

# **Regulation on the Filing and Examination of Oppositions and Appeals to the Appeal Council of the State Service of Intellectual Property and Innovation** (In edition of the resolution of the Government of KR of May 20, 2014 No. 263)

## **I. General provisions**

1. These rules define an order of giving of objections, statements and their consideration in Appeal council at the State service of intellectual property and innovation under the Government of the Kyrgyz Republic (further - Rules).

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2. Appeal council at the State service of intellectual property and innovation under the Government of the Kyrgyz Republic (further - Appeal council) is obligatory primary body for consideration of disputes concerning protectability of objects of industrial property and selection achievements in the Kyrgyz Republic, and also realizes other powers referred to competence of Appeal council by these rules and other regulations of the Kyrgyz Republic.

The structure of Appeal council is formed and approved by the order of Public service of intellectual property and innovations at the Government of the Kyrgyz Republic (further - Kyrgyzpatent) from the most competent employees of Kyrgyzpatent and the organizations subordinated to it in number of 7 members.

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## **II. Objections and applications submitted to Appeal council**

3. To Appeal council according to Patent Law of the KR, Laws of the KR “On Trademarks, Service Marks and Appellations of Origin of Goods», “On legislative protection of Selection Achievements”, “On Firm Names”, В Апелляционный совет в соответствии с Патентным законом Кыргызской Республики, законами Кыргызской Республики "О товарных знаках, знаках обслуживания и наименованиях мест происхождения товаров", "О правовой охране селекционных достижений", "О фирменных наименованиях" and the international treaties which came in accordance with the established procedure into force which participant is the Kyrgyz Republic, the following objections and applications can be submitted:

1) on decisions on refusal in issue of the patent for the invention, an industrial sample, useful model, selection achievement;

2) on solutions of preliminary expert examination on refusal in registration of the Trademark, a Service Mark and Appellations of Origin of Good;

3) on solutions of examination on preliminary refusal in registration of the trademark, a service mark according to the Madrid agreement on the international registration of signs of April 14, 1891 revised in Brussels on December 14, 1900 in Washington - on June 2, 1911, in the Hague - on November

6, 1925, in London - on June 2, 1934, in Nice - on June 15, 1957 and in

Stockholm - on July 14, 1967 (further - the Madrid agreement on the international registration of signs);

4) on solutions of examination on preliminary refusal in registration of the

trademark, a service mark according to the Protocol to the Madrid Agreement on the international registration of signs of June 28, 1989 (further - the Protocol to the Madrid Agreement on the international registration of signs);

5) on solutions of formal or preliminary expert examination on refusal in issue of the patent for the invention, an industrial sample, useful model;

6) against application for selection achievement;

7) on decisions on refusal in the registration of the trademark, a service mark accepted by results of examination of the declared designation;

8) on final refusals in registration of the trademark, a service mark by results of examination of the declared designation according to the Madrid Agreement on the international registration of signs;

9) on final refusals in registration of the Trademark, a Service Mark by results of examination of the declared designation according to the Protocol to the Madrid Agreement on the international registration of signs;

10) on decisions on refusal in registration of the name of a place of goods origin and granting a right of use of it, granting a right of use of already registered Appellations of Origin of Goods, accepted by results of examination of the declared designation;

11) on the decisions on registration of the trademark, a service mark accepted by results of examination of the declared designation including in cases:

- exceptions examination from protection of one or several elements of a sign;
- changes by examination of the inventory provided by the applicant for which registration of a sign was asked;

12) on the solution of examination on refusal in registration of Firm Name;

13) on refusal in satisfaction of the petition for modification and additions in the state register of Firm Names;

14) against issue of the patent for the invention, including the patent for the invention which is taken out according to the Eurasian patent convention, an industrial design, utility model, selection achievement;

15) against registration of the Trademark, a Service Mark;

16) against registration of the Trademark, a Service Mark according to the Madrid Agreement on the international registration of signs;

17) against registration of the Trademark, a Service Mark according to the Protocol to the Madrid Agreement on the international registration of signs;

18) against registration of the Appellations of Origin of Goods and issue of the certificate for a right of use of the Appellations of Origin of Goods;

19) about cancellation of registration of Appellation of Origin of Goods origin or the certificate on a right of use of Appellation of Origin of Good;

20) against registration of Firm Name.

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4. The following applications can be submitted to Appeal council:

1) about recognition of the Trademark well-known in the territory of the Kyrgyz Republic;

2) about loss of the well-known Trademark of the status well-known.

### **III. Conditions and order of giving of objections and statements**

5. The objections and statements provided by subparagraphs 1-5, 7-13 of point 3 and subparagraph 1 of point of 4 these rules move the applicant directly or through his representative.

The objections and statements provided by subparagraphs 6, 14-20 of point 3 and subparagraph 2 of point of 4 these rules move any person directly or through his representative.

Objections or applications are submitted in the state or official language.

Foreign legal entities or natural persons who are constantly living outside the Kyrgyz Republic, or their patent agents give objections, correspond on them with Appeal council and participate in meetings through the patent agents registered in Kyrgyzpatent if other order isn't established by the international agreement with participation of the Kyrgyz Republic.

The power of attorney issued according to the legislation of the Kyrgyz Republic is attached to objection or the application submitted through the representative or the patent agent.

The power of attorney can be issued to the patent agent registered in Kyrgyzpatent on representation of interests of the foreign legal entity or natural person who is constantly living outside the Kyrgyz Republic both this person, and to his patent agent having the relevant power of attorney issued by the applicant. In the latter case both mentioned powers of attorney, or their copies issued properly are submitted.

6. In objection or the statement have to be specified:- registration number of the applicacation for the invention, utility model, industrial design, the trademark, service mark and the Appellations of origin of goods, firm name, selection achievement, and at contest of the security document - and number of the last, a surname, a name, a middle name of the natural person or the name of the legal entity which gave objection, and the address for correspondence;

- an essence of dispute on the appeal of the challenged decisions;
- the exhaustive indication of all motives and arguments of the applicant, including the comparative analysis offered and all objects opposed to it (at refusal in issue of the security document);
- motivated argument, proofs and justification of the circumstances which are according to the applicant, the basis of its requirements and objections;
- accurately formulated requirements of the applicant for a dispute subject. The objection or the application is submitted to Appeal council in duplicate.

7. The objections provided by subparagraphs 1-4, 7-11 of point of 3 these rules move within three months from the date of receipt by the applicant of the decision. The objection provided by subparagraph 5 of point of 3 these rules moves within two months from the date of receipt by the applicant of the decision.

The objection provided by subparagraph 6 of point of 3 these rules moves within six months from the date of the publication of data on the demand.

The objection provided by subparagraph 12 of point of 3 these rules moves within one month from the date of receipt by the applicant of the decision.

The objection provided by subparagraph 13 of point of 3 these rules moves within a month from the date of receipt by the applicant of the notice.

The objection provided by subparagraph 14 of point of 3 these rules moves during

all period of validity of the patent.

The objection provided by subparagraph 15 of point of 3 these rules in case of violation of the requirements established by articles 3 and 4 of the Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of origin" moves during all period of validity of registration, and on the bases established by article

5 of the Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of Origin" - before the expiration of five years from the date of the publication of data on registration in the official bulletin.

The objection provided by subparagraphs 16-17 of point of 3 these rules moves during all period of validity of registration of the Trademark, a Service Mark.

The objection provided by subparagraph 18 of point of 3 these rules moves during action of registration of Appellation of Origin, the certificate on a right of use of Appellation of Origin.

The objection provided by subparagraph 19 of point of 3 these rules moves during all period of validity of registration of Appellations of Origin or the certificate on a right of use of the name of a place of goods origin.

The objection provided by subparagraph 20 of point of 3 these rules moves during all period of validity of registration of Firm Name.

The statement provided by subparagraph 1 of point of 4 these rules moves during action of registration of the Trademark.

The statement provided by subparagraph 2 of point of 4 these rules moves during action of registration of the well-known Trademark.

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8. The document confirming payment of the corresponding duty on giving of objection or the statement in the established size has to be attached to objection or the statement.

To the objection provided by subparagraphs 2, 3, 4, 7, 8, 9 and 12 of point of 3 these rules concerning uniform goods, the consent of the owner of the Trademark specified in points 1, 2 and 3 of part 1 of article 5 of the Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of Origin", to registration of the given designation is applied.

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9. Date of giving of objection or the statement date of representation of the objection or an application issued according to requirements of these Rules, with the appendix of the document confirming payment of duty on giving of objection or the statement in Appeal council is considered.

At discrepancy of the submitted objection or the application to requirements of these rules or non-presentation together with objection or the statement of the document confirming payment of duty in the established size, the objection or the statement is considered not given.

The document confirming payment of duty, presented with violation of an order of its registration is considered invalid, and the objection or the application in this case is returned to the applicant for correction. The term of consideration of objection or the statement is estimated from the date of submission of the corrected document.

10. The person who submitted objection or the application or his representative can withdraw the submitted objection or the application before announcement of resolutely part of the decision of Appeal council. Thus duty on giving of objection or the application isn't returned.

11. According to the petition of the applicant excessively paid sum of duty or the paid sum of duty on giving of the objection or the statement recognized not given comes back or set off in accordance with the established procedure on account of payment of other duties.

12. The term of objection passed by the applicant can be restored according to the petition of the applicant according to the legislation of the Kyrgyz Republic.

The petition has to contain confirmation of good reasons of the admission of a term of objection and the document confirming payment of duty on restoration of the passed term of objection and duty on giving of objection in the established size has to be attached to it.

At non-presentation together with the petition containing confirmation of good reasons of the admission of term of objection, the document confirming payment of the specified duties in the established size, the petition and objection are considered as not given.

In case duty is paid in a size, smaller established, and/or the document confirming its payment no, the objection or the statement in this case is considered not given.

13. According to the petition of the applicant excessively paid sum of duties or the paid sum of duties on restoration of the passed term of objection and giving of objection in case of recognition of the petition and objection by not given comes back or set off in accordance with the established procedure on account of payment of other duties.

#### **IV. Registration and reception of objections and statements**

14. The objection or the statement provided by the section II of these rules the written objection which came to Appeal council or the statement meeting the conditions of giving of objections or statements provided by the section III of these rules admits.

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15. The objection which came to Appeal council or the statement is registered and the entering number is assigned to it.

16. About acceptance to consideration of the objection or the statement provided by subparagraphs 14-20 of point 3 and subparagraph 2 of point of 4 these rules the notice to the owner of the challenged security document with application of a copy of objection or the statement goes.

To the owner of the Trademark, the Service Mark registered according to the Madrid Agreement on the international registration of signs or the Protocol to the Madrid Agreement on the international registration of signs, the specified notice goes directly to the address of the owner of a sign. Thus it is reported that further business management, the objection connected with consideration or the statement, is carried out through the patent agent registered in Kyrgyzpatent

according to the section III of these rules.

17. In case the objection or the statement doesn't meet the giving conditions provided by the section III of these rules, the objection or the application is returned, it is considered not given.

## **V. Terms of consideration of objections and statements**

18. The objections provided by subparagraphs 12-13, 20 of point of 3 these rules are considered by Appeal council within two months from the date of their receipt. The objections provided by subparagraphs 1-11, 15-19 of point of 3 these rules are considered by Appeal council within four months from the date of their receipt. The objections provided by subparagraph 14 of point of 3 these rules are considered by Appeal council within six months from the date of their receipt.

The statements provided by subparagraphs 1-2 of point of 4 these rules are considered by Appeal council within four months from the date of their receipt.

19. Any person to whom the notice of acceptance of objection or the statement to consideration by Appeal council is sent, can address to Appeal council with the petition for transfer of term of a meeting with the indication of good reasons. The petition moves in writing, with the indication of good reasons, and is accepted if it arrived in three working days prior to the declared term of consideration of objection or the statement.

In this case new date of a meeting of Appeal council on what all participants of consideration of objection or the statement are notified is appointed.

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20. Appeal council is obliged to suspend proceeding in cases:

- death of the citizen (natural person), elimination or reorganization of the legal entity who is the participant of consideration of objection or the statement if disputable legal relationship allows succession - before definition of the assignee of the left person;
- impossibility of consideration of the this case up to the permission of the another matter considered in civil legal proceedings or an administrative order.

After stay of proceeding the current of all terms provided by the legislation stops.

The proceeding renews according to the statement of the person who is legally interested in outcome of the case or at the initiative of Appeal council after elimination of the circumstances which formed the basis to its stay.

## **VI. Consideration of objection or the statement at a meeting of Appeal council**

21. Consideration of objection or the statement is carried out at a meeting of Appeal council as a part of not less than five of his members.

22. To participate in consideration of objection or the statement the person who submitted objection or the application, the owner of the challenged security document and/or their representative and the representative of the relevant department of examination Kyrgyzpatent can.

The person who submitted objection or the application the owner of the security document can take part in consideration of objection or the statement personally,

and also through the representative which powers have to be confirmed properly with the issued power of attorney.

Appeal council can allow participation to other persons without vote.

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23. Absence of any person having the right to participate in consideration of objection or the statement and notified on date and a place of a meeting of Appeal council isn't an obstacle to consideration of objection or the statement.

Appeal council has the right, having recognized impossibility of consideration of objection or the statement at this meeting owing to absence of the parties, to postpone the date of holding a meeting.

24. Production in Appeal council is conducted in the state or official language. The persons participating in dispute not knowing language in which production is conducted are granted the right of acquaintance with materials of dispute and participation in actions of Appeal council through the translator.

25. A meeting of Appeal council the chairman directs.

The chairman opens a meeting of Appeal council and represents members of Appeal council and persons participating in consideration of objection or the statement.

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26. Consideration of objection or the statement in essence begins announcement of objection or the statement by the chairman.

Further consideration of the case is conducted, as a rule, in the following sequence:

- hearing of the parties and answers to questions of members of Appeal council;
- speech of experts, in case of need.

27. The minutes of Appeal council are conducted by the secretary of Appeal council.

The minutes are signed by the chairman and the secretary of Appeal council.

28. In case of need Appeal council has the right to appoint the definition independent examination for an explanation of the questions demanding special knowledge. The materials submitted these experts shouldn't contain data on the applicant and a being of the considered dispute.

Carrying out independent examination has to be charged to the competent experts possessing knowledge necessary for this purpose.

The independent expert if necessary has the right to request additional materials from Appeal council.

The conclusion of independent experts shall conclude:

- fill description of researches;
- make conclusions by results;
- concrete answers to questions of Appeal council.

The conclusions must be in written for give to Appeal council. In case of insufficient clarity or incompleteness of an opinion of an independent expert Appeal council has the right to appoint repeated examination, having charged its carrying out to the same expert or other independent expert or a commission of experts.

## **VII. The introduction of decisions in force**

29. The decision of Appeal council is made by results of meeting of members of Appeal council after completion of consideration of objection or the statement in essence.

The decision is made by the simple majority from total number of members of Appeal council. At equality of votes, the voice of the presiding Appeal council is decisive.

The resolutive part of the decision accepted by Appeal council is disclosed to the presiding parties participating in consideration of objection or the statement.

30. In the presence of a dissenting opinion at any of members of Appeal council it is applied to the decision.

31. The decision of Appeal council is stated in writing and is signed by the chairman and all members of Appeal council participating in dispute consideration. By results of consideration of the objections or statements provided by the section II of these rules decisions on satisfaction, on partial satisfaction or on refusal in satisfaction of objection or the statement are passed.

32. The motivated decision of Appeal council is formed and goes to the person which submitted objection or the application in case of contest of the security document or registration - also to the owner of the security document, within a month from the date of pronouncement of the decision. If necessary the copy of the decision can be sent to the relevant divisions of Kyrgyzpatent.

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33. The decision of Appeal council comes into force from the date of its acceptance.

34. (No. 263 became invalid according to the resolution of the Government of KR of May 20, 2014)

35. At disagreement with the decision of Appeal council in the cases provided by the legislation of the Kyrgyz Republic, any of the objecting parties in six-months time from the date of receipt of the decision has the right to file a lawsuit the complaint.

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