate compensation; the scope and duration of use of the patented industrial property subject matter shall be limited to those purposes for which it has been authorized. Disputes deriving from such use shall be heard by the courts.

A compulsory license shall in all cases be a non-exclusive license and may not be assigned to other persons.

Acts Not Infringing the Exclusive Right of the Patent Owner

13. The following shall not be deemed to infringe the exclusive right of a patent owner:

(i) the use of devices incorporating industrial property subject matter protected by preliminary patents, patents or certificates in the construction or operation of the means of

transport (by sea, river, air, land or in space) of other countries where the devices incorporating protected subject matter enter temporarily or accidentally the territory of the Kyrgyz Republic and are used there for the needs of the means of transport. Such act shall not be deemed to infringe the exclusive right of the patent owner if the means of transport belong to natural or legal persons of countries that afford the same rights to owners of means of transport of the Kyrgyz Republic;

(ii) the use of a device incorporating industrial property subject matter for the purposes of research or scientific experimentation;

(iii) the use of such devices in exceptional circumstances (natural disasters, catastrophes, serious accidents) against payment to the patent owner of equitable compensation;

(iv) the use of devices incorporating industrial property subject matter protected by preliminary patents, patents or certificates if such devices have been lawfully marketed in accordance with rights granted by the patent owner. A person who acquires, with the authorization of the patent owner, a device incorporating industrial property subject matter that is patented or has been manufactured by means of a patented process shall be entitled to use or dispose of such device without having to request additional authorization, unless agreed otherwise.

Right of Prior User

14. Any natural or legal person who before the priority date of an invention, utility model or industrial design has conceived and used on the territory of the Kyrgyz Republic, independently of the creator, a solution that is identical, or has made the necessary preparations for such use, shall maintain the right to continue using that solution free of charge provided that he does not extend its scope.

The right of prior user may only be transferred to another natural or legal person together with the production unit in which the identical solution has been used or in which the necessary preparations for such use have been made.

Grant of the Right to Use Industrial Property Subject Matter

15. Any person not being the patent owner shall have the right to use the industrial property subject matter protected by a title of protection only with the authorization of the patent owner given on the basis of a licensing contract.

Under a licensing contract, the patent owner (licensor) grants, within the limits laid down in the contract, the right to use the protected subject matter to another person (licensee) and the latter undertakes to pay to the licensor the amounts and perform other acts laid down in the contract.

An exclusive licensing contract grants the licensee the exclusive right to use the industrial property subject matter within the limits laid down in the contract, beyond which the licensor maintains his right of use.

A non-exclusive license allows the licensor, while granting the licensee the right to use the industrial property subject matter, to maintain all the rights deriving from the patent, including the right to grant licenses to other persons.

A license may contain, on the basis of a common agreement between the licensor and the licensee, provisions that differ from those contained in this Article.

The licensing contract must be registered with Kyrgyzpatent, failing which it shall be deemed null and void. The licensing contract shall enter into force on the day it is registered at Kyrgyzpatent and shall be published in the Official Bulletin of Kyrgyzpatent.

The owner of a patent may file with Kyrgyzpatent a declaration to the effect that he undertakes to grant the right to use the industrial property subject matter to any interested party (open license) under the conditions laid down in a contract. In such case, the patent maintenance fee shall be reduced by 50% as from the year following the year of publication of the particulars of the declaration by Kyrgyzpatent.

The declaration by the patent owner granting the right to an open license may not be withdrawn.

Any disputes arising from refusal to conclude a contract or from the clauses of the contract shall be heard by the courts.

Infringement of the Title of Protection

16. Any use made of an invention or industrial design protected by a preliminary patent or a patent or of a utility model protected by a certificate in a manner contrary to this Law shall be deemed to constitute an infringement of the title of protection.

The owner of a patent shall be entitled to require:

- that the infringement of the title of protection cease;
- compensation from the infringer for the prejudice suffered, including loss of earnings, and damages for the moral prejudice;
- surrender of the profits made by the infringer in lieu of compensation for the prejudice suffered;
- payment by the infringer of compensation of between 10 and 50,000 times the minimum salary laid down by the legislation of the Kyrgyz Republic, the amount of which shall be determined by the courts in lieu of compensation for the prejudice suffered or of surrender of profits;
- confiscation for his benefit of the products marketed or stored for such purpose and deemed to infringe the title of protection together with the means specifically intended for the infringement;
- publication of the court decision in order to restore his commercial reputation.

Unless otherwise agreed in the licensing contract, the holder of an exclusive license or, where the licensing contract so provides, the holder of a non-exclusive license may also institute proceedings against an infringer of the title of protection.

Title V

Grant of the Title of Protection

Filing an Application for a Title of Protection

17. An application for a title of protection shall be filed with Kyrgyzpatent by the person entitled to obtain a title of protection in accordance with Article 9 of this Law (hereinafter referred to as “the applicant”).

The request for grant of a title of protection shall be written in the Kyrgyz language or the Russian language. The claims with respect to the invention or utility model, the list of essential features of the industrial design, the designation of the industrial property subject matter and the business name (name) of the applicant and the patent owner shall be communicated in Kyrgyz and in Russian. If other elements of the application, or elements submitted during examination of the application, are written in another language, a translation of those elements into Kyrgyz or into Russian shall be attached to the application. The applicant shall be required to submit a translation into Kyrgyz or into Russian within three months of the filing date of the application with Kyrgyzpatent.

At the request of the applicant, the time limit for submitting the aforementioned elements may be extended, or restored if it has not been complied with, provided that the applicant has good grounds and that he pays the corresponding fee.

An application may be filed through a patent agent registered with Kyrgyzpatent. Natural persons resident outside the Kyrgyz Republic or foreign legal persons, and also their patent agents, shall be required to act through patent agents registered with Kyrgyzpatent for the grant of titles of protection and for obtaining protection for industrial property subject matter.

The powers of the patent agent shall be certified in a power of attorney issued to him by the person in whose name the patent is sought.

The requirements of the qualifying examination and the registration to which patent agents shall be submitted shall be determined and applied by Kyrgyzpatent.

*Application for a Preliminary Invention Patent
or an Invention Patent*

18. An application for a preliminary invention patent or for an invention patent (hereinafter referred to as “the invention application”) shall relate to one invention only or to a group of inventions so linked as to satisfy the requirement of unity of invention.

The invention application shall contain:

(i) a request for the grant of a preliminary patent or a patent, stating the names of the creator or creators and the person or persons in whose name a preliminary patent or a patent is sought, and the address of their residence or place of business;

(ii) a description, disclosing the invention in a manner sufficiently complete for it to be carried out by a person skilled in the art;

(iii) one or more claims defining the subject matter of the invention and entirely supported by the description;

(iv) any drawings or other elements if they are necessary for the comprehension of the subject matter of the invention;

(v) an abstract.

The invention application shall be accompanied by proof of payment of the prescribed filing fee or of circumstances giving entitlement to exemption from that fee or a reduction in the fee, which may be submitted when filing the application or within two months thereafter, against payment of an additional fee.

If the above mentioned proof is not submitted within the prescribed time limit, the application shall be deemed withdrawn.

The filing date of the application with Kyrgyzpatent shall be determined on the basis of the date of receipt of the elements necessary to establish priority in accordance with the conditions laid down in the first paragraph of Article 21 of this Law or, if the above mentioned elements are not all submitted at the same time, on the basis of the date of receipt of the last element submitted.

Any other conditions to be met by the elements of the invention application shall be determined by Kyrgyzpatent.

Application for a Utility Model Certificate

19. An application for a utility model certificate shall relate to one utility model or to a group of utility models so linked as to satisfy the requirement of unity of the utility model.

The utility model application shall contain:

(i) a request for the grant of a certificate, stating the names of the creator or creators of the utility model and the person or persons in whose name the certificate is sought, and the address of their residence or place of business;

(ii) a description, disclosing the utility model in a manner sufficiently complete for it to be carried out;

(iii) one or more claims entirely supported by the description;

(iv) any drawings required for the comprehension of the subject matter of the utility model;

(v) an abstract.

The utility model application shall be accompanied by proof of payment of the prescribed filing fee or of circumstances giving entitlement to exemption from that fee or to a reduction in the fee, which may be submitted when filing the application or within two months thereafter, against payment of an additional fee.

If the above mentioned proof is not submitted within the prescribed time limit, the application shall be deemed withdrawn.

The filing date of the application with Kyrgyzpatent shall be determined on the basis of the date of receipt of the elements necessary to establish priority in accordance with the conditions laid down in the first paragraph of Article 21 of this Law or, if the above mentioned elements are not all submitted at the same time, on the basis of the date of receipt of the last element submitted.

Any other conditions to be met by the elements of a utility model application shall be determined by Kyrgyzpatent.

Application for a Preliminary Design Patent or a Design Patent

20. An application for a preliminary design patent or a design patent (hereinafter referred to as “the design application”) shall relate to one industrial design only or a group of industrial designs so linked as to satisfy the requirement of unity of industrial design.

The design application shall contain:

(i) a request for the grant of a preliminary patent or a patent, stating the names of the creator or creators of the industrial design and the person or persons in whose name the

preliminary patent or the patent is sought, and the address of their residence or place of business;

(ii) a set of reproductions of the manufactured article (model), providing a full and detailed view of its outward appearance;

(iii) an overall drawing of the manufactured article, a representation of its functional features or an assembly diagram where necessary for the disclosure of the subject matter of the industrial design;

(iv) a description of the industrial design;

(v) a list of its essential features.

The design application shall be accompanied by proof of payment of the prescribed deposit filing fee or of circumstances giving entitlement to exemption from that fee or to a reduction in the fee, which may be submitted when filing the application or within two months thereafter, on payment of an additional fee.

If the above mentioned proof is not submitted within the prescribed time limit, the application shall be deemed withdrawn.

The filing date of the application with Kyrgyzpatent shall be determined on the basis of the date of receipt of the elements necessary to establish priority in accordance with the conditions laid down in the first paragraph of Article 21 of this Law or, if the above mentioned elements are not all submitted at the same time, on the basis of the date of receipt of the last element submitted.

Any other conditions to be met by the elements of the design application shall be determined by Kyrgyzpatent.

Priority of an Invention, Utility Model or Industrial Design

21. The priority of an invention or a utility model shall be determined on the basis of the date of filing with Kyrgyzpatent of an application containing a request for grant of a preliminary patent, a patent or a certificate, a description, one or more claims and any drawings referred to in the description.

The priority of an industrial design shall be determined on the basis of the date of filing with Kyrgyzpatent of an application containing a request for grant of a patent or preliminary patent, a set of reproductions, a description and a list of the essential features of the industrial design.

Priority may be determined on the basis of the filing date of a first application in a State party to the Paris Convention for the Protection of Industrial Property (Convention priority) if Kyrgyzpatent receives the application within a period, computed as from that date, of 12 months in the case of an invention or a utility model or of six months in the case of an industrial design.

If it has not been possible, for reasons beyond the control of the applicant, to file the application claiming Convention priority within the above mentioned period, that period may be extended for a maximum of two months.

An applicant wishing to avail himself of Convention priority shall make a declaration to that effect when filing the application or within two months following the filing date of the application with Kyrgyzpatent and shall attach thereto a copy of the first application or shall furnish it within three months at most following receipt of the application by Kyrgyzpatent.

Priority may be determined on the basis of the filing date of additional elements if the applicant has submitted them in the form of a separate application filed prior to expiry of a period of three months as from the date on which he received a notification from Kyrgyzpatent to the effect that the additional elements may not be taken into account by reason of the fact that they modify the subject matter of the solution to which the application refers.

Priority may be determined on the basis of the date of filing with Kyrgyzpatent of an earlier application filed by the same applicant, disclosing the invention, utility model or industrial design concerned, on condition that the application claiming such priority is filed no later than 12 months after the filing date of the earlier application in the case of an invention or no later than six months after the filing date of the earlier application in the case of a utility model or an industrial design. In such case, the earlier application shall be deemed withdrawn.

Priority may be determined on the basis of more than one earlier application provided that each such application meets the aforementioned conditions.

Priority may not be determined on the basis of the filing date of an application in which an earlier priority has already been claimed.

The priority of an invention, utility model or industrial design based on a divisional application shall be determined on the basis of the date of filing with Kyrgyzpatent of the initial application disclosing the industrial property subject matter concerned, provided that the divisional application is received by Kyrgyzpatent before a final decision of refusal has been taken or, if a title of protection has been granted, before entry of the industrial property subject matter in the official register.

Where it is ascertained during the examination that identical industrial property subject matter has the same priority date, the application that is proven to have been sent first to Kyrgyzpatent or, if the date of despatch is the same, the application whose registration number at Kyrgyzpatent is earlier shall be considered for the grant of a title of protection.

Correction of Elements in the Application at the Initiative of the Applicant

22. Within two months of the filing date of the application, the applicant shall be entitled to correct or amend elements in the application provided that the subject matter of the invention, utility model or industrial design concerned is not modified.

In the case of an application relating to industrial property subject matter and subject to payment of a fee, the applicant may file corrections or amendments even after expiry of the above mentioned time limit, but not once a decision to grant a title of protection has been taken.

Formal Examination and Preliminary Examination of Invention Applications

23. On expiry of a period of two months as from the filing date of the application, Kyrgyzpatent shall carry out a formal examination of the application.

At the request of the applicant, the formal examination may be initiated prior to expiry of that time limit. In such case, the applicant shall lose the right provided in the first paragraph of Article 22 of this Law as from the filing date of the request.

The formal examination of the application shall check whether the elements required by Article 18 of this Law are all present and that they comply with the requirements and shall examine whether the solution claimed in the application relates to industrial property subject matter eligible for legal protection.

If the application meets the requirements of the formal examination, the applicant shall receive a notification that his application will be taken into consideration.

If the formal examination ascertains that the application concerns a solution that does not relate to subject matter eligible for legal protection, the applicant shall receive a notification informing him that his application cannot be taken into consideration.

When the formal examination has been completed, the invention application shall be subjected within 12 months to a preliminary examination.

The preliminary examination shall verify, on the basis of the elements of the application submitted by the applicant, the titles of protection already granted in the Kyrgyz Republic and applications not withdrawn having an earlier priority date, whether the invention under the application meets the patentability criteria.

If the applicant files additional elements in accordance with Article 22 of this Law, the preliminary examination shall check whether those elements modify the subject matter of the invention under the application.

The additional elements shall be deemed to modify the subject matter of the invention under the application if they contain features that were not contained in the application as initially filed and that should be included in the claims. Additional elements modifying the subject matter of the invention under the application shall not be taken into consideration in the examination and the applicant may submit them as a separate application.

If the application does not comply with the requirement of unity, the applicant shall be invited to state, within a period of two months, which proposal is to be taken into consideration and to make the corresponding amendments to the elements in the application.

The other solutions contained in the initial application may be submitted as divisional applications.

If the applicant fails, within two months following the date of receipt of the notification of failure to comply with the unity of invention requirement, to state which proposal is to be taken into consideration and to submit documents containing the amendments, the examination shall be carried out only in respect of the proposal that is mentioned first in the claims.

Where the documents contained in an application do not comply with the requirements, the applicant shall be invited to submit within two months of the date of the invitation the corrected or missing documents.

If, within the prescribed time limit, the applicant fails to furnish the documents referred to in the invitation and has not submitted a request for extension of the period, the application shall be deemed withdrawn.

Where the result of the preliminary examination of the application is favorable, a decision shall be taken to grant a preliminary patent at the liability of the applicant.

If the decision to grant a preliminary patent is taken at the request of the applicant prior to the expiry of a period of 12 months as from the filing date of the application with Kyrgyzpatent and if Kyrgyzpatent receives within that period of time an identical application claiming earlier priority, the decision to grant a patent shall be deemed cancelled.

If Kyrgyzpatent receives a request for substantive examination at the same time as the constituent elements of the application or before expiry of a period of two months after the decision to grant a preliminary patent, no preliminary patent shall be granted on the applicant's request.

If the result of the preliminary examination shows that the application concerns a proposal that is not patentable under the provisions of this Article, a decision shall be taken to refuse the grant of a preliminary patent.

The applicant shall be entitled to lodge an appeal against such decision with the Appeal Board within a period of two months as from the date of receipt of the decision. The appeal shall be heard by the Appeal Board within two months as from the date of lodging.

In the event of disagreement with the decision given by the Appeal Board, the applicant may, within six months of the date of receipt, institute legal proceedings.

Substantive Examination of Invention Applications

24. On a request submitted by the applicant or by another person during the five years following the filing date of the application, Kyrgyzpatent shall carry out, within 24 months, a substantive scientific and technical examination of all applications for which the preliminary examination has given a favorable result. Kyrgyzpatent shall notify the applicant of any request by another person.

During the substantive examination, Kyrgyzpatent shall have the right to invite applicants to furnish any additional elements without which examination is not possible, including amended claims.

The additional elements requested by the examiner shall be submitted within two months as from the date of receipt by the applicant of the invitation and may not modify the subject matter of the invention.

The procedure set out in Article 23 of this Law shall apply to additional elements that modify the subject matter of the invention.

If Kyrgyzpatent ascertains as a result of the substantive scientific and technical examination of the application that, taking into account the extent of the legal protection claimed by the applicant, the proposal contained in the application meets the patentability criteria set out in Article 5 of this Law, it shall take a decision to grant a patent containing the claims proposed and negotiated with the applicant.

If Kyrgyzpatent ascertains that, taking into account the extent of legal protection claimed by the applicant, the proposal contained in the application does not satisfy the patentability criteria, it shall take a decision to refuse the grant of a patent.

If a decision is taken to refuse grant of a patent, the applicant shall be entitled to lodge an appeal against such decision with the Appeal Board within a period of three months as from the date of receipt of the decision. The appeal shall be heard by the Appeal Board within four months as from the date of its lodging.

If the applicant is not in agreement with the decision given by the Appeal Board, he may, within six months as from the date of receipt, institute legal proceedings.

The applicant shall be entitled to inspect all elements referred to in the examiner's decision or in the search report. A copy of the patent documents requested by the applicant shall be sent by Kyrgyzpatent within one month of the date on which it receives the request for copies from the applicant.

With the exception of the time limits laid down in the twentieth paragraph of Article 23 of this Law and in the first and eighth paragraphs of this Article, an applicant who has failed to comply with the time limits laid down in Article 23 of this Law and in this Article may have his rights restored by Kyrgyzpatent if he can show good grounds and pays the prescribed fee.

A request for restoral of a right linked to a time limit may be submitted by the applicant 12 months at the latest after the expiry of the time limit concerned.

Examination of Utility Model Applications

25. Examination of an application for a utility model certificate shall consist of a formal examination and a preliminary examination.

The provisions of Article 23 of this Law shall apply to the examination of utility model applications. If it is ascertained as a result of the examination that the application concerns a proposal relating to patentable subject matter and if the elements of the application satisfy the requirements, a decision to issue a certificate shall be taken.

Conversion of Applications

26. An applicant shall have the faculty of converting his invention application to a utility model application by filing a request before the publication of data concerning a preliminary patent or an invention. A utility model application may be converted to an invention application before a decision is taken to issue a certificate.

Converted applications shall maintain the priority date of the initial application.

Conversion of applications shall be subject to payment of the corresponding fee.

Examination of Design Applications

27. Kyrgyzpatent shall carry out a formal examination, a preliminary examination and a substantive examination of design applications.

The provisions in Article 23 of this Law shall apply to the formal examination and the preliminary examination of design applications.

The provisions of Article 24 of this Law shall apply to the substantive examination of the applications.

Registration of Industrial Property Subject Matter

28. If Kyrgyzpatent decides to grant a title of protection and if the prescribed fee for registration and grant of a title of protection has been paid, it shall enter an invention in the official register of inventions of the Kyrgyz Republic, a utility model in the official register of utility models of the Kyrgyz Republic or an industrial design in the official register of industrial designs of the Kyrgyz Republic.

Proof of payment of the fee prescribed for registration and grant of a title of protection shall be submitted within two months as from the date on which the applicant has received the decision to grant a title of protection or within three months of expiry of the aforementioned two month time limit on payment of an additional fee.

If proof of payment of the fee prescribed for registration and grant of a title of protection is not submitted in accordance with the prescribed procedure, the industrial

property subject matter shall not be registered, a title of protection shall not be granted and the corresponding application shall be deemed withdrawn.

*Publication of Data on the Registration of
Industrial Property Subject Matter*

29. Kyrgyzpatent shall publish in its Official Bulletin data concerning the registration of industrial property subject matter within six months from the date of registration. The complete list of data to be published shall be determined by Kyrgyzpatent.

All persons shall be entitled to inspect the constituent elements of applications after publication of the data on the registration of industrial property subject matter.

Grant of Titles of Protection

30. Kyrgyzpatent shall grant a title of protection within three months of the date of official publication of the data on registration in the Official Bulletin.

The title of protection shall be granted on behalf of the Kyrgyz Republic and shall be signed by the Director of Kyrgyzpatent.

If a preliminary patent, a patent or a certificate is sought in the name of more than one person, one title of protection only shall be granted to them.

Where the creator of the industrial property subject matter is not the owner of the patent, Kyrgyzpatent shall grant him a certificate attesting to his capacity as creator.

The presentation of the above mentioned titles of protection or certificates and the list of data to be shown on them shall be determined by Kyrgyzpatent.

At the request of the patent owner and of the creator, Kyrgyzpatent shall correct obvious and clerical errors in granted titles of protection or certificates.

**Title VI
Expiry of Titles of Protection**

Opposition to Titles of Protection

31. Throughout its term of validity, a title of protection may be cancelled in whole or in part as a result of opposition to grant if:

(i) the protected solution does not meet the patentability requirements set out in this Law;

(ii) the claims of the invention patent or the utility model certificate or the list of essential features of an industrial design contain characteristics that were not contained in the application as initially filed;

(iii) the preliminary patent, patent or certificate contains an incorrect statement of the creators or of the owners.

Any person filing an opposition shall be required to give reasons and also to furnish proof of payment of the fee.

Opposition to grant of a title of protection filed on the grounds referred to in items (i) and (ii) of this Article shall be heard by the Appeal Board within six months following the date of receipt and shall be brought to the attention of the patent owner.

The person filing opposition and the patent owner may participate in the hearing. The Appeal Board shall limit its examination to the grounds set out in the opposition to grant of the patent.

In the event of disagreement with the decision taken by the Appeal Board on an opposition filed against the grant of a title of protection, each party may, within six months as from the date of the decision, institute legal proceedings.

Premature Expiry of Titles of Protection

32. The validity of titles of protection shall expire prematurely:

- (i) in the event of total cancellation of a title of protection under Article 31 of this Law;
- (ii) at the request of the patent owner submitted to Kyrgyzpatent, provided that renunciation does not prejudice third party interests;
- (iii) in the event of failure to pay the maintenance fee for the title of protection within the prescribed time limits;
- (iv) in the event of annulment of the decision to grant a preliminary patent in accordance with the sixteenth paragraph of Article 23 of this Law.

Kyrgyzpatent shall publish the data of premature expiry of validity of a title of protection in its Official Bulletin.

Title VII Rights and Privileges of Creators and Patent Owners

Rights and Privileges of Creators

33. A creator shall have the right to give to the industrial property subject matter his name or a special title and may submit a request to that end at any time during examination of the application.

Creators of the most significant and the most widely used inventions may be nominated for the award of the honorary title of “Meritorious Inventor of the Kyrgyz Republic”.

State Incentives for the Creation and Use of Industrial Property Subject Matter

34. In order to promote scientific and technical progress, to enhance the intellectual potential of the Kyrgyz Republic, to contribute to the development of technical and artistic creation and to encourage the creation and use of industrial property subject matter, there shall be set up at Kyrgyzpatent a State Fund for Intellectual Property of the Kyrgyz Republic (hereinafter referred to as “the State Fund”).

The State Fund may acquire, on behalf of the State, the rights of a patent owner in patented industrial property subject matter in order to develop its use in the public interest.

The State Fund shall carry out its activities in accordance with its Regulations, adopted by Kyrgyzpatent.

The finances of the State Fund shall be constituted by appropriations from the budget of the Kyrgyz Republic, a share of the fees and patent royalties, resources from the activities of the Fund and by other revenue.

The State shall grant tax benefits and other rights and privileges in accordance with the legislation of the Kyrgyz Republic to creators and to economic agents who use industrial property subject matter.

Title VIII **Defense of the Rights of Patent Owners and Creators**

Hearing of Disputes by the Courts

35. The procedure for hearing disputes arising from the application of this Law shall be laid down in the legislation of the Kyrgyz Republic.

The courts shall be competent to hear disputes relating to:

- (i) authorship of the industrial property subject matter;
- (ii) grant of the title of protection;
- (iii) identification of the patent owner;
- (iv) grant of a compulsory license;
- (v) infringement of the exclusive right to use the protected industrial property subject matter and of other economic rights of the patent owner;
- (vi) conclusion and execution of licensing contracts for the use of the protected industrial property subject matter;
- (vii) right of prior user;
- (viii) remuneration to be paid by an employer to the creators in accordance with the contracts referred to in the first paragraph of Article 10 of this Law;
- (ix) other matters related to the protection of the rights.

Liability for Infringement of Creators' Rights

36. Any person who usurps the capacity of creator, acquires the status of joint creator by coercion or without authorization discloses information on industrial property subject matter shall be liable under the legislation of the Kyrgyz Republic.

Title IX **Final Provisions**

Patent Fees

37. The filing of an application for a title of protection for industrial property subject matter, the examination and grant of a title of protection, its maintenance, the extension of the term of validity and the performance of any other legal acts shall be subject to payment of fees. The list of acts whose performance is subject to the payment of fees, the amount of such fees and the time limits for payment, together with the conditions for exemption, reduction or reimbursement shall be laid down by the Government of the Kyrgyz Republic.

Fees shall be paid to Kyrgyzpatent by the applicant or the patent owner or, with their agreement, by any natural or legal person.

Kyrgyzpatent shall devote all the resources constituted by the fees, including those in foreign currency, and by the remuneration it charges in return for services and documents it furnishes to the acquisition of technical equipment, the development and operation of automatic systems, the extension of the collection of patent documents and to the training of staff and staff incentives.

Patenting of Industrial Property Subject Matter Abroad

38. The filing abroad of an application for a patent for industrial property subject matter created in the Kyrgyz Republic shall be made no earlier than three months after the filing of the corresponding application with Kyrgyzpatent.

Where necessary, Kyrgyzpatent may authorize the filing of an application for industrial property subject matter abroad prior to expiry of the above mentioned time limit once it has verified, in accordance with the procedure it shall itself establish, whether the application contains information that constitutes a State secret.

If the procedure laid down in this Article is not complied with when filing an application relating to industrial property subject matter created in the Kyrgyz Republic abroad or with an international organization, no title of protection shall be granted for such industrial property subject matter in the Kyrgyz Republic.

Rights of Foreign Natural and Legal Persons

39. In accordance with the international treaties to which the Kyrgyz Republic is party or on the basis of reciprocity, foreign natural and legal persons shall enjoy the rights provided by this Law and by other statutory acts relating to the legal protection of industrial property subject matter on the same footing as natural and legal persons of the Kyrgyz Republic.

Stateless persons residing in the Kyrgyz Republic shall enjoy the rights provided by this Law and other legislative texts relating to legal protection of industrial property subject matter on the same footing as natural and legal persons of the Kyrgyz Republic except as otherwise provided by this Law or by another legislative text in force in the Kyrgyz Republic.

International Treaties

40. Where an international treaty to which the Kyrgyz Republic is party contains provisions that differ from those set out in this Law, the provisions of such international treaty shall apply.

Entry into Force of this Law

41. The Patent Law of the Kyrgyz Republic shall enter into force on the day of its publication.

* *Russian title:* Патентный закон.
Entry into force: February 4, 1998.
Source: Communication from the Kyrgyz authorities.
Note: Translation by the International Bureau of WIPO.

** Added by the International Bureau of WIPO.