

FEDERAL LAW
NO. 316-FZ OF DECEMBER 30, 2008
ON PATENT ATTORNEYS
(with the Amendments and Additions of July 11, 2011)

Adopted by the State Duma December 24, 2008

Approved by the Federation Council December 29, 2008

Article 1. The Subject Matter of the Regulation

1. In accordance with the **Civil Code** of the Russian Federation the present Federal Law regulates relationships that have to do with the activities of patent attorneys on the territory of the Russian Federation, defines requirements applicable to patent attorneys, establishes the procedure for the attestation and registration thereof, and also defines the rights, duties and accountability of patent attorneys.

2. The patent attorney is responsible for solicitation with the **federal executive governmental body charged with intellectual property** matters on behalf of applicants, right-holders and other concerned citizens and legal entities which permanently reside (for citizens) or are located (for legal entities) in the Russian Federation or abroad, except as otherwise established by an international treaty of the Russian Federation or the legislation of the Russian Federation.

Article 2. The Requirements Applicable to a Patent Attorney

1. The following persons shall be deemed patent attorneys: citizens who have received in the procedure established by the present Federal Law the status of patent attorney and who are pursuing an activity relating to the legal protection of the results of intellectual activities and means of individualisation, protection of intellectual rights, acquisition of exclusive rights to the results of intellectual activities and means of individualisation and disposal of such rights (hereinafter referred to as "the activities of a patent attorney").

2. A citizen of the Russian Federation may be attested and registered as a patent attorney, provided that he/she:

- 1) has reached the age of 18;
- 2) is permanently residing on the territory of the Russian Federation;
- 3) has a higher education background;
- 4) has at least a four-year record of work in the area of patent attorney's activities in accordance with the specialisation in respect of which the citizen is seeking for being attested and registered as a patent attorney.

3. The following persons shall not be attested as patent attorneys:

1) citizens deemed in the procedure established by the **legislation** of the Russian Federation as lacking dispositive capacity or having limited dispositive capacity;

2) citizens whose activities as patent attorneys is suspended by a court decision for an indefinite term, until the expiry of the term, and citizens removed from the Register of Patent Attorneys of the Russian Federation (hereinafter referred to as "the Register") -- in the procedure set out in **Article 10** of the present Federal Law.

4. The following shall not be registered as patent attorneys:

1) state employees, persons occupying state positions of the Russian Federation, state positions of subjects of the Russian Federation or municipal positions and municipal employees;

2) employees of the organisations reporting to the federal executive governmental body charged with intellectual property matters;

3) citizens deemed in the procedure established by the **legislation** of the Russian

Federation as lacking dispositive capacity or having limited dispositive capacity.

Article 3. The Forms of Activity of Patent Attorneys

1. A patent attorney is entitled to pursue his/her professional activity on his/her own by means of private practice and also under a labour contract between the patent attorney and an employer (legal entity).

2. The patent attorney's employer that has concluded a civil-law contract with an applicant, right-holder or other person concerned, such contract including provisions on the performance of work (provision of services) that have to do with the activities of the patent attorney shall:

1) make sure the patent attorney with which the labour contract has been concluded properly executes relevant instructions and if the execution is not proper it shall subject the patent attorney to disciplinary measures in accordance with the **labour legislation**;

2) ensure the preservation of the documents received from an assignor, customer or other persons in the course of performance of the civil-law contract;

3) inform the assignor, customer that he/she cannot perform his/her obligations under the civil-law contract due to the occurrence of circumstances impeding the performance thereof;

4) not disclose the information for which a provision requiring the observance of its non-disclosure status is established and which is received in the course of performance of the civil-law contract, except for the cases envisaged by the legislation of the Russian Federation.

3. The name "**patent attorney**" or a combination of words including that name may be used only by patent attorneys, employers of patent attorneys, public associations and self-regulating organisations of patent attorneys.

Article 4. The Rights and Duties of a Patent Attorney

1. Within the specialisation indicated in the Register a patent attorney is entitled to carry out the following types of patent attorney's activity in the interests of the employer who has concluded a labour contract with him/her or of a person who has concluded a civil law contract with him/her or with his/her employer:

1) to provide consultations on issues of the legal protection of the results of intellectual activities and means of individualisation, the protection of intellectual rights, the acquisition of exclusive rights to the results of intellectual activities and means of individualisation, and the disposal of such right;

2) to carry out patent research and analysis of the circumstances that stipulate the selection of the subject matter of legal protection;

3) to complete formalities and file on behalf of an assignor, customer or employer the applications and other documents required under the **legislation** of the Russian Federation and international treaties of the Russian Federation for seeking legal protection for the results of intellectual activities and means of individualisation, for instance, those created in the course of international scientific and technological cooperation. When patent applications are filed for secret inventions the patent attorney shall be cleared for handling information deemed a **state secret**;

4) to interact on behalf of an assignor, customer or the employer with the federal executive governmental body charged with intellectual property matters and with the patent disputes chamber formed under it, for instance, to maintain correspondence, prepare and send objections to expert examination decisions, applications and other documents and attend expert and other meetings and sessions;

5) to carry out a legal expert examination of draft civil-law contracts serving as a basis for the acquisition of exclusive rights to the results of intellectual activities and means of

individualisation and the disposal of such rights, and also to provide consultations on issues relating to the conclusion and performance of such contracts;

6) to attend a court hearing as an expert or a representative acting on behalf of an assignor, customer or the employer in cases relating to the legal protection of the results of intellectual activities and means of individualisation, the protection of intellectual rights, the acquisition of exclusive rights to the results of intellectual activities and means of individualisation and also the disposal of these rights;

7) to pursue another activity of a patent attorney -- not prohibited by the legislation of the Russian Federation -- in the interests of an assignor, customer or employer.

2. The patent attorney's powers to solicit in dealings with the federal executive governmental body charged with intellectual property matters shall be certified by a power of attorney issued by an applicant, right-holder, employer or another person concerned and not needing attestation by a notary. If it is necessary to confirm the powers of the patent attorney the federal executive governmental body charged with intellectual property matters may ask the patent attorney to present the power of attorney, with it being subsequently returned. If the power of attorney is drawn up in a foreign language its Russian translation shall be presented simultaneously with the power of attorney.

3. The patent attorney is not entitled to receive an assignment from an assignor or customer if he/she:

1) has been directly involved in the consideration of the case being the subject matter of the assignment and in the taking of a decision concerning the case as an employee of the federal executive governmental body charged with intellectual property matters or of an organisation reporting thereto;

2) represents or provides consultations to the persons whose interests conflict with the interests of his/her assignor or customer, unless both parties have given their consent thereto.

4. The patent attorney shall refuse to perform an assignment if a case being a part of the assignment is being considered in the federal executive governmental body charged with intellectual property matters and/or in an organisation reporting thereto by an employee in respect of which or in respect of whose direct supervisor the patent attorney was a kinship relation.

5. Having received from the assignor or customer materials of the case being part of the assignment the patent attorney shall confirm receipt thereof or if he/she has terminated his/her activities or if the assignor or customer so requested or if the effective term of the contract or power of attorney has expired he/she shall return the materials of the case being part of the assignment, except as otherwise envisaged by the contract.

6. The patent attorney shall ensure the preservation of the documents received and/or drawn up in the course of pursuance of his/her activities. The patent attorney is not entitled to transfer or otherwise disclose the information contained in these documents without the consent in writing of the person whose interests he/she represents.

Article 5. Public Associations and Self-Regulating Organisations of Patent Attorneys

1. Patent attorneys are entitled to form public associations of patent attorneys in accordance with the **legislation** of the Russian Federation and/or to be members thereof (participants therein) and also to form self-regulating organisations of patent attorneys.

2. An empowered body of a public association or of a self-regulating organisation of patent attorneys shall send a notice within 30 days after the formation thereof concerning the formation of such public association or such self-regulating organisation and concerning the membership thereof with regard to the provisions of **Federal Law** No. 152-FZ of July 27, 2006 on Personal Data to the federal executive governmental body charged with intellectual property matters so that relevant information be entered in the Register.

Article 6. Procedure for Attesting Contenders for Patent Attorneys

1. Contenders for patent attorneys shall be attested by the federal executive governmental body charged with intellectual property matters, which shall form a qualification commission headed by an official of the federal executive governmental body charged with intellectual property matters. The procedure for deliberations of the qualification commission shall be established by the federal executive governmental body charged with normative legal regulation in the area of intellectual property.

2. Among the members of the qualification commission there shall be patent attorneys nominated by public associations and self-regulating organisations of patent attorneys. The patent attorneys sitting on the qualification commission shall make up one third of the total number of members of the qualification commission. The patent attorneys sitting on the qualification commission are subject to rotation once every three years.

3. An attestation of contenders for patent attorneys shall be carried out at least twice a year.

4. The attestation of contenders for patent attorneys shall include the following:

1) verification of the observance of the requirements applicable to a patent contender under **Parts 2 and 3 of Article 2** of the present Federal Law, **Part 13** of the present Article, which is to produce results serving as basis for a decision on clearing for a qualification examination or refusing to grant such clearance;

2) a qualification examination during which it shall be found out if the contender for the patent attorney has the necessary knowledge for pursuing the activities of a patent attorney and relevant skills to apply it in practice;

3) the taking of a decision on attestation or on refusal to grant attestation according to the results of the qualification examination.

5. A citizen who has expressed his/her will to acquire the status of a patent attorney shall file a patent attorney attestation application with the federal executive governmental body charged with intellectual property matters in the form established by the federal executive governmental body charged with intellectual property matters, and present copies of his/her certificate of higher professional education, work-record book, labour contract and/or other documents confirming his/her observance of the requirement envisaged by **Item 4 of Part 2 of Article 2** of the present Federal Law.

6. Having received the patent attorney attestation application, the qualification commission shall find out if the citizen who has expressed his/her will to acquire the status of patent attorney observes the requirements in accordance with Item 1 of Part 4 of the present Article, and it shall take a decision on clearing him/her for taking a qualification examination or on refusing to grant clearance for taking a qualification examination if the citizen does not meet the requirements established by the present Federal Law as applicable to patent attorneys or if he/she has provided unreliable information. Citizens cleared for taking a qualification examination shall be informed of the time and place of the examination at least one month before it.

7. The qualification examination shall be conducted on the basis of examination assignments confirmed by the qualification commission, in accordance with the specialisation(s) indicated in the patent attorney attestation application including the following:

1) inventions and utility models;

2) industrial design;

3) trademarks and service marks;

4) the appellation of origin of goods;

5) computer software, databases and integral microchip layouts.

8. A payment shall be charged for the qualification examination, with the **rate** of, and the

procedure for collecting, it being established by the Government of the Russian Federation. Citizens cleared for the qualification examination in compliance with Part 6 of the present article may proceed to take it, provided they have shown a document confirming that the established payment has been made.

9. Within one month after the end of the qualification examination, the qualification commission shall take a decision on attestation or refusal to grant attestation. The qualification commission's decision on the results of attestation shall take effect as of the date of the decision.

10. The qualification commission is not entitled to refuse to grant attestation as a patent attorney to a citizen who has passed the qualification examination, except for cases when the circumstances described in **Parts 2 and 3 of Article 2** of the present Federal Law and deemed an obstacle for attestation have been discovered after the qualification examination.

11. If he/she disagrees with the qualification commission's decision on refusal to clear for a qualification examination or on refusal to grant attestation the citizen is entitled to appeal against the relevant decision to an appellate commission within three months after he/she received it.

12. The attestation of the patent attorneys who have expressed a will to broaden the area of activity within the specialisations described in **Part 7** of the present Article shall be carried out in observance of the requirements set out in the present Federal Law and in the procedure established by it.

13. A citizen who has been refused being granted of attestation according to the results of a qualification examination in accordance with the specialisation stated in the patent attorney attestation application shall be cleared for a repeated attestation in the given specialisation at least six months after the date of the qualification commission's decision on refusal to grant attestation.

Article 7. Procedure for Registering a Patent Attorney in the Register

1. The registration in the Register of a citizen attested as a patent attorney shall be carried out by the federal executive governmental body charged with intellectual property matters on the basis of the qualification commission's decision on attestation and the patent attorney's application drawn up in the form established by the federal executive governmental body charged with normative legal regulation in the area of intellectual property, provided there are no grounds described in **Part 4 of Article 2** of the Federal Law for refusal to grant registration. A refusal to grant registration to a patent attorney may be appealed in court.

2. A registration application for registration in the Register may be filed by a citizen attested as a patent attorney with the federal executive governmental body charged with intellectual property matters within three months after the qualification commission's decision on attestation together with a document confirming that the state duty has been paid for the issuance of a certificate as envisaged by the **legislation** of the Russian Federation on taxes and fees. In the event of laches for a good reason, the term may be reinstated by the federal executive governmental body charged with intellectual property matters on an application of the citizen attested as patent attorney.

3. Starting from the date of registration in the Register of the citizen who has been attested as a patent attorney, he/she acquires the status of patent attorney.

4. The Register shall contain the following details:

- 1) the registration number of the patent attorney being also the number of the registration certificate of the patent attorney, and the date of registration of the patent attorney;
- 2) the surname, first name and patronymic of the patent attorney;
- 3) the number and date of the qualification commission's decision on attestation;
- 4) the specialisation of the patent attorney;

5) the name of the employer of the patent attorney or reference to the fact that he/she pursues his/her professional activities on his/her own;

6) address for correspondence on the territory of the Russian Federation and also an e-mail address, contact phone number, fax number, if any, and the language for correspondence;

7) the sanctions envisaged by [Articles 9 and 10](#) of the present Federal Law and imposed on the patent attorney;

8) the names of the public associations and self-regulating organisations of patent attorneys in which the patent attorney is member (participant).

5. The procedure for keeping the Register shall be established by the federal executive governmental body charged with normative legal regulation in the area of intellectual property. The patent attorney shall send information on all changes in the details mentioned in Part 4 of the present article to the federal executive governmental body charged with intellectual property matters within 30 days after the occurrence of such changes so that they be entered in the Register. Also information shall be entered in the Register concerning the removal of patent attorneys from the Register and the reinstatement of registration thereof. Any person is entitled to obtain a statement of the Register containing the information published in accordance with Part 7 of the present article, by means of filing a relevant application with the federal executive governmental body charged with intellectual property matters.

6. Within 30 days after receipt of a registration application for registration of a patent attorney in the Register and a document confirming that the state duty has been paid, the federal executive governmental body charged with intellectual property matters shall register the patent attorney in the Register and hand a certificate of a patent attorney thereto. The form of the certificate of patent attorney is established by the federal executive governmental body charged with normative legal regulation in the area of intellectual property. If a change has occurred in the details entered in the certificate of a patent attorney, and also if a patent attorney has lost his/her certificate of patent attorney the federal executive governmental body charged with intellectual property matters shall issue a new certificate of a patent attorney thereto on an application of the patent attorney filed together with a document confirming that the state duty has been paid.

7. The federal executive governmental body charged with intellectual property matters shall publish the information contained in the Register on its [official Internet site](#) and in an official publication.

Article 8. Procedure for Removing a Patent Attorney from the Register

1. The removal of a patent attorney from the Register shall be carried out by the federal executive governmental body charged with intellectual property matters on the following grounds:

1) an application filed by the patent attorney;

2) the loss of Russian Federation citizenship;

3) exit from the territory of the Russian Federation for permanent residence abroad;

4) the discovery of the circumstances set out in [Part 4 of Article 2](#) of the present Federal

Law;

5) death or being declared as dead or unaccounted for by a court;

6) a court's decision on removal from the Register in the procedure established by [Part 1 of Article 10](#) of the present Federal Law.

2. If the circumstances envisaged by Items 2-5 of Part 1 of the present article and serving as a ground for removing a patent attorney from the Register cease to exist, the federal executive governmental body charged with intellectual property matters reinstate the citizen's registration in the Register on his/her application without a repeated attestation of the patent

attorney. A decision on the refusal to reinstate registration in the Register without a repeated attestation of a patent attorney may be contested in court.

3. Information on the removal of a patent attorney from the Register and also on the reinstatement of his/her registration in the Register shall be published in the procedure established by [Part 7 of Article 7](#) of the present Federal Law, with grounds for the decision being indicated.

Article 9. Monitoring the Attestation of Contenders for Patent Attorneys, the Registration of Patent Attorneys and the Activities Thereof

1. For the purpose of monitoring the attestation of contenders for patent attorneys and the activities of patent attorneys the federal executive governmental body charged with intellectual property matters shall form an appellate commission. The procedure for deliberations of the appellate commission shall be established by the federal executive governmental body charged with normative legal regulation in the area of intellectual property.

2. Apart from other persons the members of the appellate commission shall include the patent attorneys nominated by public associations and self-regulating organisations of patent attorneys. Patent attorneys shall make up one third of the total number of the appellate commission's members. The patent attorneys included in the appellate commission are subject to rotation once every three years.

3. The appellate commission shall consider the following:

1) citizens' complaints against a decision of the qualification commission on refusal to grant clearance for a qualification examination or refusal to grant attestation as a patent attorney;

2) complaints of patent attorneys who have expressed their will to pursue other types of activity within the scope of the specialisations set out in [Part 7 of Article 6](#) against a decision of the qualification commission on refusal to grant clearance for a qualification examination or attestation as a patent attorney in the relevant specialisation;

3) persons' complaints against actions committed in breach of the legislation of the Russian Federation by the patent attorneys who represent their rights and lawful interests.

4. The persons who have filed complaints against the actions of a patent attorney and the patent attorneys in respect of whom such complaints have been filed are entitled to participate in person in the hearing of the relevant complaints by the appellate commission. The complaints shall be considered by the appellate commission within 30 days after being received.

5. According to the results of consideration of the complaints described by Items 1 and 2 of Part 3 of the present article the appellate commission is entitled to uphold the qualification commission's decision or overturn it and deem the results of the qualification examination satisfactory or obligate the qualification commission to hold a qualification examination again with another set of examiners or to consider again the issue of clearance for a qualification examination.

6. If a patent attorney is in breach of the legislation of the Russian Federation, which results in an infringement of the rights and/or lawful interests of the persons he/she represents one of the below decisions may be taken by the appellate commission, with account being taken of the consequences that have come into being:

1) a warning being issued to the patent attorney;

2) a representation being made to the federal executive governmental body charged with intellectual property matters for the filing of a claim with the court for imposition of the sanctions described in Part 1 of Article 10 of the present Federal Law on the patent attorney.

7. The appellate commission's decision may be contested in court.

Article 10. The Sanctions Applicable to a Patent Attorney

1. The federal executive governmental body charged with intellectual property matters is entitled to file a claim with the court for imposition of the following sanctions on a patent attorney: suspension of the patent attorney's activities for up to one year or his/her removal from the Register for up to three years with the possibility of subsequent reinstatement on the condition of a repeated attestation or without attestation.

2. If a patent attorney has caused harm to the persons whose rights and lawful interests he/she represents, the patent attorney shall be accountable under the legislation of the Russian Federation.

Article 11. Conclusive Provisions

1. The present Federal Law shall enter into force upon the expiry of 90 days after its official publication.

2. The provisions of the present Federal Law are applicable to the patent attorneys who have been registered in the Register as of the date of entry into force of the present Federal Law.

President of the Russian Federation

D.Medvedev

The Kremlin, Moscow