

Law on Patent Agents of January 9, 1993

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Table of Contents

		<i>page</i>
Part I	General provisions.....	1
Part II	Qualifications and authorization needed for the practicing of the patent agent profession.....	1
Part III	Rights and obligations of patent agents	3
Part IV	Self-administration of patent agents	4
Part V	Disciplinary responsibility.....	6
Part VI	Transitional and final provisions.....	7

Part I General provisions

1.-

This Law regulates the principles of the practicing of the patent agent profession, rights and obligations of patent agents, rules and procedure for the acquirement of the qualifications for the practicing of this profession, as well as the rules of activity of the patent agents self-administration.

2.-

(1). The objective of the practicing of the patent agent profession is to provide assistance in any matters relating to industrial property.

(2). The patent agent profession may be practiced on a basis of a contract of employment or independently, on a patent agent own behalf.

3.-

Any reference in this Law to:

- i) the Patent Office – shall mean the Patent Office of the Republic of Poland,
- ii) industrial property matters – shall mean the acquirement, maintenance and execution of rights relating to subjects resulting from inventive activity, destined for industrial application, as well as to names and marks intended for distinguishing goods and services in industrial and commercial activities, and to the combat of unfair competition.
- iii) self-administration – shall mean the self-administration of patent agents.

Part II Qualifications and authorization needed for the practicing of the patent agent profession

4.-

(1). The patent agent profession may only be practiced by a person meeting the requirements prescribed in this Law.

(2). The employees of the Patent Office shall not be permitted to practice the patent agent profession.

5.–

- (1). The right to practice the profession and make use of the title “patent agent” shall be acquired after the taking the oath and upon the entry in the patent agent register.
- (2). The patent agent register shall be kept by the Patent Office.
- (3). The patent agent register shall be freely accessible for public.
- (4). The entry in the patent agent register shall be made at the request of a person concerned.
- (5). The President of the Patent Office shall lay down the rules for keeping the patent agent register.

6.–

The patent agent register may be entered in by anyone, who:

- i) is a Polish citizen and has at least three years been permanent resident on the territory of the Republic of Poland,
- ii) enjoys full legal capacity and full civic rights,
- iii) has not been punished for an offence committed deliberately and his normal reputation is of that kind that guarantees his capabilities to practice the patent agent profession in proper way,
- iv) is graduated from a university or a high technical school, especially from the technical or law faculties,
- v) completed the professional training and was in practice in matters relating to industrial property protection,
- vi) passed the professional examination.

7.–

(1). The scope of a theoretical and practical training as well as forms and the duration of the practice referred to in section 6(v) shall be determined by the President of the Patent Office after having consulted the self-administration body.

(2). The President of the Patent Office may, in reasonable cases, exempt a candidate for patent agent from the requirements specified in section 6(v) wholly or in part.

8.–

(1). The professional examination for candidates for patent agents shall be conducted by an Examining Board appointed by the President of the Patent Office.

(2). The President of the Patent Office shall, in consultations with the self-administration, indicate the subject matter and the procedure for conducting the examination as well as the amount of the examination fee.

9.–

(1). The oath formula taken by the patent agent shall be as follows:

“I promise to practice the patent agent profession with conscientiousness and due respect to the law, to maintain secrecy about any professional matters, behave in proper and honest way and observe the principles of professional ethics”.

(2). The oath shall be taken before the President of the Patent Office and in presence of a representative of the self-administration body.

10.–

(1). The Patent Office shall issue a licence to a patent agent entered in the patent agent register, which constitutes the confirmation of the right to practice the profession and to make use of the title “patent agent”.

(2). The President of the Patent Office shall determine the form of a patent agent licence.

11.–

(1). The cancellation of the entry in the patent agent register shall take place in the case:

- i) of making a declaration, by a person concerned, on the renouncement of his right to practice the profession,
- ii) of loss of the Polish citizenship,

- iii) where a valid sentence for a deliberate offence has been passed or a valid judgment delivered on the loss or restriction of legal capacity, the loss of civic rights or on the prohibition to practice the patent agent profession,
- iv) of a patent agent death.

(2). In the case of the cancellation of the entry in the patent agent register, re-entering in the register shall, at the request of a person concerned, be made after a reason for the cancellation has ceased to exist, when, at the same time, taking into account the provisions of sections 6 and 7 and after having taken an opinion of the self-administration body.

12.–

(1). A decision on the entry or refusal to entry in the patent agent register, as well as on the cancellation of the entry in the register, shall be taken by the President of the Patent Office.

(2). The entry in the patent agent register and the cancellation of the entry in the register shall be communicated in the official gazette “Wiadomosci Urzedu Patentowego”.

Part III Rights and obligations of patent agents

13.–

(1) A patent agent is obliged to provide assistance in matters relating to industrial property, particularly in the following:

- i) drawing up applications of patentable subject matter and filing them, as well as the participation in granting, litigation and appeal proceedings,
- ii) performing actions relating to the maintenance of exclusive rights and counteracting infringement thereof,
- iii) preparation of contracts in industrial property protection matters, participation in negotiations with domestic and foreign contractors and cooperation in the execution of these contracts.

(2). The President of the Patent Office shall, in consultations with the self-administration body, determine detailed rules for keeping files and dossier by patent agents.

14.–

(1). A patent agent shall, when having the right to appoint other patent agents as representatives, act as a representative in proceedings before the Patent Office, the Board of Appeals with the Patent Office, common courts and other adjudicative authorities deciding in industrial property protection matters.

(2). The patent agent who has renounced his power of attorney, shall be obliged to continue his duties for a period of additional two months, provided that the case has not earlier been taken over by another patent agent or he has not earlier been released by the person who had appointed him as a representative.

(3). In the case of the suspension of a patent agent in practicing his profession or of the cancellation of the entry in the patent agent register, the self-administration of patent agents shall appoint an acting substitute representative. The self-administration may also appoint an acting substitute representative for the patent agent who remains in temporary incapability to perform his duties and has failed to appoint his substitute.

15.–

(1). When practicing his professional duties, patent agents shall enjoy legal protection vested in barristers, and freedom of speech and writing to the extent prescribed by the provisions on the Bar.

(2). The patent agent may not be bound, as to the substance of an opinion or advice given, by a service order.

(3). When performing his professional duties, the patent agent shall be obliged to maintain secrecy of any information acquired.

16.–

The patent agent shall not be allowed to accept the substitution or provide assistance if he has acted as a representative of the opposite party or provided assistance to this party in the same or relating case; he shall neither be allowed to accept the substitution nor provide assistance in a case, in which he has participated by the authorization of the governmental administration or self-administration bodies.

Part IV

Self-administration of patent agents

17.–

(1). Hereby the Polish Chamber of Patent Agents is established, hereinafter referred to as “self-administration”.

(2). Membership in the self-administration shall be obligatory and become effective upon the entry in the patent agent register.

(3). The Polish Chamber of Patent Agents shall enjoy the status of legal person.

18.–

The self-administration shall represent patent agents and protect their professional interests, in particular through:

- i) taking measures for securing proper conditions for the practicing of the patent agent profession,
- ii) participation in forming and application of the law in the field of industrial property protection as well as in the organization and practicing of the patent agent profession,
- iii) cooperation with the Patent Office in conducting training's in industrial property protection matters,
- iv) improvement of professional qualifications of patent agents,
- v) taking care of the practicing of the patent agent profession in proper way,
- vi) making studies aimed at improving the organisation and the practicing of the patent agent profession.

19.–

(1). The self-administration consists of: National Conference of Patent Agents, National Council of Patent Agents, Audit Commission, Appeal Disciplinary Commission, Disciplinary Commission and Disciplinary Prosecutor.

(2). The term of office of the self-administration authorities shall be four years.

20.–

The organizational structure of the self-administration and a detailed procedure of the establishment of its authorities shall be determined in the statute adopted by the National Conference of Patent Agents.

21.–

The National Conference of Patent Agents shall, as the supreme self-administration authority, be responsible for:

- i) adoption of the statute,
 - ii) adoption of the directions of the self-administration activity, principles of professional ethics and passing other resolutions admitted by the Conference as advisable,
 - iii) laying down the rules for holding elections to the self-administration authorities, fixing the number of members of these authorities and rules of recalling and completion of the composition of the Conference, as well as of passing resolutions by the self-administration authorities,
 - iv) adoption of the regulations of activity of the self-administration authorities,
 - v) determination of the rules of financial activity of the self-administration and fixing of the amount of a membership fee,
-

- vi) election of the Chairman of the Polish Chamber of Patent Agents who shall also preside the National Council of Patent Agents, as well as of Chairmen of the Audit Commission, Appeal Disciplinary Commission, Disciplinary Commission and of the Disciplinary Prosecutor,
- vii) election of members of the National Council of Patent Agents, Audit Commission, Appeal Disciplinary Commission and Disciplinary Commission,
- viii) examination and adoption of the reports of the National Council of Patent Agents, Audit Commission, Appeal Disciplinary Commission and Disciplinary Prosecutor.

22.–

The National Council of Patent Agents shall be responsible for:

- i) representation of the self-administration,
- ii) giving opinions to draft legal acts and presentation of proposals relating to the legal regulations in the field of industrial property protection and patent agents,
- iii) adoption of the budget of the National Council, approval of the reports of its execution and the consideration of motions submitted by the Audit Commission,
- iv) organization of training courses for candidates for patent agents and of the improvement of professional qualifications of patent agents,
- v) running of the financial activity of the self-administration,
- vi) adoption of the directions for fixing the amount of royalties for patent agent activities,
- vii) performance of other self-administration's tasks not falling within the responsibilities of other self-administration authorities.

23.–

The Audit Commission shall supervise the organizational and financial activities of the National Council of Patent Agents.

24.–

(1). The Disciplinary Commission shall be responsible for deciding in disciplinary matters concerning patent agents, submitted by the Disciplinary Prosecutor, and in complaints against directions given by the Disciplinary Prosecutor.

(2). The Appeal Disciplinary Commission shall examine appeals against the decisions taken by the Disciplinary Commission.

(3). The Disciplinary Prosecutor shall receive or submit requests for the institution of a disciplinary proceedings and conduct explanatory proceedings.

25.–

The self-administration's activity shall be financed from:

- i) contributions of patent agents,
- ii) running of economic activity, excluding in matters referred to in section 13(1).
- iii) incomes from other sources, including donations and inheritances.

26.–

(1). The Ombudsman, General Public Prosecutor and President of the Patent Office may lodge an appeal with the Supreme Court against a resolution of the self-administration authority on the ground of its inconsistency with the law. The Supreme Court shall either dismiss the appeal or repeal the appealed resolution and remand the case to the self-administration authority, which shall be bound by the Supreme Court's decision.

(2). The President of the Patent Office may move to the National Council of Patent Agents for the adoption of a resolution in a specific case falling within the competence of the self-administration authority. The National Council of Patent Agents shall consider this motion within a period of one month.

(3). The National Council of Patent Agents shall submit annually to the President of the Patent Office the information on the self-administration's activity.

Part V

Disciplinary responsibility

27.–

(1). Patent agents shall be liable to disciplinary responsibility for acts contrary to the oath, in particular for deliberately improper execution of their professional duties.

(2). The acts violating the regulations indicated in the Labour Code, concerning the work discipline and order, shall be exempted from the disciplinary responsibility.

28.–

(1). Disciplinary punishments shall be the following:

i) admonition

ii) censure and warning

iii) suspension in the right to practice the patent agent profession for a period of five years.

(2). The punishment shall be canceled in the register upon the expiration of three years of its execution.

(3). A copy of the final decision with the sentence to a disciplinary punishment shall be added to the personal dossier of the person sentenced.

29.–

(1). (Disciplinary proceedings relating to the same act shall be conducted independently of a penal proceedings or a separate disciplinary proceedings resulting from the special provisions to which the defendant is amenable. The disciplinary proceedings may be suspended until the penal proceedings is concluded.

(2). In case, where a penal proceedings is instituted against a patent agent, the Disciplinary Commission may suspend the right to practice the patent agent profession until the pending proceedings is concluded. The suspension in the right to practice the profession may also be decided in the case of the persistent evasion of the defendant from taking part in the disciplinary proceedings.

(3). The decisions in the matters referred to in subsection (2) shall be subject to complaint to the Appeal Disciplinary Commission, which can be lodged within a period of one month of the day on which the decision is served upon the defendant in writing.

30.–

(1). The disciplinary proceedings before the Disciplinary Commission shall be instituted at the request of the Disciplinary Prosecutor after the explanatory proceedings is carried out.

(2). The Disciplinary Prosecutor shall institute an explanatory proceedings at his own motion or at the motion of the Chairman of the Polish Chamber of Patent Agents or the President of the Patent Office.

(3). Period of limitation of the punishability of the offence shall expire after six months of the moment when the Disciplinary Prosecutor is noticed on the commission of the offence or upon the expiry of one year of its commission.

(4). Where, however, the act is recognized as being a criminal offence, the limitation in disciplinary cases shall not have effect before the limitation provided for in the penal law.

(5). Period of limitation in disciplinary cases shall be suspended by any action taken by the Disciplinary Prosecutor.

(6). The Disciplinary Prosecutor shall not institute a proceedings and shall discontinue the proceedings already instituted, where:

i) the act has not been committed or the act is recognized as being a criminal offence,

ii) the defendant is dead,

iii) the act is barred by limitation,

iv) the act is recognized not to be an offence because of the minimal degree of danger to the public weal.

31.–

The Disciplinary Commission and the Appeal Disciplinary Commission shall take decisions at sittings.

32.–

(1) When taking decisions, members of disciplinary commissions shall be independent and disciplined only by the law.

(2). The Disciplinary Commission shall decide in three–member boards and the Appeal Disciplinary Commission shall decide in five–member boards.

(3). In course of the proceedings the Disciplinary Commission shall order a hearing with the participation of the defendant; where the clarification of the case is considered to be satisfactory, the hearing shall be declared closed.

(4). The Disciplinary Commission may renounce from inflicting a disciplinary punishment, if it finds the offence to be of minor consequence.

(5). The decisions of the Disciplinary Commission shall be subject to appeals lodged with the Appeal Disciplinary Commission within one month of the day on which the decision is served, in writing, upon the parties.

33.–

The defendant shall, during the disciplinary proceedings, be entitled to appoint a counsel for the defense.

34.–

The provisions of the Penal Procedure Code shall apply mutatis mutandis to the cases not governed by the provisions of this Part.

Part VI Transitional and final provisions

35.–

(1). The patent agents entered in the patent agent register by the day of the entry of this Law into force, shall be deemed to be patent agents in the meaning of this Law.

(2). The patent agents referred to in subsection (1) shall be required to furnish, within a period of three months as from the date of the entry of this Law into force, a declaration on the practicing of the patent agent profession.

36.–

Any persons who, by the day of the entry of this Law into force, became qualified to be entered in the patent agent register under the former Law, may apply, within two years as from the entry of this Law into force, for being entered in the patent agent register.

37.–

Any persons being, at the date of the entry of the Law into force, under the training for the patent agent profession and are expected to complete the training in due time may, under the former rules, enter the professional examination and request for being entered in the patent agent register.

38.–

(1). The President of the Patent Office shall, within six months as from the entry of this Law into force, convoke the first National Conference of Patent Agents.

(2). Any patent agents entered in the patent agent register shall be entitled to participate in the first National Conference of Patent Agents.

39.–

In Article 51 of the Law of January 31, 1985 on Trademarks (O.J. No 5 item 17 and of 1989 No 35 item 192) the expression “of the units authorized by the Ministry of Foreign Trade” shall be replaced by the words “of a patent agent being the permanent resident in Poland”.

40.–

The Law on April 21, 1966 on patent agents (O.J. No 14, item 86) is repealed.

41.–

The Law shall become effective upon the expiry of thirty days of its promulgation.
