

**PROTOCOL
TO THE EURASIAN PATENT CONVENTION
OF SEPTEMBER 9, 1994,
ON THE PROTECTION OF INDUSTRIAL DESIGNS**

The States Parties to this Protocol (hereinafter referred to as "the Contracting States") represented by Governments;

Having regard to the need to expand the Eurasian system for the protection of industrial property;

Striving to establish an interstate system for the protection of industrial designs based on a common Eurasian patent having legal effect on the territories of all Contracting States;

Desirous of developing the domestic markets of the Contracting States and increasing the attractiveness of their territories for the development of trade and investment activities;

Have agreed as follows:

**PART I
GENERAL PROVISIONS**

**Article 1
Status of the Protocol**

(1) This Protocol constitutes a special agreement within the meaning of Article 19 of the Paris Convention for the Protection of Industrial Property of March 20, 1883 (hereinafter referred to as "the Paris Convention").

(2) The Contracting States hereby expand the scope of the Eurasian Patent Organization (hereinafter referred to as "the Organization") as regards the protection of industrial property afforded by the Eurasian Patent Convention of September 9, 1994 (hereinafter referred to as "the Convention").

(3) This Protocol shall not affect the rights of any Contracting State to grant national patents or other documents affording protection to industrial designs.

**Article 2
Eurasian Patent System**

(1) The Eurasian Patent System, established pursuant to Article 1(1) of the Convention, and the Organization, together with all of its organs, established pursuant to Article 2(1) of the Convention, shall serve to protect inventions under the Convention and to protect industrial designs under this Protocol.

(2) For the purposes of the protection of industrial designs, the territory within which the Convention has legal effect shall be the territories of the Contracting States.

(3) By unanimous decision of the Administrative Council of the Organization, adopted by the plenipotentiary representatives (or their deputies) of all the Contracting States, the Organization shall have the right to become a party to an international treaty providing for the international registration of industrial designs. Details concerning the procedures applied within the Eurasian system for the protection of industrial designs with regard to international registrations are established by the Patent Regulations to the Convention.

PART II
SUBSTANTIVE PROVISIONS GOVERNING INDUSTRIAL DESIGNS

Article 3
Patentable Industrial Designs

(1) An industrial design to which legal protection is granted shall be a design of the external appearance of an industrial or artisanal product that is patentable in accordance with the Patent Regulations to the Convention.

(2) Legal protection as an industrial design shall **not** be granted to the following designs:

(i) those that are contrary to public order or the principles of humanity and morality in at least one of the Contracting States;

(ii) those that include, reproduce, or imitate official symbols (including State symbols and emblems) or the abbreviated or full names of international and intergovernmental organizations, without the consent of the respective competent authorities of the States or organizations whose interests are affected by such designs; and

(iii) those that include, reproduce, or imitate official names or images of cultural heritage (including ethnic or religious heritage), or recognizable parts thereof, without the consent of the respective competent authorities of the Contracting States whose interests are affected by such designs.

A list of other designs and objects to which legal protection as industrial designs shall not be granted is established by the Patent Regulations to the Convention.

Article 4
Persons Entitled to Obtain a Eurasian Patent
for an Industrial Design

(1) The right to obtain a Eurasian patent for an industrial design shall be vested in the author of an industrial design, that is, the individual through whose creative work the industrial design was created, or their successor-in-title.

Ownership of the right to obtain a Eurasian patent for an industrial design created by an author within the context of an employment or civil-law relationship shall be determined in accordance with the laws of the State that regulate such relationships.

(2) For the purposes of procedures performed at the Eurasian Patent Office (hereinafter referred to as "the Eurasian Office"), an applicant shall be considered eligible to obtain a Eurasian patent for an industrial design.

Article 5
Right of Priority

The right of priority with respect to an industrial design shall be recognized in accordance with the Paris Convention.

Article 6

Eurasian Patent for an Industrial Design

(1) A Eurasian patent for an industrial design shall certify the authorship, priority, and exclusive right to an industrial design.

(2) A Eurasian patent for an industrial design shall have legal effect simultaneously within the territory of all the Contracting States, having regard to the provisions of this Protocol.

Article 7

Scope of Legal Protection for an Industrial Design

The scope of legal protection provided by a Eurasian patent for an industrial design shall be determined by the set of essential attributes of the industrial design that are reflected in images of the product.

Article 8

Duration of a Eurasian Patent for an Industrial Design

(1) The duration of a Eurasian patent for an industrial design shall be five years from the filing date of an application for a Eurasian patent for an industrial design (hereinafter referred to as "a Eurasian application for an industrial design").

(2) The duration of a Eurasian patent for an industrial design may be extended for successive periods of five years each at the request of the holder of a Eurasian patent for an industrial design, with respect to the territory of all the Contracting States in which the Eurasian patent for an industrial design has legal effect. The overall duration of a Eurasian patent for an industrial design may not exceed 25 years from the filing date of an application for a Eurasian patent for an industrial design.

The duration of a Eurasian patent for an industrial design shall be extended provided that the appropriate fee is paid to the Eurasian Office.

Article 9

Rights to an Industrial Design

(1) The author (or co-authors) of an industrial design for which a Eurasian patent has been granted shall hold the right of authorship, that is, the right to be recognized as the author of the industrial design.

(2) The holder of a Eurasian patent for an industrial design shall hold the exclusive right to the industrial design, which is understood to mean the right to use the industrial design, and to permit or prohibit its use by other persons.

Acts performed with respect to an industrial design and recognized as its use shall be defined in accordance with the laws of the Contracting States.

The holder of a Eurasian patent may determine the disposal of the exclusive right to an industrial design for the duration of the patent, with effect from the date of publication of information about the granting of the patent in the official bulletin of the Eurasian Office.

Article 10

Disposal of an Exclusive Right to an Industrial Design: Transfer of an Exclusive Right

(1) The holder of a Eurasian patent for an industrial design shall be entitled to assign the exclusive right to the industrial design to another person, to grant the right to use the industrial design under a licensing agreement, and to provide the exclusive right to the industrial design as collateral.

The assignment of the exclusive right certified by a Eurasian patent for an industrial design to another person shall be permitted only for the territories of all the Contracting States within which the patent has legal effect.

The holder of a Eurasian patent for an industrial design shall be entitled to dispose of the exclusive right to the industrial design in some other manner within an individual Contracting State if such disposal is legal in the Contracting State.

(2) An exclusive right to an industrial design may be assigned by inheritance or through some other form of legal succession only in its entirety.

(3) Registration of the assignment of an exclusive right to an industrial design, including an assignment pursuant to a contractual arrangement, as well as registration of the use of an exclusive right as collateral, shall be performed by the Eurasian Office.

Registration of a licensing agreement, as well as an agreement concluded in accordance with the laws of a Contracting State on the basis of the third sub-paragraph of article (1) above, shall be performed by the national patent office of the Contracting State (hereinafter referred to as a national office) in whose territory the agreement was concluded.

Article 11

Invalidation of a Eurasian Patent for an Industrial Design

(1) A Eurasian patent for an industrial design may be invalidated by the Eurasian Office following an administrative revocation procedure on the grounds and following the procedure provided for by this Protocol and the Patent Regulations to the Convention, or by judicial or other competent authorities of the Contracting States on grounds provided for by this Protocol and the Patent Regulations to the Convention, following the procedure provided for by the laws of the respective Contracting State.

An objection to the invalidation of a Eurasian patent for an industrial design following an administrative revocation procedure may be filed, including an objection by a national office, if the right of the national office to file an objection is provided for by the laws of the respective Contracting State.

(2) A decision taken by the Eurasian Office based on the results of a review of an objection to the invalidation of a Eurasian patent for an industrial design following an administrative revocation procedure may be appealed following the procedure and within the time limits established by the Patent Regulations to the Convention.

The decision by the Eurasian Office on the invalidation of a Eurasian patent for an industrial design shall enter into force upon expiration of the deadline for its appeal stipulated by the Patent Regulations to the Convention, and shall have legal effect on the territories of all the Contracting States.

(3) The decision on the invalidation of a Eurasian patent for an industrial design adopted by judicial or other competent authorities of a Contracting State may be appealed following the procedure and within the time limits stipulated by the laws of the respective Contracting State. A decision adopted in accordance with this paragraph shall enter into force upon

expiration of the deadline for its appeal and shall have legal effect in the territories of the Contracting State whose judicial or other competent authorities took such decision.

A Contracting State shall inform the Eurasian Office of the final decision on the invalidation of a Eurasian patent for an industrial design.

Upon entry into force of a decision on the invalidation of a Eurasian patent for an industrial design adopted by judicial or other competent authorities of a Contracting State, the common legal protection for the industrial design shall be terminated. Conversely, a Eurasian patent for an industrial design shall remain legal in the territory of Contracting States in which no such decision was taken.

(4) Judicial and other competent authorities of Contracting States hearing disputes regarding the validity of a Eurasian patent for an industrial design shall have the right to request a translation of the Eurasian patent for an industrial design into the official language of the respective Contracting State.

Article 12

Disputes Related to the Protection of Rights

(1) Save for disputes referred to under Articles 11 and 14 of this Protocol, disputes relating to the protection of rights granted in accordance with this Protocol and the Patent Regulations to the Convention shall be settled in accordance with substantive and procedural laws of the Contracting State within whose territory protection of these rights is sought.

(2) Judicial and other competent authorities of Contracting States hearing disputes in accordance with paragraph (1) above shall have the right to request a translation of the Eurasian patent for an industrial design into the official language of the respective Contracting State.

PART III

PROCEDURE GOVERNING INDUSTRIAL DESIGNS

Article 13

Eurasian Application for an Industrial Design

(1) A Eurasian application for an industrial design shall be submitted to the Eurasian Office, except in those cases provided for under paragraph (2) below.

(2) Applicants of a Contracting State shall submit applications for an industrial design through a national office if the laws of the Contracting State so provide. A Eurasian application for an industrial design submitted through a national office shall have the same effect as if it had been submitted on the same day to the Eurasian Office, provided that it is sent by the national office to the Eurasian Office within the time limit laid down by the Patent Regulations to the Convention.

(3) When a Eurasian application for an industrial design is submitted directly to the Eurasian Office, a common processing fee shall be paid to the Eurasian Office.

When a Eurasian application for an industrial design is submitted through a national office, a fee shall be paid to the national office for the processing and transmittal of the Eurasian application for an industrial design, if such a fee is established by the laws of the respective Contracting State, concomitantly with the payment of the common processing fee to the Eurasian Office.

(4) The right to obtain a Eurasian patent for an industrial design may be transferred to another person following the procedure and under the conditions provided for by the Patent Regulations to the Convention.

Article 14 **Review of a Eurasian Application for an Industrial Design**

(1) The Eurasian Office shall conduct a preliminary examination of a Eurasian application for an industrial design to verify compliance with the requirements for an application, the conditions for establishing the application filing date, and fulfillment of other conditions concerning the filing of an application specified by the provisions of this Protocol and the Patent Regulations to the Convention and to determine whether the industrial design should be treated as a design that is contrary to public order or to the principles of humanity and morality in at least one of the Contracting States.

(2) In accordance with the Patent Regulations to the Convention, the Eurasian Office shall publish a Eurasian application for an industrial design for which a preliminary examination has been completed with a positive outcome, and shall then perform an examination of the application based on its merits.

(3) Opposition to the grant of a Eurasian patent for an industrial design may be filed with respect to a published Eurasian application for an industrial design, including opposition by a national office, if such an action is provided for by the laws of the respective Contracting State, on grounds established by this Protocol and the Patent Regulations to the Convention.

The procedure and deadlines for the filing and review of oppositions to the grant of a Eurasian patent for an industrial design are established by the Patent Regulations to the Convention.

(4) A decision to grant or to deny a Eurasian patent for an industrial design shall be made by the Eurasian Office taking into consideration the results of a review of oppositions to the grant of a Eurasian patent for an industrial design received by the Eurasian Office.

(5) Applicants may appeal decisions by the Eurasian Office, including a decision to grant or to deny a Eurasian patent for an industrial design, by filing an objection with the Eurasian Office in accordance with the procedure and time limits laid down in the Patent Regulations to the Convention.

Article 15 **Registration of an Industrial Design and Grant of a Eurasian Patent for an Industrial Design**

(1) When a decision is made to grant a Eurasian patent for an industrial design, the Eurasian Office shall record the industrial design in the register of Eurasian patents for industrial designs.

(2) The scope of information to be recorded in the register of Eurasian patents for industrial designs and the procedure for maintaining the register are determined by the

Patent Regulations to the Convention.

(3) The Eurasian Office shall publish information about the grant of a Eurasian patent for an industrial design in the official bulletin of the Eurasian Office. The scope of the information published and the publication deadlines are established by the Patent Regulations to the Convention.

(4) The Eurasian Office shall grant a Eurasian patent for an industrial design to an applicant immediately upon the publication of information about the grant.

(5) The Eurasian Office shall register an industrial design, publish information about the grant of a Eurasian patent for an industrial design or grant a Eurasian patent for an industrial design provided that the applicant has paid the requisite fee.

(6) Excerpts from the register of Eurasian patents for industrial designs that are requested for the purpose of their presentation in one of the Contracting States shall not require any notarization.

Article 16 Representation

(1) Any person who has the right to be a representative before a national office and who is registered with the Eurasian Office as a patent attorney may serve as a representative before the Eurasian Office (hereinafter referred to as "a patent attorney").

(2) An applicant or the holder of a Eurasian patent for an industrial design who is not a permanent resident or who is not permanently located in the territory of any Contracting State must be represented by a patent attorney.

(3) An applicant who is a permanent resident or who is permanently located in the territory of any of the Contracting States may file Eurasian applications for industrial designs, and may also transact with the Eurasian Office with regard to such applications and Eurasian patents for industrial designs either:

- (i) independently; or
- (ii) through patent attorneys; or
- (iii) through representatives who are not patent attorneys.

Article 17 Conversion of a Eurasian Application for an Industrial Design into a National Application

(1) Within six months of notification to an applicant by the Eurasian Office of a denial of a Eurasian patent for an industrial design or a rejection of an appeal, the applicant may file a petition with the Eurasian Office indicating the Contracting States in which it wishes to obtain a patent for an industrial design following national procedure.

(2) In each Contracting State so indicated, a Eurasian application for an industrial design which was denied or was rejected on appeal and was subsequently the subject a petition shall be considered a duly prepared national application filed with the national office with the same filing date and, if applicable, the same priority date as the Eurasian application for an industrial design, with all of the effects provided for under the national law of the Contracting State, and shall be further processed by the national office provided the applicant pays the requisite national fees to the national office.

Article 18

Fees

(1) Fees for the performance of legally significant acts with respect to a Eurasian application for an industrial design or a Eurasian patent for an industrial design, in accordance with the provisions of this Protocol and the Patent Regulations to the Convention, which accrue to the Organization in accordance with paragraphs (2) and (3) below, shall be paid to the Eurasian Office.

(2) The fee for the processing of a Eurasian application for an industrial design and its transmittal to the Eurasian Office pursuant to Article 13(3) of this Protocol shall be paid and shall belong to the national office with which the Eurasian application for an industrial design is filed.

(3) Fees paid to the Eurasian Office in accordance with Articles 8(2) and 15(5) of this Protocol shall be apportioned between the Organization and Contracting States in accordance with a decision by the Administrative Council of the Organization adopted by a two-thirds majority of the plenipotentiary representatives of the Contracting States (or their deputies) participating in the vote. At least one-fifth of said fees must remain at the disposal of the Organization, with the rest being transferred to the respective national offices.

PART IV

PATENT REGULATIONS TO THE CONVENTION

Article 19

General Provisions

In addition to the details specified under Articles 14 and 19 of the Convention, the Patent Regulations to the Convention contains details concerning substantive and procedural provisions governing industrial designs protected in accordance with this Protocol.

Article 20

Substantive Provisions

The Patent Regulations to the Convention contains details concerning substantive provisions established under Part II of this Protocol, specifically:

- (i) requirements for an industrial design and the conditions of its patentability;
- (ii) circumstances not affecting the patentability of an industrial design;
- (iii) legal succession with respect to a Eurasian application for an industrial design;
- (iv) assignment of the right to obtain a Eurasian patent for an industrial design;
- (v) right of priority;
- (vi) temporary legal protection;
- (vii) scope of legal protection for an industrial design;
- (viii) exclusive right to an industrial design;
- (ix) legal succession with respect to a Eurasian patent for an industrial design;
- (x) agreement on the assignment of an exclusive right to an industrial design, licensing agreement, and other agreements concerning the turnover of an exclusive right to an industrial design; and
- (xi) validity of a Eurasian patent for an industrial design and grounds for its invalidation.

Article 21 Procedural Provisions

The Patent Regulations to the Convention contains details concerning the procedural provisions established under Part III of this Protocol, specifically:

- (i) requirements regarding the form, structure, and content of a Eurasian application for an industrial design;
 - (ii) administrative procedures involving a Eurasian application for an industrial design and a Eurasian patent for an industrial design;
 - (iii) requirements regarding patent attorneys and the procedure for their certification and registration;
 - (iv) determination of the filing date of a Eurasian application for an industrial design;
 - (v) calculation of time limits, consequences of failing to comply with prescribed, conditions and procedure for the continuation of administrative processes and reinstatement of rights;
 - (vi) requesting priority;
 - (vii) the procedure and deadlines for the payment of fees;
 - (viii) making changes and corrections to a Eurasian application for an industrial design;
 - (ix) examination of a Eurasian application for an industrial design, including a preliminary examination and substantive examination, decisions adopted on the basis of their results, as well as the filing and review of oppositions;
 - (x) documentation and information services of the Eurasian Office with respect to industrial designs;
 - (xi) recording of industrial designs in the register of Eurasian patents for industrial designs, scope of information entered in the register, the procedure for maintaining and providing excerpts therefrom;
 - (xii) granting Eurasian patents for industrial designs;
 - (xiii) publication of information about Eurasian applications for industrial designs and Eurasian patents for industrial designs;
 - (xiv) the official bulletin of the Eurasian Office concerning industrial designs;
 - (xv) the procedure for invalidation of Eurasian patents for industrial designs;
 - (xvi) conversion of Eurasian applications for industrial designs into national applications;
- and
- (xvii) contacts of the Eurasian Office regarding industrial designs with applicants, holders of Eurasian patents for industrial designs, representatives and other persons and the procedure for consultation of said persons of documents of the Eurasian Office regarding industrial designs.

PART V FINAL PROVISIONS

Article 22 Signature. Entry into Force of the Protocol

- (1) This Protocol shall be signed in the Russian language.
- (2) Participation in the Protocol shall be open to any member State of the United Nations that is bound by the Convention, as well as the Paris Convention.

To become party to this Protocol, a State shall either sign the Protocol and deposit an instrument of ratification with the depositary, or deposit an instrument of accession with the depositary.

This Protocol shall be open for signing at an international conference in the city of Nur-Sultan following its adoption, and subsequently at the headquarters of the World Intellectual Property Organization, prior to its entry into force.

This Protocol shall be open for accession by any State referred to in the first part of this paragraph (Editor 1) that has not signed the Protocol.

(3) No reservations to this Protocol shall be permitted.

(4) This Protocol shall enter into force, in respect of the first three States to ratify it or accede to it, three months after the third State has deposited one of the aforementioned instruments with the depositary. In respect of any other State, this Protocol shall enter into force three months after such State has deposited its instrument of ratification or accession. A Eurasian patent for an industrial design shall have legal effect within the territory of such a State if the respective Eurasian application for an industrial design was filed following the entry into force of this Protocol with respect to that State.

Article 23

Transitional Provisions

Until such time as all of the States party to the Convention become Contracting States, decisions of the Administrative Council of the Organization on matters that fall within the scope of its authority in accordance with Article 3(3)(vi)-(ix) of the Convention and this Protocol in respect of industrial designs shall be made by the plenipotentiary representatives of the Contracting States (or their deputies).

Article 24

Settlement of Disputes under the Protocol

Should any dispute arise between Contracting States concerning the interpretation or implementation of this Protocol, the Director General of the World Intellectual Property Organization shall, at the request of any of the parties to the dispute, mediate in order to lead the parties to a settlement of the dispute.

Article 25

Revision of the Protocol

(1) This Protocol may be revised by the Contracting States at any time.

(2) A decision to convene a conference of the Contracting States for the purposes of revising this Protocol shall be taken by the Administrative Council of the Organization. The Administrative Council of the Organization shall also decide matters regarding rules of procedure and other details concerning a conference for the revision of this Protocol.

Article 26

Denunciation of the Protocol

(1) A Contracting State shall have the right to denounce this Protocol by notification addressed to the Director General of the World Intellectual Property Organization.

Denunciation shall take effect 12 months after the day on which the Director General of the World Intellectual Property Organization received such notification.

(2) Eurasian patents for industrial designs granted on the basis of applications filed prior to the entry into force of a denunciation shall have legal effect within the State that denounced this Protocol for the entire period of their validity, including cases in which such period is extended as allowed by this Protocol.

Article 27
Depositary of the Protocol

The Director General of the World Intellectual Property Organization shall be the depositary of this Protocol.

Done in the city of Nur-Sultan on September 9, 2019, in one original copy in the Russian language.