

LAW OF THE KYRGYZ REPUBLIC

On making alterations and additions into certain legislative acts of the Kyrgyz Republic

Article 1.

The following alterations and additions shall be made in the Law of the Kyrgyz Republic “On the legal protection of software and databases”:

1. In part III of Article 2 the words “(hereinafter referred to as Kyrgyzpatent)” shall be deleted.
2. In the entire text of the Law the word “Kyrgyzpatent” in different forms shall be replaced by the following: “Authorized State body in the field of Intellectual Property” in appropriate forms.
3. Part III and IV of Article 11 shall be in the following edition:
“Treaty on transfer of economic rights or licensing agreement for registered in the Authorized State body in the field of Intellectual Property computers software or database may be registered in the Authorized State body in the field of Intellectual Property”

4. Article 14 shall be in the following edition:

“Article 14. Registration of computers Software or Database

An application for official registration of software or database (hereinafter referred to as application) shall refer to one software or one database.

An application must contain:

- application for official registration of software or database with the indication of a right owner as well as the author, unless he refused to be mentioned as such and their place of location (place of residence);
- deposited documents identifying the software or database, including an abstract;
- document confirming the payment of the registration fees due, or grounds for exemption from the payment of registration fees and for reduction of its amount.

Authorized State body in the field of Intellectual Property shall determine rules of filing the application for registration.

After receipt of an application for registration the Authorized State body in the field of Intellectual Property shall check the availability of the documents required and their compliance with the requirements set forth in paragraph 2 of this Article.

Upon the request by the Authorized State body in the field of Intellectual Property or on his own initiative the applicant shall be entitled to update, add and make changes in the materials of the application prior to making a decision on official registration.

Consideration of the application shall be made within six months.

Should the results of the examination be positive, the Authorized State body in the field of Intellectual Property shall enter the software or database into the software state register of the Kyrgyz Republic or the database State register respectively, grant the certificate on official registration to the applicant and publish the information about registered software or database in the official bulletin of the Authorized State body in the field of Intellectual Property.

Procedures for official registration, forms of certificates on official registration, content of the data indicated therein shall be established by the Authorized State body in the field of Intellectual Property. The Authorized State body in the field of Intellectual Property shall also define the list of data to be published in the official bulletin.

The information entered into the Software State Register of the Kyrgyz Republic and the Database State Register of the Kyrgyz Republic shall be considered authentic until otherwise is proved.

The liability for authenticity of the indicated information shall be with the applicant.

Appropriate registration fees shall be paid for execution of actions connected with the official registration of software or database, contracts and publication of information.

Amounts, deadlines of payment of registration fees and grounds for exemption from payment thereof or reduction of their amounts shall be established by the Government of the Kyrgyz Republic.

All the financial resources accumulated on the account of the Authorized State body in the field of Intellectual Property, including those in foreign currency, shall be used by the Authorized State body in the field of Intellectual Property to cover costs of activities envisaged in this article and also for creating, equipping and using an automated system, for training and motivating the staff. ”

5. In Article 15:

In paragraph I the words: “property rights” and “after the sale” shall be replaced by the following words: “economic rights” and “after first sale” respectively.

In paragraph III after the words: “special procedures” the words “conclusion of agreements” shall be added; the words “conditions for the use” shall be replaced by the words “conditions of the agreement”.

6. Articles 18 and 19 shall be in the following edition:

“Article 18. Civil and other types of Protection of Rights to Software or Database

Author of software or database or other right owners have the right to require:

- recognition of rights;
- restoration of the status which existed prior to the infringement of the right;

- cessation of the actions that infringe the right or create the threaten of its infringement;
- payment of damages;
- recovery of losses, the amount of which shall include revenues illegally obtained by the infringer;
- payment of compensation by the infringer in cases of infringement aimed at gaining profit instead of recovery of losses in the amount of 20 to 50 000 times of the minimum monthly wage set up by the legislation of the Kyrgyz Republic, in cases of infringement with the aim of making profit instead of covering losses;
- taking other measures envisaged in regulations connected with protecting their rights;

Measures listed in paragraphs 5, 6 and 7 of part II of the present Article shall be taken at the option of a software or database owner.

Right owners shall be entitled to go to the Court, investigation bodies, prejudicial inquiry bodies in accordance with their competence.

Counterfeit copies of software or database are subject to obligatory confiscation according to the Court's decision. Confiscated counterfeit copies shall be destroyed except for cases where of transfer thereof to the right owner at his/her request.

Court may order to seizure materials and equipment used for reproduction and manufacture of counterfeit copies.

A person who is guilty in intentional or neglect destruction of original software or database on request of the author is obliged to pay material and moral damages in accordance with part I of current Article.

Article 19. Methods of filing of plaintiffs related to violation of the rights for software and database

Court or judge may solely decide to prohibit defendant or person who is reasonably suspected in violation of the rights to take certain actions (production, reproduction, sale, rent, import or other use stipulated by the present Law, as well as transporting, storage or possession aimed at entering into civil turnover of copies of software and database, which are suspected to be counterfeit).

Court or judge may solely decide to arrest and seize of all copies of a software or database, which are suspected to be counterfeit as well as materials and equipment aimed at manufacture and reproduction thereof.

Where there is sufficient information about violation of the legislation regulating legal protection of software and database appropriate measures may be taken in the order established by the legislation of the Kyrgyz Republic in order to search and arrest copies of software and database, which are suspected to be counterfeit, materials and equipment aimed at manufacture and reproduction of the said copies as well as documents, which may be a proof of taking actions violating the present Law, including seizure and transfer to responsible storage as a case may be.”

Article 2.

The following alterations and additions shall be made in the Law of the Kyrgyz Republic “On the legal protection of selective achievements”:

1. Part I of the Preamble shall be in the following edition:

“This Law shall regulate economic and personal non-economic relations arising due to exposure or raising (hereinafter referred to as creation), exploitation and legal protection of selective achievements for which the patents of the Kyrgyz Republic are granted”

2. In the entire text of the Law:
the word “Kyrgyzpatent” in different forms shall be replaced by the following: “Authorized State body in the field of Intellectual Property” in appropriate forms; words “(exposure, raising)”, “(exposure or raising)”, “(exposed or raised)” in different forms as well as “(has been exposed, raised)”, “(has been exposed or raised)” and “(has been raised or exposed)” in different gender and numeral forms shall be deleted.

3. Paragraph 11 of Article 1 shall be in the following edition:

“plant material -- a whole plant or its parts, seeds, seedlings, bulbs, fruits of different crops used for breeding or a purpose, other than reproduction of a plant variety;”

4. In Article 4:

Paragraph 4 of part 4, part 5 and 6 shall be deleted;

In paragraph 2 of part 7 the word “novelty” shall be deleted;

Part 7 shall be considered as part 5 accordingly.

5. In Article 4:

Paragraph 2 of part 2 shall be in the following edition:

“2) Distinctiveness

Selective achievement shall meet the condition of distinctiveness if it obviously differs from any other selective achievement which is well-known on the date of filing an application.

Publicity may be established in respect of a selective achievement:

- which became a part of generally known level of knowledge in the result of its production, reproduction, sowing for multiplication, storage for the purposes mentioned above;
- which was offered for sale, soled, exported or imported;
- which was included into official catalogues, reference funds or has exact description in one of the publications, or is included into the State Register of protected selective achievements”

6. In Article 7:

Paragraph of part 1 shall be in the following edition:

“2) description of a variety, breed:

For a variety of plant - variety form;

For a breed of animals - description thereof in accordance with current methods for approbation of agricultural animals;”

In part 2 the words “to the indicated” shall be replaced by “to the application and attached”

7. Part 8 of Article 8 shall be deleted.

8. Articles 10 and 11 shall be in the following edition:

“Article 10. Examination of the application for a selective achievement

Examination of the application for selective achievement shall include preliminary examination and test of claimed selective achievement for distinctiveness, uniformity and stability.

Article 11. Preliminary examination of the application for a selective achievement

“Preliminary examination of the application for a selective achievement shall be carried out within the term of 2 months after the date of filing at the Authorized State body in the field of Intellectual Property. In the course of the preliminary examination the Authorized State body in the field of Intellectual Property shall check the availability of necessary documents provided by Article 7 of this Law, the compliance of the denomination of a selective achievement with the requirements of Article 8 of this Law and shall establish the priority of a selective achievement.

Appropriate fee shall be paid for execution of preliminary examination

Since the date of filing the application and till notification of the applicant of accept of his application for consideration by the Authorized State body in the field of Intellectual Property the applicant may add, clarify and update the materials of the application at his own initiative without change of the nature of the claimed selective achievement provided that appropriate fee is paid.

If the application is submitted in violation of the established requirements to the form and composition, or if additional materials are required for the purposes of examination, the request shall be sent to the applicant with the suggestion to present corrected or missing materials within two months from the date of its receipt.

If in the course of preliminary examination the Authorized State body in the field of Intellectual Property determined that denomination of a selective achievement does not meet the established requirements, the request shall be sent to the applicant with the suggestion to submit another denomination within two months since the date of receipt thereof.

At the request of an applicant, under the presence of valid reasons and payment of an appropriate fee, the Authorized State body in the field of Intellectual Property may

permit the extension of the term of an answer to the request or to the notification, specified in paragraphs 4 or 5 of this Article up to six months.

In the event that the applicant does not provide the requested documents, does not change the denomination of a selective achievement or does not provide the request to prolong the established term within the indicated term, the application is considered revoked.

In the event of positive result of the preliminary examination, the applicant shall be notified of the acceptance of his/her application to consideration.”

9. Article 12 shall be added with paragraphs 4 to 10 in the following edition:

“Within six months since the date of publication of the application a claim for novelty shall be taken into consideration submitted by any interested person to the Authorized State body in the field of Intellectual Property.

This claim shall be submitted by any interested person in the form of objection to the Board of Appeals.

The Board of Appeals shall notify the applicant on receipt of the objection and state the nature of this objection. If the applicant disagrees with the objection of interested person he/she is entitled within one month since the date of receipt of notification to submit motivated reasons to the Board of Appeals.

This objection shall be considered by the Board of Appeals within four months since the date of receipt thereof. Appropriate fee shall be paid to the Board of Appeals for consideration of the objection.

A person submitted an objection and the applicant are entitled to participate in consideration thereof.

If a selective achievement does not meet the requirement of novelty, then the decision on refusal of granting of a patent.

In case of disagreement with the decision on the objection of the Board of Appeals any party is entitled to bring an action to the Court within six months since the date of decision.”

10. Paragraphs 3 and 4 of Article 13 shall be deleted.

11. Articles 14 and 15 shall be in the following edition:

“Article 14. Examination of Compliance of a Selective achievement for distinctiveness, similarity and stability.

Examination of Compliance of a Selective achievement for distinctiveness, similarity and stability shall be carried out by the State Commission, State Pedigree Inspectorate or other competent agencies with which the Kyrgyz Republic is bound by virtue of bilateral or multilateral agreements on the protection of plants varieties and animals breeds.

Appropriate fee shall be paid for examination of a variety.

In the course of assessment of the selective achievement for distinctiveness, similarity and stability, the State Commission and the State Pedigree Inspectorate may base on:

- the results of tests conducted on the agreements with legal entities and natural persons of the Kyrgyz Republic or competent organizations of foreign countries on testing of a selective achievement with which the Kyrgyz Republic is bound by virtue of bilateral or multilateral agreements on the protection of varieties of plants or breeds of animals;
- tests conducted by the applicant or on his assignment in the Kyrgyz Republic or outside of its territory.

The State Commission and the State Pedigree Inspectorate may request the applicant to provide all necessary information, documents or pedigree materials as well as offer the applicant to provide specific tests of a variety of plant or a breed of animal.

On the basis of the tests of a selective achievement the State Commission and the State Pedigree Inspectorate shall make a conclusion on compliance of the selective achievement with the conditions of protectability and compile an official description of a selective achievement.

In the course of technological development the State Commission and the State Pedigree Inspectorate shall be entitled to add the description of a selective achievement any time during the period of patent validity.

On the basis of the results of examination for novelty, distinctiveness, similarity and stability, the materials of the reports and conclusion of the State Commission and the State Pedigree Inspectorate, the Authorized State body in the field of Intellectual Property shall take a decision to grant a patent and to establish the priority, if not established during the preliminary examination or to refuse to grant a patent.

The applicant may get acquainted with the materials used in the course of examination and observe the examination procedure.

The applicant may request the copies of the claims against the materials of the application as well as complete information on the results of conducted tests within two months as of the date of the receipt the decision on application.

Article 15. Appeal Against the Decision of Examination and Restitution of the Missed Time Limits

When disagreed with the expert decision, the applicant shall be entitled to file a grounded complaint with the Board of Appeals within three months from the date the applicant is notified of such decision on his/her application, or copies of the materials opposed to the application and requested by him and complete information on the upshots of the tests.

The complaint shall be reviewed within four months from the date it is received by the Board of Appeals. This review term may be prolonged in respect of complex applications upon the consent of the applicant. The applicant shall be entitled to participate personally or through a representative in the review of his/her complaint.

The appropriate fee shall be paid for file of an appeal to the Board of Appeals.

The decision of the Board of Appeals may be contested by the applicant in court within six months from its adoption.

The time limits stipulated in paragraph 4 and 5 of Article 11, paragraph 1 of this Article, that have been missed by the applicant may be reinstated by the Authorized State body in the field of Intellectual Property provided that there are solid reasons therefor, and the dues are paid.

A solicitation on the restitution of missed time limits may be filed by the applicant no later than 6 months after the missed time limits.”

12. In Article 17 the words: “30 years” and “35 years” shall be replaced by the words “20 years” and “25 years” respectively.

13. In Article 19 the words “six months” shall be replaced by the words “two months”.

14. In paragraph 4 of Article 20 the words “and motivation” shall be deleted.

15. In Article 24:

This Article shall be added with paragraph 4 in the following edition:

“Exclusive right of a patent owner shall cover also plant materials, which were introduced into economic turnover without consent of a patent owner and regarding trade products of plant material and a protected variety”;

In paragraph 4 the word “first” shall be replaced by the word “second”.

Paragraphs 4, 5 shall be deemed as paragraphs 5 and 6 respectively.

16. Article 25 shall be in the following edition:

“Article 25. Actions that are not Deemed Violations of the Patent Owner's Rights

The following actions shall not be deemed to be infringement of the right of the patent owner:

- actions carried out for personal and non-commercial purposes;
- actions carried out for experimental purposes;
- exploitation of a protected animal breed or plant variety as the original material to engineer a new selective achievement and with the exception of cases provided by paragraph 5 of Article 24 of this Law, as well as the actions provided in paragraph 2 of Article 24 of this Law in respect of such selective achievements;
- use of the plant material engineered by agricultural (farmer) enterprise within two years as seeds to grow the variety within the territory of this enterprise.

The list of varieties of plants and animal breeds, which are covered by the privilege specified in paragraph 5 of part 1 of this Article shall be determined by the Government of the Kyrgyz Republic.”.

17. Paragraph 1 of Article 27 shall be in the following edition:

“The liability stipulated by the legislation of the Kyrgyz Republic shall commence upon violation of the rights of the patent owner provided by this Law.”.

18. Title of Section VIII shall be in the following edition:

“SECTION VIII. INVALIDATION OF A PATENT, PRE-TERM ANNULMENT OF A PATENT VALIDITY AND RESTORATION OF A PATENT VALIDITY.”

19. In the first sentence of paragraph 1 of Article 29 the words: “within three months” shall be deleted.

20. In Article 30:

Title of the Article shall be in the following edition: “Pre-term annulment of a patent validity”;

Paragraph 1 of Part 1 shall be in the following edition:

“Patent validity shall be annulled pre-term.”;

The Article shall be added with paragraph 2 in the following edition:

“The Authorized body in the field of Intellectual Property shall publish data on pre-term annulment of a patent validity in its Official Gazette.”.

21. This Law shall be added with Article 30-1 in the following edition:

“Article 30-1. Restoration of a patent validity. Right of after-use

Validity of a patent for selective achievement, which was discontinued due to failure to pay prolongation fee at established time, may be restored by solicitation of a person which was a patent owner. This solicitation shall be filed with the Authorized State body in the field of Intellectual Property within three years for varieties of plants; and within five years since the date of termination of the term of payment of appropriate patent fee, but prior to termination of the patent validity established pursuant to this Law - for grape varieties, arboreal decorative, fruit crops and forest varieties, including their stocks as well as animal breeds. A solicitation shall be supported by the document, which confirms that appropriate fee is paid for restoration of a patent validity.

The Authorized State body in the field of Intellectual Property shall publish data on the restoration of a patent validity in its Official Gazette.

Any person, who within the period between the date of termination of a patent validity and date of publication in the Official Gazette of the Authorized State body in the field of Intellectual Property of data regarding restoration of a patent validity has started to use a unpatented selective achievement in the territory of the Kyrgyz Republic or has made any necessary preparation in order to do so, shall be entitled to keep further free using thereof without expanding of such using (right of after-use).

The right of after-use may be transferred to another natural person or legal entity only together with production, where use of such selective achievement or any necessary preparations in order to do so took place.

Rights specified in the paragraphs 3 and 4 of this Article shall not include the right to issue a license to any person for performance of abovementioned action.”.

22. Article 31 shall be in the following edition:

“Article 31 Appealing Against the Decisions of the Board of Appeals of the Authorized State body in the field of Intellectual Property

The decision of the Board of Appeals to grant a patent or to refuse to grant a patent, to consider the patent invalid may be appealed in court within six months since the date of receipt thereof by the applicant”

23. Paragraph 5 of Article 32 shall be in the following edition:

“A licensing agreement as well as an agreement of patent concession shall be registered in the Authorized State body in the field of Intellectual Property, without such registration it shall be deemed invalid. Data about registration shall be published in the Official Gazette. Appropriate fee shall be paid for the registration of a licensing agreement as well as for the registration of an agreement of patent concession”

24. In Article 34:

Paragraph 1 shall be in the following edition:

“In the event of failure to use a selective achievement, which is vital for the country’s agriculture or failure to provide market with sufficient number of seeds by a patent owner or the person to whom the rights are transferred within three years from the date of patent issuance, a person willing and prepared to use this selective achievement, in the event of refusal of the patent owner to enter into a licensing agreement with an interested person, the latter shall have the right to apply to court soliciting a compulsory license to use the indicated selective achievement.”;

The Article shall be added with paragraph 2 in the following edition:

“In case of force-majeure (disasters, catastrophes etc.) the Government of the Kyrgyz Republic shall be entitled to permit using a selective achievement without consent of a patent owner by notifying him/her in the shortest time and paying reasonable compensation; volume and duration of such use of a patented selective achievement shall be limited by purposes for which permitted. Disputes arising from such use shall be regulated by Court.”;

Paragraph 5 of Part 5 shall be deleted;

Paragraph 7 shall be deleted;

Paragraphs 2 to 6 shall be considered as paragraphs 3 to 7 respectively.

25. Paragraph 1 of Article 35 shall be in the following edition:

“An applicant shall be entitled to file an application for protection of a selective achievement to the competent authorities of another country, by notifying the Authorized State body in the field of Intellectual Property.”

26. Article 38 shall be in the following edition:

“Article 38. Control Over Import and Export of Selective achievements

The control over import and export of selective achievements registered in the State Register of protected selective achievements shall be effectuated by the State Customs bodies in accordance with the Customs legislation of the Kyrgyz Republic.”

27. In Article 39:

Paragraph 4 shall be deleted;

Paragraphs 5 and 6 shall be considered as paragraphs 4 and 5 respectively.

28. The Law shall be added with Article 40 in the following edition:

“Article 40. Transitional Provisions

Patents of the Kyrgyz Republic for selective achievements granted prior to entering into effect of the present Law shall keep the validity periods specified therein.

Applications for granting a patent for selective achievement filed prior to entering into effect of the present Law, which received positive decisions shall be granted by patents of the Kyrgyz Republic for selective achievements with the following validity periods: 30 years since the date of registration of the claimed selective achievement in the State Register of Protected Selective Achievements – for plant varieties; and 35 years – for grape varieties, arboreal decorative, fruit crops and forest varieties, including their stocks as well as animal breeds.

Further consideration of applications for granting a patent for selective achievement filed prior to entering into effect of the present Law, which did not received any decisions shall be carried out pursuant to this Law.”;

Article 40 shall be considered as Article 41 respectively.

Article 3.

The Law of the Kyrgyz Republic “On patent attorneys” (Bulletin of Jogorku Kenesh (Parliament) of the Kyrgyz Republic, 2001 No.1, Article 10) shall be added with the following alterations and additions:

1. In the entire text of the Law the word “Kyrgyzpatent” in different forms shall be replaced by the words: “the Authorized State body in the field of Intellectual Property” in appropriate forms.
2. Article 2 shall be in the following edition:

“Article 2. The Authorized State Body in the field of Intellectual Property

In order to regulate professional activities of patent attorneys the Authorized State Body in the field of Intellectual Property shall execute the attestation of candidates for Patent Attorneys, re-attestation and registration of Patent Attorneys. Commissions of attestation and appellation shall be set up to this effect.

The Attestation Commission shall approve the order of examination, examination tests, shall determine the board of examiners, shall decide whether or not the

candidate can be admitted to the attestation examination, shall make decisions about attestation, limited activity attestation or non attestation under Article 7 of this Law.

The Appellation Commission shall consider complaints of applicants against Attestation Commission decisions, as well as complaints of clients against unprofessional activity of patent attorneys.”.

3. In Article 5:

Paragraph 1 of part 1 after the word “attested” the word “re-attested” shall be added.

Part 1 shall be added with paragraph 5 in the following edition:

“5) having knowledge of the State language in the scope, which is necessary for performance of their duties.”.

4. In Article 7:

In paragraphs 5 and 6 the words: “corresponding fee payment” shall be replaced by the words “payment of the fee”;

The Article shall be added with paragraph 7 in the following edition:

“Re-attestation of patent attorneys shall be carried out by the Authorized State body in the field of Intellectual Property not less than once a five years in the same order as during attestation.”;

Paragraph 7 shall be considered as paragraph 8 respectively.

5. In Article 8:

Paragraph 1 shall be in the following edition:

“Persons who have passed the examination successfully shall be registered in the Register by the Authorized State body in the field of Intellectual Property within the period of one month from the application date and after payment of corresponding fee.”;

In paragraph 3 the words “payment of corresponding fee” shall be replaced by the words “payment of the fee”

6. In Article 10:

Paragraph 3 of part 1 after the words: “loss of the Kyrgyz Republic’s nationality” shall be added with the words “including the change of domicile (i.e., staying abroad during the period more than one year)”;

Paragraph 6 of part 1 shall be added with the words: “systematic and gross violation of legislation of the Kyrgyz Republic and professional ethics”;

The Article shall be added with paragraph 4 in the following edition:

“In case of elimination of a patent attorney from the Register based on his/her application or in case of change of his/her domicile, specified in paragraph 3 of part 1 of this Article, a registration may be made without any re-attestation within five-year starting from the date of his/her last attestation.”;

Paragraphs 4 and 5 shall be considered as paragraphs 5 and 6 respectively.

7. Article 15 shall be in the following edition:

“Article 15. Fees

Appropriate fee provided by this Law shall be paid for legal actions related to attestation, re-attestation and of patent attorneys.

The amount and terms of the fee shall be established by the Government of the Kyrgyz Republic.

All means entered the account of the Authorized State body in the field of Intellectual Property in the form of fees, including currency ones, shall be used by the Authorized State body in the field of Intellectual Property for technical equipping, creation and exploitation of automated system, complex of patent information’s fund as well as personnel training.”

Article 4.

The Government of the Kyrgyz Republic shall amend its normative legal acts pursuant to this Law.

Prior to amending the legislation of the Kyrgyz Republic pursuant to this Law, normative legal acts of the Kyrgyz Republic shall be applied to the extent, which does not contradict to this Law.

Article 5.

This Law shall enter into effect from the date of publication thereof.

This Law shall be applied to legal relationships, which arise from the date of entering into effect.

Acting President of the Kyrgyz Republic

K.Bakiev

Adopted by the Legislative Assembly of Jogorku Kenesh on January 20, 2005
