

LAW OF THE REPUBLIC OF TAJIKISTAN ON SECRET INVENTIONS

This law regulates property relationships and related personal non-property relationships, arising from the creation, legal protection and use of secret invention within the territory of the Republic of Tajikistan.

Article 1. Main definitions

In this law the following definitions are used:

- application – the set of documents, defined by this law, filed with the Patent Office in order to be granted the protection document;
- secret inventions and research – inventions, containing information categorized as a state secret and classified as provided for by this law;
- secret objects of industrial property – inventions, industrial designs and useful models containing information classified as a state secret and resulting from human intellectual activity;
- conditions of patentability – conditions for granting legal protection to an invention, stipulated by this Law;
- analog of the invention – an object serving the same purpose as the invention, defined as having aggregate characteristics that are similar to the essential aggregate characteristics of the invention;
- protection documents – patents or minor patents for a secret invention granted in accordance with this law;
- state of the art – the aggregate knowledge that has become available to the general public worldwide before the priority date of the invention.

Article 2. Legislation of the Republic of Tajikistan on secret inventions

The legislation of the Republic of Tajikistan on secret inventions is based on the Constitution of the Republic of Tajikistan and consists of this law, other normative legal acts of the Republic of Tajikistan, as well as the international legal acts recognized by Tajikistan.

Article 3. The state authority for protection of secret inventions and research

The state authority for protection of secret inventions and research (hereinafter – the Patent Office) is to be appointed by the Government of the Republic of Tajikistan to provide the implementation of a uniform policy in the area of legal protection of secret inventions and research, accept applications for secret inventions and research, examine and perform the

state registration of secret inventions and research, grant protection documents and act otherwise as provided for by the constituent documents of the Patent Office.

Article 4. Classification of inventions containing information classified as a state secret

1. In case of an application for a protection document for an invention, filed in accordance with the Law of the Republic of Tajikistan “On Inventions”, the Patent Office shall process the application in order to identify any information classified as a state secret, and shall classify applications containing such information. The procedure of filing and examination of applications for a patent for a secret invention shall be determined by the Patent Office.

2. The Ministries, state committees, administrative agencies (hereinafter – state bodies) which have the lists of information subject to classification, have the right to classify the inventions containing information classified as a state secret and file applications marked for the appropriate classification level through their security-secrecy departments with the Patent Office.

3. The Patent Office shall also accept for examination applications for inventions with a claim to classification filed by individuals referred to in Article 7 of this law (hereinafter - applicants), through the appropriate security-secrecy departments of the employer or, in the absence of such an opportunity, directly as provided for by the Law of the Republic of Tajikistan “On Inventions”.

4. The procedure for classification of applications, containing information classified as a state secret, determination of classification level, and the terms of review, shall be the authority of the state bodies appointed by the Government of the Republic of Tajikistan in accordance with the Law of the Republic of Tajikistan “On State Secret”, as well as this Law.

Article 5. The right to a secret invention and its use

1. The right to a secret invention and its use is protected by this law, the Law of the Republic of Tajikistan “On State Secret”, as well as by other normative legal acts of the Republic of Tajikistan.

2. The right to the secret invention and its use shall within the whole classification period belong to the Republic of Tajikistan represented by the state bodies classifying such an invention. A secret invention may be used according to the classification level of the state secret of the Republic of Tajikistan pursuant to the requirements of the Law of the Republic of Tajikistan “On State Secret”.

3. The use of a secret invention by a third party, be it in the national interest, may be authorized by the classifying state body in the order prescribed by the Government of the Republic of Tajikistan in compliance with its classification status.

4. The right of ownership of a secret invention shall belong to the Republic of Tajikistan for the whole term of classification.

Article 6. Author of a secret invention

1. The author of the secret invention is deemed to be the individual who has developed the respective invention through their creative effort.

2. If several individuals have taken part in the creation of the secret invention, all of them shall be deemed to be its authors.

3. Individuals who have not personally added any creative contribution to the secret invention but only provided the author (authors) with technical, organizational or financial support, or assistance in the registration of the rights to the invention and its use shall not be deemed the authors.

4. The right of authorship shall be an inalienable personal right subject to perpetual protection.

5. The authorship in a secret invention shall be certified by the patent, issued by the Patent Office, which shall serve as grounds for an of incentive premium, an indemnity payment for the classification and a compensation for its use.

6. Should a secret invention be used in the national interest, the author (authors) shall be granted compensation by the state body classifying such invention. The amount and the terms of payment shall be determined by an agreement between the author and the state body classifying the invention.

Article 7. Terms for filing, examination and classification of an application for a secret invention

1. The right to file an application for a secret invention belongs to the author (authors) of the secret invention or to his/her (their) successors, including the party acquiring the respective right by assignment.

2. Unless an agreement between the employer and the author of the secret invention provides otherwise, the right to file the application for the invention, containing information classified as a state secret which has been created in accordance with the Law of the Republic

of Tajikistan “On Inventions”, belongs to the employer or their successors, including the party that acquires such right by assignment.

3. An application shall be prepared in accordance with the Law of the Republic of Tajikistan On Inventions. The procedure for examination of an application for a secret invention and the order of its classification shall be determined by the Patent Office of the Republic of Tajikistan.

Article 8. Conditions on protectability of a secret invention

1. The conditions on patentability of an invention prescribed by the Law of the Republic of Tajikistan “On Inventions” shall apply to determine the legal protectability of the secret invention.

2. When determining the novelty of the secret invention, along with the information stipulated by the Law of the Republic of Tajikistan “On inventions”, the state of the art shall include the following documents in case they have earlier priority:

- protection documents of the Republic of Tajikistan for the secret objects of industrial property;

- applications for protection documents for secret items of industrial property filed in the Republic of Tajikistan by other parties (with the exception of withdrawn applications);

- information containing a state secret disclosed in a printed publication or another source of information, that has become available in the Republic of Tajikistan to parties having lawful access to such information before the priority date of the claimed secret invention.

3. When determining the novelty of the secret invention, the level of classification of the information categorized as a state secret included in the state of the art may not be higher than the level of classification of the claimed secret invention.

Article 9. Priority date of a secret invention

1. The priority date of a secret invention shall be determined by the date of filing the application with the Patent Office in accordance with item 3, Article 4 of this Law.

2. The priority date of the secret invention may be determined by the date of filing with the Patent Office of additional materials drawn up by the applicant as an independent application, provided the latter is filed before the end of the three month term on the applicant’s receipt of the notification that the additional materials may not be taken into account as changing the substance of the claimed invention.

3. The priority date of the secret invention may be determined by the date of filing an earlier application for the invention by the same applicant, disclosing such invention, if the application for the invention where priority date is sought, is filed within twelve months after the date of filing the earlier application for the invention. In this case the earlier application for the invention shall be deemed withdrawn.

4. The priority date of the secret invention may be determined as the date of filing of several previous applications if each of them was in compliance with the conditions stipulated by item 3 of this Article.

5. The priority date of the secret invention may not be determined by the date of filing the application where by an earlier priority date has been already sought.

6. The priority date of the secret invention under a divisional application for the secret invention shall be determined by the date of filing with the Patent Office of the initial application by the same applicant disclosing such invention, provided the divisional application has been received before dismissal of the initial application, and the grounds for appeal on the latter have been exhausted; or in case of receipt of the decision to grant the protection document on the aforementioned application, before the date of the invention registration with the State registry of secret inventions.

7. Should examination reveal any identical inventions with the same priority date, the protection document may be granted on the application showing the earliest date of dispatch to the Patent Office. In case of these dates being the same - on the application with the earliest registration number with the Patent Office, unless an agreement between the applicants provides otherwise.

Article 10. Examination and registration of secret inventions

1. Applications for secret inventions classified pursuant to Articles 4 and 7 of this Law shall be subject to a secret invention examination pursuant to the unclassified invention procedure provided for by the Law of the Republic of Tajikistan "On Inventions", subject to the following particulars:

- examination of an application for a secret invention shall consist of a formal examination and a review of the merits;
- in reviewing the merits, the Patent Office may engage representatives of the relevant state bodies;

– heads of the proper state bodies shall formally dispatch the aforementioned specialists, subject to payment of their average compensation, as well as a travel and accommodation allowance;

– examination on the merits of an application concerning a new weapon, military equipment or a special device, shall be carried out following the respective resolution of the appropriate state bodies, the list of which is to be determined by the Government of the Republic of Tajikistan;

– the cost of the examination shall be borne by the state bodies classifying the invention.

2. Upon completion of the merits review, the application for the object classification shall either be upheld or dismissed.

3. Should the Patent Office recognize the claimed invention as a secret one, the Patent Office shall enter the secret invention in the State registry of secret inventions of the Republic of Tajikistan and grant the protection document to the author (or authors).

4. The information concerning the secret inventions shall be entered into the State registry of secret inventions of the Republic of Tajikistan. The rules of record keeping by the State registry of secret inventions of the Republic of Tajikistan shall be enacted by the Government of the Republic of Tajikistan.

5. The access to the information concerning registered secret inventions shall be subject to the state secret regulations provided for by the Law of the Republic of Tajikistan “On State Secret”.

Article 11. Compensation for classification of an invention

1. The applicant shall be compensated for classification of the invention at the rate and on the terms specified in the agreement between the author and the employer; the applicant shall also be compensated for the costs of filing and examination of the application for the secret invention.

2. The expenses referred to item 1 above shall be paid at a time by the state body classifying the application pursuant to Article 7 of this Law in a lump sum within one month from the date of the Patent Office’s decision to recognize the claimed invention as a secret one or to dismiss the claim.

Article 12. Declassification of a secret invention

1. The grounds for the upkeep of the prescribed level of classification of the secret invention shall be reviewed within the period specified by the classifying state body. The review may also be initiated by the applicant, author or their successors.

2. The decision to declassify shall be taken as decreed by the Government of the Republic of Tajikistan at the request of the state body classifying the secret invention.

3. The notification of declassification of the secret invention shall be given to the applicant, the author and the Patent Office in order to have the respective secret invention removed from the State registry of secret inventions of the Republic of Tajikistan.

Article 13. Issuance of a protection document for a declassified invention

1. An applicant may, within one year after the declassification date, file with the Patent Office an application for the protection document concerning the declassified secret invention, as provided for by the Law of the Republic of Tajikistan "On Inventions". Protection shall be granted for the remaining period of validity as of the date of filing the application materials with the Patent Office as provided for by the Law of the Republic of Tajikistan "On Inventions",

2. The priority date of the declassified secret invention shall be deemed to be the date of filing the application documents with the Patent Office in accordance with Article 9 of this Law.

3. The protection document granted for the declassified invention shall be valid as of the date of filing the application for it and shall be deemed as grounds for the inclusion of the declassified invention in the state of the art from its priority date for the purpose of determining the novelty of other unclassified inventions pursuant to the Law of the Republic of Tajikistan "On Inventions".

4. The patent for an unclassified invention, granted in accordance with the Law of the Republic of Tajikistan "On Inventions", shall be deemed invalid in case of issuance of the patent for an identical declassified invention with an earlier priority date. The holder of the invalid protection document for unclassified invention, who has been properly using it before the date of the application or has made proper arrangements for such use, or if such invention has been created independently from the author (authors) of the declassified invention, shall retain the right of further use of such invention without broadening the scope of such use.

Article 14. Compulsory payments

Compulsory payments shall be due:

- for filing the application; for the issuance of the protection document; for keeping it valid; for the renewal or the recovery due to negligence, as well as for any other lawful act inherent to a protection document for a secret invention. The complete list of acts subject to a compulsory payment, the amount and the terms of the payment, as well as the grounds for an exemption, reduction or refund of the payment shall be established by the law of the Republic of Tajikistan.

Article 15. Application of this law to a foreign individual or legal entity

Unless an international treaty to which Tajikistan is a party to, provides otherwise, this Law shall not apply to a foreign national or a legal entity.

Article 16. Settlement of disputes

Disputes arising out of or with respect to a secret invention shall be settled judicially.

Article 17. Liability for violation of the law

An individual or a legal entity shall be liable for a violation of this Law as provided for by the legislation of the Republic of Tajikistan.

Article 18. Enforcement of the Law

This law shall enter into force after its official publication.

President of the Republic of Tajikistan

Emomalii Rahmon

Dushanbe, July 21, 2010

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