

# PATENT LAW OF MONGOLIA

## Chapter One General Provisions

### Article 1. Purpose of the law

The purpose of this law shall be to regulate matters relating to the protection of the rights of creators of inventions, industrial designs and innovations and of patent owners, and to regulate matters relating to the use of inventions, industrial designs and innovations.

### Article 2. Legislation on patents

1. The legislation on patents is comprised of the Constitution of Mongolia, the Civil Law, this law and other relevant legislation which is consistent with those laws.

2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty shall prevail.

### Article 3. Definitions in this law

1. "Invention" means an absolutely new solution that relates to a product or process, that has been created for the first time, and the essence of which depends upon the basis of a law of nature.

2. "Industrial design" means an absolutely new original solution that relates to the appearance of a manufactured article which can be produced in industry.

3. "Innovation" means a solution which is new and useful for a given entity or organisation and relates to a product or process, or the organisation of the manufacturing process.

4. "Patent" means the document issued by the competent State authority which certifies the recognition of the given solution as an invention or industrial design, and grants the owner of the certificate the exclusive right to exploit the invention or industrial design for a fixed period of time.

5. ["Innovation certificate" means a document certifying the recognition of an item as an innovation and granting ownership to the author of the innovation.]

6. "Licence" means permission given to another person to exploit a patented invention or industrial design.

7. "Filing date" means the date on which a patent application for an industrial design or invention is received and registered by the [Intellectual Property Office] or the date on which the application for an innovation is received or registered by a given entity.

8. "Priority date" means the date on which a patent application for the same invention or industrial design was filed and registered in any other member State of the Paris Convention for the Protection of Industrial Property, such date being prior to the date on which an application has been filed under this law.

### Article 4. Objects of patents and patentability

1. A patent shall be granted to the author of an invention or to a natural person or legal entity to whom the author has assigned his or her right to a patent if that author has created a product or

process which is absolutely new or involves an inventive step and the product or process is industrially applicable.

2. An invention shall be regarded as involving an inventive step if that step is not obvious to a person skilled in the relevant field. The existence of an inventive step shall be determined by an examiner appointed by the [Intellectual Property Office].

3. An invention shall be considered industrially applicable if it can be made or used in industry.

4. A product or process shall be considered new if it is not preceded by a product or process of the same design.

5. The following shall not be considered to be inventions:

- 1) discoveries, scientific theories and mathematical methods;
- 2) computer program and algorithms;
- 3) schemes, rules or methods for doing business, performing mental acts or playing games;
- 4) solutions that are contrary to public health or environmental protection;
- 5) [methods of treatment and diagnosis, or prophylaxis of human and animal diseases;
- 6) plant varieties and animal breeds arising from biological methods of breeding.

[Sub-paragraphs 5](#) and [6](#) shall not apply in the case of substances used in conjunction with such methods of treatment and diagnosis or to microbiological methods and products cultivated by such methods.]

6. A patent shall be granted to an author of an industrial design or to a natural person or legal entity to whom that author has assigned his or her right to a patent if that author has created a new and original solution relating to an industrially applicable article and that solution has not, prior to the filing date of that author's application, been disclosed anywhere in the world by publication in a tangible form or by publication in any manner in this country.

## **Article 5. [Intellectual Property Office]**

[The Intellectual Property Office shall, in accordance with the framework of functions of the Minister of Justice, be the Government executive agency responsible for dealing with matters concerning inventions, industrial design and innovations and will carry out the following functions:

- 1) receiving applications for inventions and industrial designs and making determinations on them;
- 2) granting patents and innovation certificates;
- 3) keeping a State register of inventions, industrial designs, innovations, trademarks, and licence contracts;
- 4) compiling a unified database of inventions, industrial designs, innovations and trademarks;
- 5) publishing information on inventions, industrial designs, innovations, and trademarks;
- 6) providing references for the purpose of settling disputes on patents;
- 7) determining the design of patent and innovation certificates;
- 8) in the cases involving an infringement of the Patent Law by a legal entity or individual the Intellectual Property Office shall inform the relevant organisation;

- 9) withdrawing a patent in accordance with this law;
- 10) protecting and representing the rights of an author or owner of patent rights;
- 11) initiating measures for the enforcement of the Patent Law within the authority conferred upon it;
- 12) receiving claims and appeals concerning patents and making determinations on them;
- 13) setting and conducting examinations for, and approving, any citizen or legal entity who intends to practice as a patent attorney;
- 14) on request by an author, establishing a value for an invention, industrial design or innovation;
- 15) making requirements to an organisation or official to provide documents which are relevant to a matter.
- 16) The Intellectual Property Office shall be financed from income earned in performing its functions.]

3. The Government shall approve the charter of the [Intellectual Property Office].

4. Central State and local administrative bodies shall perform work in the field of inventions, industrial designs and innovations as a part of their technology policies.

## **CHAPTER TWO**

### **Filing of Patent Applications for Inventions and Industrial Designs and Applications for Innovations and Examination of Applications**

#### **Article 6. Filing of patent applications for inventions and industrial designs**

1. A patent application for an invention or industrial design shall be filed with the [Intellectual Property Office] by the author of the invention or industrial design or by the natural or legal entity to whom the author has assigned the right to the patent.

2. A separate application shall be filed for each invention or industrial design. For a group of inventions which are linked so as to form a single general inventive concept, a single application may be filed.

3. The application for an invention shall contain a request, a description of the invention, a formulation and a brief explanatory note. If required, it shall also contain relevant drawings and certificates.

4. The application for an industrial design shall contain a request, a drawing of the industrial design and a description. If required, it shall also contain relevant materials concerning the drawing and the description.

5. The application shall state the filing date of the application, the request for patent, names and addresses of the author of the invention or industrial design, the applicant and the agent. If the applicant is not the author of the invention or industrial design, he or she shall submit a statement justifying his or her right to obtain a patent for the invention or industrial design. [In the case of inventions and industrial designs relating to the supply of food for humans or hygiene a document issued by the organisation responsible for epidemiology and hygiene should be attached certifying those inventions or designs will not harm the human body or health.]

6. In the request, the applicant may claim priority over earlier national, regional or international applications. In that case, the application shall contain relevant documents.

7. [An applicant may be represented by a patent attorney. A patent attorney must be registered with the Intellectual Property Office of Mongolia. The Intellectual Property Office shall establish regulations on the activities of patent attorneys. A patent attorney must be a citizen of Mongolia over the age of 25 years who has worked in the field of intellectual property for at least three years with higher education and no previous criminal convictions. The Ministers of Justice and Finance shall jointly determine the rate of salary for a patent attorney and ten percent of the income of a patent attorney shall be paid to the Intellectual Property Office.]

8. An application shall be written in Mongolian. If it is written in a language other than Mongolian, the applicant shall furnish a Mongolian translation of the application within two months of the date of receipt of the application by the [Intellectual Property Office]. [If a translation has not been submitted within the prescribed time the application concerned shall be deemed to have been withdrawn.]

## **Article 7. Filing of applications for innovations**

An application for an innovation shall be filed by the author or by an authorised agent and shall be submitted to the administration of the entity or organisation concerned. The application shall contain a request, a description of the innovation and evidential documents.

## **Article 8. Date of filing of patent applications**

1. The [Intellectual Property Office] shall verify the presence of the required documents in the application within 20 days of the date of receipt of the application. If the [Intellectual Property Office] finds that the application has fulfilled the requirements, it shall record as the filing date the date of receipt of the application.

2. If the [Intellectual Property Office] finds that the application has not fulfilled the requirements, it shall invite the applicant to file the required corrections and amendments.

3. If the applicant files the required corrections and amendments within 3 months from the date of receipt of the invitation referred to in [paragraph 2](#) of this article the [Intellectual Property Office] shall record as the filing date the date of receipt of the application. If no correction or amendment is made, the application shall be considered as having been rejected.

## **Article 9. Date of filing of applications for innovation**

The administration of the entity or organisation with whom the application has been filed shall record the filing date as the date of receipt of the application for an innovation.

## **Article 10. Examination of patent applications**

1. After recording the filing date, the [Intellectual Property Office] shall examine the invention or industrial design to determine if it complies with the requirements of [article 4](#) of this law.

2. The applicant shall, on request, supply to the [Intellectual Property Office] information on any application for a patent or other form of entitlement to protection which has been filed by the applicant in any other country and which relates to the same or essentially the same invention as that to which the application filed with the [Intellectual Property Office] relates.

3. During the examination procedure the applicant may request that the application be corrected or amended, provided that the correction or amendment shall not go beyond the disclosure made in the initial application. [If such a request is made the examination procedure may be

postponed. The duration of any postponement shall be consistent with the time limits provided for in [paragraph 5](#) of this article.]

4. During the examination procedure, the applicant may divide the application into two or more applications, provided that each divided application shall not go beyond the disclosure made in the initial application.

5. The [Intellectual Property Office] shall, according to the examination report, reach a decision as to whether or not to grant a patent within 9 months from the filing date of the application. If required, the [Intellectual Property Office] may extend this period for a further 12 months.

6. If it is decided to grant the patent, the formulation of the invention or the drawing of the industrial design and the particulars concerned shall be published in the Patent Gazette.

7. If the invention or industrial design has not been recognised, a copy of the examination report shall be sent to the applicant within 30 days from the date of conclusion of the examination and the report shall be kept at the patent library.

## **Article 11. Examination of applications for innovations**

1. The business entity or organisation with whom an application is filed shall, within 14 working days of the date of receipt of the application, prepare a report on whether the innovation is new and will be effective for its intended use in that entity or organisation.

2. The administration of the business entity or organisation shall examine the innovation and make a decision as to whether to recognise the innovation within 14 days of the date of completion of the report.

3. If the administration of the business entity or organisation recognises the innovation it shall, within 14 days of the date of agreeing to such recognition, refer its decision to the [Intellectual Property Office] together with a copy of the application.

4. If the administration of the business entity or organisation does not recognise the innovation, it shall give notice of its decision and a copy of the examination report to the applicant within 7 days of the date of its decision. If the applicant disagrees with the decision he or she may submit an appeal to the Court within 30 days of receiving notice of the decision.

5. *[deleted by amendment of 1 February 1997]*

## **Chapter Three Grant of Patents and Innovation Certificates**

### **Article 12. Grant of patents for inventions and industrial designs**

1. If, after the expiry of three months from the date of the publication in the Patent Gazette of the formulation of an invention or the drawing of an industrial design together with the particulars concerned, the [Intellectual Property Office] has received no notice of opposition and no dispute has arisen, it shall grant the patent. [The request for a patent should be submitted within 10 years of the filing date. On request by the owner of a patent, the rights in it shall be extended for a further period of 20 years provided that in that case the patentability of the invention satisfies the requirements for patentability at the time such request is made.]

2. If a notice of opposition is received or a dispute arises, the grant of the patent shall be deferred until the opposition or dispute has been settled in accordance with established procedure.

3. Patents for inventions and industrial designs shall be registered in the State register and applications shall be kept in the patent library.

### **Article 13. Grant of innovation certificates**

1. The [Intellectual Property Office] shall register innovations in the State register and shall grant a certificate to any innovator within 30 days of receipt of the decision to recognise the innovation.

2. *[deleted by amendment of 1 February 1997]*

### **Article 14. Term of patents and innovation certificates**

Patents for inventions and industrial designs shall be valid for terms of 20 and 10 years respectively; innovation certificates shall be valid for a term of 5 years; each such term shall run [from the date on which the patent or certificate is granted].

## **Chapter Four Rights of Creators of Inventions, Industrial Designs, Innovations and Patent Owners**

### **Article 15. Rights of creators of inventions or industrial designs**

1. The creator of an invention or industrial design shall be entitled to:

- 1) ownership of his or her invention or industrial design;
- 2) assign his or her right in a patent to another person;
- 3) name his or her invention or industrial design;
- 4) take part in the drafting of technical documentation, testing and implementation of his or her invention or industrial design during the production process;
- 5) receive an appropriate sum from profits which arise from the use of his or her invention or industrial design.]

2. The right to a patent for an invention or industrial design which was created jointly shall belong to the authors jointly. A joint author shall not be able to assign his or her rights in a patent without the consent of the other authors.

3. If two or more persons independently create the same invention or industrial design the right to a patent shall belong to the author who first submits an application to the [Intellectual Property Office]. To determine which application is submitted first, reference shall be made to the filing date.

4. *[deleted by amendment of 1 February 1997]*

### **Article 16. Rights of creators of innovations**

Creators of innovations shall be entitled:

- 1) to take part in or to take under his or her control the drawing up of technical documentation and testing and implementation of the innovation;
- 2) to be remunerated for any exploitation of the innovation.

## **Article 17. Rights of patent owners**

1. Patent owners shall have the exclusive right to exploit their invention or industrial design.
2. Patented inventions or industrial designs shall be exploited only with the permission of the patent owner.
3. Patent owners shall have the right to assign their rights in a patent.

## **Chapter Five Exploitation of Inventions, Industrial Designs and Innovations**

### **Article 18. Exploitation of patented inventions and industrial designs**

1. Making, selling, using, importing or storing an invention or industrial design for the purposes of making, selling or using that invention or design shall be recognised as exploitation of the protected invention or industrial design.

2. The performance of the following acts of using patented inventions or industrial designs shall not constitute an infringement of the exclusive rights of patent owners:

- 1) the use of articles which have been put on the market in this country by a patent owner or by another person with the patent owner's consent;
- 2) use for scientific research or experimental purposes in Mongolia;
- 3) use of an invention or industrial design on a means of transport belonging to another country which temporarily or accidentally enters the airspace or territory of Mongolia.

3. Any person who, before the filing date of the application, was using the invention or industrial design or was making effective and serious preparation for use of such device, may exploit it without the consent of the patent owner. The scale and scope of such exploitation of the invention or industrial design may not be extended.

[4. The Intellectual Property Office shall establish the State Reserve Fund of Inventions to ensure the effective use of inventions and industrial designs. The Intellectual Property Office shall hold the patent rights in all inventions which form part of that fund.]

### **Article 19. Licence contracts**

1. Any interested person may exploit a patented invention or industrial design by concluding a licence contract with the patent owner.

2. The licence contract shall specify:

- 1) the methods, scope and term of exploitation of the invention or industrial design;
- 2) the rights and duties of the contracting parties;
- 3) the amount of payment for the exploitation of the invention or industrial design and the payment terms.

3. A licence contract shall be registered with the [Intellectual Property Office]

4. If the patent owner is a citizen or legal person of Mongolia, he or she shall get permission from the [Intellectual Property Office] to conclude a licence contract for the exploitation abroad of the invention or industrial design and such exploitation must, if required, be under State control.

5. A licence contract for the exploitation of an invention relating to any of the following matters may only be concluded with the permission of the relevant State central administrative body: methods of treatment of the human body, cattle or animals in relation to diagnostics and prophylactics for human or animal diseases; plant varieties; breeds of cattle or animals; biological methods for the production of plant varieties or breeds of cattle or animals; strains of micro-organisms and the mediums for their cultivation.

6. The contracting parties shall keep the contents of the licence contract confidential.

[7. The owner of a patent may submit a request to the Intellectual Property Office for permission for any interested party to use his or her invention pursuant to a licence contract.]

## **Article 20. Compulsory licences**

1. In the following cases, on the request of any interested person, a compulsory licence in respect of a patented invention may be granted by the [Intellectual Property Office]:

- 1) if the invention must be used for a purpose associated with the public interest and in particular with national security, food supply or health
- 2) if the invention has not been used or has been insufficiently used for a period of four years from the filing date of the patent application or three years from the date of the grant of the patent (whichever period expires last) and the patent owner does not satisfy the [Intellectual Property Office] that circumstances exist which justify the lack of use of the invention in Mongolia;
- 3) if the patent owner sets unacceptable terms for the exploitation of the invention.

2. If the patent owner disagrees with a decision of the [Intellectual Property Office] to grant a compulsory licence he or she may appeal to the Court.

## **Article 21. Exploitation of innovations**

A business entity or organisation which recognises an innovation shall conclude a contract with the innovator to exploit the innovation. In the contract, the amount of payment for the exploitation of the innovation and the payment terms shall be specified. The innovator may conclude a contract for the exploitation of his or her invention with other business entities or organisations.

## **Article 22. Obligations of business entities or organisations and patent owners**

1. A business entity or organisation exploiting an invention, industrial design or innovation shall report on the profit received from the exploitation in its balance sheet and shall keep the production method confidential.

2. Any changes in the name and address of patent owners shall be communicated to the [Intellectual Property Office] for recording in writing.

## **Article 23. Inventions and industrial designs related to State secrecy**

Relations arising in connection with inventions and industrial designs which are related to State secrecy shall be regulated by the relevant law.



## **Article 24. Patent and licence fees**

1. Fees shall be paid in order to maintain patents and for the registration of licence contracts. The fees shall be payable to the [Intellectual Property Office]

2. Fees shall be regulated by law.

## **Article 25. Times for payment of fees**

1. A fee shall be paid at fixed intervals so as to maintain the patent in force.

2. The fee for the first three years shall be paid within six months of the date of the decision to grant the patent. Fees for subsequent periods shall be paid during the six month period immediately prior to the completion of that period.

3. If the patent owner is unable to pay the fee within the time limit prescribed in [paragraph 2](#) of this article he or she may pay the fee within six months of the date of expiry of that period. In that case a surcharge of the same amount as the fee for that period shall also be paid.

[4. Any interested person seeking to enforce the effectiveness of a patent may, with the consent of the patent owner, pay the patent fee.]

## **Article 26. Invalidation of patents**

1. Any interested person may present a complaint to the Court to take action to invalidate a patent.

2. If a patent is granted in breach of [articles 4, 6, 8, 10, or 12](#) of this law the Court shall invalidate the patent. In that case, the [Intellectual Property Office] shall record the corresponding changes in the State register and shall publish notices of the invalidation of the invention or industrial design in the Patent Gazette.

3. In the case of surrender of a patent, refusal to pay a fee or non-payment of a fee within the time limit fixed in [paragraph 3 of article 25](#) of this law, the [Intellectual Property Office] shall invalidate the patent. In such a case, the right to any patent in respect of an invention or industrial design which must be under State control shall be transferred to the corresponding State central administrative body.

[4. If a patent is withdrawn due to non-payment of the patent fee, that patent may be renewed with the consent of the patent owner within the effective period of the patent.]

## **Chapter Six Miscellaneous Provisions**

### **[Article 27. Appeals and settlement of disputes**

The Intellectual Property Office shall examine and consider any appeal filed in connection with the examination of an application for an invention or industrial design and shall give written notice of its decision within six months of receipt of the appeal. If a party wishes to dispute that decision it may appeal to the Court within 30 days of receipt of the decision.]

## **Article 28. Liability for breach of patent law arising out of infringement of rights of creators of inventions and industrial designs, innovators and patent owners**

1. [If a breach of the patent legislation does not result in criminal liability, a judge shall impose on a person in breach of the patent legislation a fine of up to 25,000 togrogs, and, in the case of a business entity or organisation, a fine of up to 250,000 togrogs.]

2. Any person who infringes the rights of creators of inventions or industrial designs, or of the owners of innovations or patents shall be liable to sanctions under the laws of Mongolia.

3. The procedure for the payment of compensation for losses caused by infringements of rights in a patent shall be determined in accordance with the Civil Code of Mongolia.

## **Article 29. Coming into force of the law**

1. This law shall come into effect on 1 September 1993.

2. This law shall not apply retrospectively.

Chairman of the State Ih Hural of Mongolia

N Bagabandi

General Secretary of the Secretariat of the State Ih Hural of Mongolia

N Rinchindorj

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25 June 1993

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