

Law of the Kyrgyz Republic
on Secret Inventions
(as amended by Law of the Kyrgyz Republic No. 38 of March 22, 2007)

The Law of the Kyrgyz Republic "On Secret Inventions" governs relations arising in the Kyrgyz Republic territory, concerned to classification and usage on inventions recognized as secret under the present law.

In accordance with the present law secret invention is an invention which contains information of public secrecy and is recognized as secret in order prescribed by the present law.

During the term of classification secret inventions are the property of the Kyrgyz Republic.

Article 1. Legal Regulation of the Relations in the field of Secret Inventions.

Legal regulation of relations arising out of classification or use of the secret inventions, shall be realized in accordance with the Civil Code of the Kyrgyz Republic, Patent Law of the Kyrgyz Republic, The Law of the Kyrgyz Republic "On Service Inventions, Utility Models, Industrial Designs", The Law of the Kyrgyz Republic "On Protection of state secrets of Kyrgyz Republic", the present Law and other regulatory legal acts of the Kyrgyz Republic.

Relations arising from classification and use of developments containing information of public secrecy and not determined as secret inventions in accordance with the present law, shall be regulated by the Law of the Kyrgyz Republic "On protection of state Secrets of the Kyrgyz Republic".

Article 2. Classification of Inventions Containing Information of State Secrets.

An authorized public body of the Kyrgyz Republic in the region of Intellectual Property at filing of an application for the grant of a patent on invention, filling in accordance with the requirements of the Patent Law of Kyrgyz Republic, arranges procedure to reveal the information containing state secrets and classifying applications, containing such information. Order of organization of such procedure shall be established by the state body of The Kyrgyz Republic in the region of Intellectual Property.

Ministries, state committees, administrative departments (hereafter - state bodies) possesses lists of information to be classified, are entitled to classify the invention containing information constituting state secrets and apply through their secret-regime structural subdivisions to the Intellectual property authorized state body of the Kyrgyz Republic bearing the stamp of their respective degree of secrecy.

Authorized state body of the Kyrgyz Republic in the region of intellectual property is also entertaining applications for the invention with a proposal to classify applied by individuals as provided in Article 5 of this Law (hereafter - the applicants for a patent) through secret-regime structural subdivisions on place of employment, and, in case of absence of such opportunities - through the special bond of residence (location) or directly in the order prescribed by the Patent Law of the Kyrgyz Republic.

Classifying of applications containing information constituting state secrets, establishing a degree of privacy, and the term of their readjudication are performed by state authorities defined by the Government of the Kyrgyz Republic in accordance with the Law "On the Protection of State Secrets of the Kyrgyz Republic" and present Law.

(As amended by Act of the Kyrgyz Republic of March 22, 2007, N 38)

Article 3. Right on a Secret Invention and its use.

The right to a secret invention and its use is protected by this Law and other regulatory legal acts of the Kyrgyz Republic.

The right to a secret invention and its use during the term of its classification belongs to the Kyrgyz Republic represented by state bodies that classified it. The use of secret inventions must be in compliance with state security order of the Kyrgyz Republic in accordance with the Law "On Protection of State Secrets of the Kyrgyz Republic."

In the interest of the state the usage of a secret invention by other bodies may be allowed by state authority that classified it, in order prescribed by the Government of the Kyrgyz Republic, in consideration of security order.

Persons guilty of violating the terms of use of a secret invention, are liable under the legislation of the Kyrgyz Republic.

Article 4. Author of a Secret Invention.

Author of a secret invention is defined as a natural person by whose creative work the invention was made.

If in the process of creation of a secret invention were involved several individual persons, all of them would be considered as its authors.

Natural persons who have not made a personal contribution in the creation of a secret invention, shall not be recognized as the author (or authors) technical, organizational or material assistance.

The right of authorship is inalienable personal nonproperty right which is indefinitely protected.

Authorship of a secret invention is certified by certificate issued by an authorized state body of the Kyrgyz Republic in the region of intellectual property, which serves as a ground for incentive fee, pecuniary compensation for the classification and compensation for its usage. Form of certificate and its contents shall be established by the authorized government body of the Kyrgyz Republic in the region of intellectual property.

If using a secret invention for public use, a public authority that classified the invention pays the incentive fee to its author (authors). Provided that the amount of remuneration is set by state authority and shall be no less than fifty times the minimum wage for each year of usage, regardless the number of authors.

Article 5. Order of Filing, Pendency and Classification of Application for Secret Invention

The right to apply for a secret invention belongs to the author (authors) of a secret invention or its (their) assignee, including a person who has received a corresponding right in the assignment order.

The right to apply for a service invention, containing information constituting state secrets, and established in accordance with the Law of the Kyrgyz Republic "On service inventions, utility models, industrial designs," belongs to the employer or his legal successor, including a person who has received a corresponding right to assignment order, if the contract between the employer and the author of the service invention does not contain any contrary provisions.

Applications shall be drawn up in accordance with the patent legislation of the Kyrgyz Republic. The order of the pendency of applications for secret inventions and their classification is determined by the authorized state body of the Kyrgyz Republic in the region of intellectual property.

Involvement of experts on every stage of application passing shall be carried out in order established by the Law of the Kyrgyz Republic "On Protection of State Secrets of the Kyrgyz Republic".

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Article 6. Conditions of Protectability of a Secret invention

At determining of protectability of a secret invention criteria of patentability of the invention that established by The Patent Law of the Kyrgyz Republic shall be used.

At determining of the novelty of a secret invention, along with the information provided by the Patent Law of the Kyrgyz Republic, state of the art is including(providing their earlier priority):

- Kyrgyz Republic patents for secret objects of industrial property;
- Applications for the grant of a patent for secret objects of industrial property in the Kyrgyz Republic submitted by other persons (except withdrawn applications);
- Information constituting state secrets disclosed in printed matters and other sources of information that became available in the Kyrgyz Republic for persons who have access to such information on a legal basis, the priority previously declared secret invention.

At determining of the novelty of secret inventions, the degree of secrecy of information constituting state secrets, included in the state of the art, should not exceed the degree of secrecy of the secret invention predicated.

Article 7. Priority of a Secret Invention

Priority of a secret invention shall be established on the filing date to the authorized state body of the Kyrgyz Republic in the region of Intellectual Property application filed in accordance with the third paragraph of Article 2 of present Law, containing the description, claims and drawings, if there is a reasonable reference in the description.

Priority of a secret invention may be determined by the filing date to the authorized state body of the Kyrgyz Republic in the region of intellectual property of supplementary materials, if they are submitted by the applicant as an independent application, that was filed before the expiration of three months from the date of receiving the declaration of the failure to take into account the supplementary materials on grounds of admitting it as changing essence of the solution claimed, and at the date of its filing, application which represents these additional materials is not withdrawn.

Priority of a secret invention may be determined by the filing date to the authorized state body of the Kyrgyz Republic in the region of intellectual property of an earlier application by the same applicant, disclosing the invention, if the application which claims that priority was received prior to twelve months from the filing date of an earlier application for secret invention. Provided that an earlier application is considered withdrawn.

Priority of a secret invention could be established on the basis of several earlier applications in compliance of conditions specified.

Priority of a secret invention shall not be determined by the filing date for which has already been claimed earlier priority.

Article 8. Registration and Examination of Application for a Secret Invention

Subject to applications for secret inventions, classified in accordance with Articles 2 and 5 of present Law, shall be examined applications for secret inventions in accordance with the examination procedure of unclassified invention established by the Patent Law of the Kyrgyz Republic by references to specific features of consideration of secret inventions:

- Examination of an application for a secret invention consists of formal and preliminary examinations of the application on merits;
- During the substantive examination an authorized state body of the Kyrgyz Republic in the region of intellectual property is entitled to involve officers from relevant state agencies. Heads of state bodies are obliged to delegate within-named specialists with their average monthly salary and reimbursement of expenses for travel and accommodation;
- Substantive examination of the application relative to a fundamentally new hardware, military equipment and special technical devices, is carry out after providing an opinion of the ministries

involved, state committees and administrative agencies, a list of which is defined by the Government of the Kyrgyz Republic;

- Expenses related to the examination, shall be on public authority that classifying it.

According to the results of substantive examination the decision on the recognition or non-recognition of the claimed subject as secret invention is made.

Based on the decision of the authorized state body of the Kyrgyz Republic in the region of intellectual property on the recognition of the claimed subject as secret invention authorized state body of the Kyrgyz Republic in the region of intellectual property shall put the secret invention in the State Register of secret inventions of Kyrgyz Republic and the Kyrgyz Republic shall issue a certificate to author (authors), and patent stamped "The Secret" to the applicant. Access to information about registered secret inventions and familiarization with it is performed in compliance with the claim of preservation of state secrets, provided by Law of the Kyrgyz Republic "On Protection of State Secrets of the Kyrgyz Republic."

Dispute escalation for secret inventions is performed in the order established by the Government of the Kyrgyz Republic.

(As amended by the Act of the Kyrgyz Republic of March 22, 2007, N 38)

Article 9. Reimbursement for Classification of Invention

An applicant shall be paid a reimbursement for the classification of the invention in an amount of at least twenty times the minimum earnings as well as the cost of the applicant's inputs related to the filing and pendency of applications for secret inventions.

Reimbursement specified in paragraph one of present Article shall be paid as a lump-sum by public authority, that had classified the application in accordance with the fourth part of Article 2 of present Act, and shall be paid within a period of one month from the date of entry into the State Register of secret inventions of the Kyrgyz Republic.

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Article 10. Declassification of a Secret Invention

Control of the necessity to maintain the established classification level of a secret invention is made within the period specified on its classification by the public authority that made the decision of its classification. Such inspection might be initiated by an applicant, author or e public authority that classified it.

Decision on declassifying is adopted in the manner prescribed by the Government of the Kyrgyz Republic identified by the public authority that classified secret invention.

Decision on declassifying of the secret invention shall be notified to the applicant, the author, as well as to the authorized state body of the Kyrgyz Republic in the region of intellectual property, for purposes of its exclusion from the registry.

Article 11. Granting of a Patent for Declassified Invention

Under the Patent Law of the Kyrgyz Republic, within one year from the date of declassification of the invention the applicant may submit to the authorized state body of the Kyrgyz Republic in the region of intellectual property a motion for the grant of a patent. A patent is granted for the remaining period of validity provided by the Patent Law of the Kyrgyz Republic, artificially from the filing date of the materials to the authorized state body of the Kyrgyz Republic in the region of intellectual property. If the applicant within twelve months did not submit an application or refuses to supply it, the right passes over to the author (authors) of a secret invention.

Priority of a declassified secret invention is determined by the filing date of the materials to the authorized state body of the Kyrgyz Republic in the region of intellectual property in accordance with

Article 7 of present Law.

Patent granted on declassified invention, enter into effect artificially from the date of filing of the motion for its grant and constitute grounds for inclusion of the declassified protectable invention in state of the art artificially from the date of priority at determining of novelty of other unclassified invention in accordance with the Patent Law of the Kyrgyz Republic.

In case of invalidating of a patent on the unclassified invention issued in accordance with the Patent Law of the Kyrgyz Republic, due to the fact of issuance of a patent for the identical declassified invention having an earlier priority, on the basis of the fourth part of the present article, the owner of the invalidated patent on unclassified invention that begun its usage in good faith, before the filing date and having made all of the necessary preparations, and if such an invention is created, regardless of the author (authors) declassified invention, the owner retains the right to continue the usage of such invention without extension of its the scope.

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Article 12. Taxes on a Patent

For performing of legally significant acts, related with filing and pendency of applications for a secret invention, a charge shall be tolled in accordance with the legislation of the Kyrgyz Republic on charges for inventions patenting.

Article 13. Rights of Foreign Individuals and Entities

The provisions of present Act do not cover foreign individuals and legal entities, unless otherwise stipulated by international treaties of the Kyrgyz Republic.

Article 14. Disputes Arising on Ground of the Application of Present Act

Disputes over authorship on a secret invention, breach of conditions of usage of a secret invention, the relevancy of classification, reimbursements and rewards are considered by the court in accordance with its jurisdiction.

Article 15. Liability of Infringement of Present Act

Violation of present law entails liability in accordance with the legislation of the Kyrgyz Republic.

Article 16. Transitional Provisions

On applications for a grant of a patent for a secret invention for which no decisions were made before the entry into force of the present Act, the further procedure of clerical correspondence is carried out in the manner prescribed by the present Law.

On applications for granting patents for utility models and industrial designs constituting state secrets, for which no decisions were made before the entry into force of the present Act, clerical correspondence stops.

On applicant's motion the clerical correspondence on such applications could be continued in the manner prescribed by the Patent Law of the Kyrgyz Republic.

On applications for granting patents for inventions, utility models and industrial designs containing information constituting state secrets, to which favorable decision of the Kyrgyz Republic was made and patents granted prior to the entry into force of present Act, provided all safety measures comply

with state secrets in accordance with the Law of the Kyrgyz Republic "On Protection of State Secrets of the Kyrgyz Republic" and present Law.

Article 17. Final Provisions

The present Law enters into force immediately upon the date of publication.

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The Government of the Kyrgyz Republic must bring their regulatory legal acts in line with the present Law.

President of the Kyrgyz Republic

R.Bakiev

Approved by the Jogorku Kenesh of the Kyrgyz Republic

January 23, 2006.