

The Draft Law of the Republic of Kazakhstan “On amendments and additions to certain legal acts of the Republic of Kazakhstan concerning intellectual property issues”

The Government of the Republic of Kazakhstan resolves:

To submit the project Law of the Republic of Kazakhstan “On amendments and addenda to certain legal acts of the Republic of Kazakhstan concerning intellectual property” to the Mazhilis of the Parliament of the Republic of Kazakhstan for its consideration.

*Prime Minister
of the Republic of Kazakhstan*

Resolution of the Government of the Republic of Kazakhstan of 30 June 2003 # 631

Draft

Law of the Republic of Kazakhstan “On amendments and additions to certain legal acts of the Republic of Kazakhstan concerning intellectual property issues”

Article 1. The following amendments and additions to be made to the following legal acts of the Republic of Kazakhstan:

1. In the Law of the Republic of Kazakhstan of 10 June 1996 "On the copyright and related rights" (Newsletter of the Parliament of the Republic of Kazakhstan, 1996, # 8-9, p. 237):

1) Article 2 to be written as follows:

"Article 2. Main definitions

For the purposes of this Law the terms below are defined as follows:

- “author” is a person who created the work as a result of intellectual labor;
- “copyright” is property and personal non-property rights of the author;
- “adaptation” of a software or a database means making changes or adjusting the software or database only for the purpose so as the software or database function on specific user’s hardware or under specific user’s operation system or software;
- “audio-visual work” is a work consisting of a fixed sequence of frames or pictures (with or without a sound track), designated for visual or aural impression (if it has a sound track) with the help of relevant technical equipment. Audio-visual works include cinematographic films and all works represented by media similar to cinematographic (TV and video films, film-strips and slides, etc) regardless of the method of the primary or subsequent fixation;
- “database” is a compound work where a collection of data (articles, calculations, facts, etc), which is the result of intellectual labor due to choice and/or sorting of the materials, is systemized in such a way that the data could be found and processed with the help of a computer.

The notion of a database does not refer to the software for electronic access to the materials of the database;

- “reproduction” is making one or more permanent or temporary copies of works or objects of related rights by any means and in any form, wholly or in part, directly or indirectly. The following are the types of reproduction: making a sound track or a video clip, one or more 3D copies of two-dimensional works, as well as any permanent or temporary storage of works or objects of related rights in any material form;
- “decompilation” of software is a technical method, including conversion of the product’s code into the source code with the purpose of studying the structure and coding of the software;
- “making available to the public” means transmission of the copyright and/or related rights objects, by wire or wireless means, in such a way that the public may access these works from a place and at time chosen by them (in an interactive mode);
- “fixation” means the embodiment of sounds or images in any material form allowing multiple perception, reproduction or communication through a device;
- “intellectual property” is the property for objective results of an intellectual activity;
- “rights management information” means any information which identifies the work, the author of the work, the performer, the performance, producer of a phonogram, the owner of any rights in the work. This information also refers to any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work, fixation, or phonogram to the public.
- “exclusive right” is the property right of the author or the owner of related rights for the use of a work, fixation, phonogram, or broadcast by air, cable or any other medium for the period set by this Law;
- “performance” is representation of a work, phonogram, play, or drama by acting, singing, dancing in live or with help of any technical aids (TV or radio broadcasting, cable TV, etc). Showing the frames of an audio-visual work in their sequence with or without the sound track;
- “performers” are actors, singers, musicians, dancers, and other persons as well as directors who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
- “pirated copy” of an object of copyright or related rights is a copy of a work, fixation, phonogram, broadcast by air or cable, production, distribution or any other use of which entails violation of the copyright and related rights under this Law or of regulations of the international agreements ratified by the Republic of Kazakhstan. Moreover, pirated copies refer to such copyright and related rights objects that are produced with the help of any illegally applied device allowing to bypass any technical methods of protection and whose rights to manage information was removed or altered without the authority of the rights owner.
- “modification” of a software or database is any change of the software or database, which is different from adaptation;
- “non-exclusive right” is such right when another person besides the owner of the authorship and related rights can use the works with a correspondent permission of the author with exception for cases provided in this Law;

- “communication to the public” means making the work available to the public for the first time with the authorization of the author to publish, publicly display, publicly perform or make it available to the public by any other means;
- “publication” of a fixed performance or a phonogram means offering copies of the fixed performance or the phonogram to the public, with the consent of the author or any other rightholder of the copyright or related rights, and provided that copies are offered to the public in reasonable quantity, through selling, renting or transferring the right of possession of a copy of a fixed performance or a phonogram in any other way;
- “translation” of a work means rendering the work in a language different from the original. The translation must be accurate and shall not mutilate neither the content nor the style of the original work;
- “broadcasting” means transmission by TV and radio channels (excluding the cable TV) of public reception of works, fixed performances, phonograms, and programs of broadcasting or cable TV organizations. Such transmission via the satellite is also “broadcasting” regardless of whether the public actually receives the transmission or not. Transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- “broadcasting program or cable TV organization” is a program created by the broadcasting or the cable TV organization themselves as well as by another organization with the order and on its own funds;
- “adaptation of a work” means changing the original work from one genre to another. Among conversion types are dramatization, direction, and arranging of the original work;
- “rightholder” is any person (or legal entity) different from the author who has the property rights due to:
 - inheritance or legal succession;
 - an agreement with the author about cession of the exclusive property rights.

A rightholder is also a producer of an audio-visual work, producer of a phonogram, and broadcasting or cable TV organization;

a person or legal entity to whom the property rights have been yielded;

a person other than the author or performer, or a legal entity in the cases when such person or legal entity is initially entitled the property rights;

a “computer program” (software) is a set of instructions expressed in words, schemes or in any other form, the fixation of which on a material medium readable by computers allows execution of a certain task or result by the computer; it includes such preparatory materials, for which a computer program (software) gives result at a later phase;

“applied-decorative arts work” is a two- or three-dimensional work of art transferred on commodities, including art craft, or a manufactured work;

“folklore work” is a work that includes characteristic elements of the traditional art heredity (folk fairy tales, poetry, songs, instrumental music, folk dances and plays, artistic forms of folk customs, etc);

“producer of an audio-visual work” means a person, or a legal entity, who or which takes the initiative and has the responsibility for creation of such work. Unless otherwise is proved, the person whose name is on the work is recognized to be the producer of the audio-visual work;

“producer of a phonogram” means a person, or a legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds. If otherwise is not proved, the person whose name is on the phonogram and (or) on its container is recognized to be the producer of the phonogram;

a “derivative work” is a work, which is a result of a creative conversion of another original work;

“public performance” means performance of a work by declamation, play, dance, or any other manner, including through a device (concerning audio-visual performance: demonstration of a sequence of frames with the sound) in places where public other than family members is or might be;

“public show” means showing the original or a copy of the work immediately or in form of a slide, cinematographic or television frame, with the help of any other technical device or by other means (concerning audio-visual performance: demonstration of separate frames without their sequence) in places where public other than family members is or might be;

“stage director” of a play is a person who directed the production of a theatre, puppet entertainment, or other show (play);

“reproduction” (reprographic reproducing) means a facsimile reproduction of one or more copies of the original or the copies of written or other graphic works of any size and form with the help of photocopying or any other technical means other than edition. Reprographic reproducing exclude storage or reproduction of such copies in electronic (including digital), optical or other machine-recognizable form;

“renting” means giving a copy of a work or a phonogram for a temporary use with the purpose of direct or indirect commercial profit;

“transmission to the public” of images, sounds, or images and sound, a performance, phonogram, a program of broadcasting or cable organization, by wire or wireless means, in such a way that images or sounds become available for perception by people other than family members, in such remote places that images or sounds cannot be available for perception without communication; “communication to the public” also includes making available for public a work, performance, or phonogram in such a way that members of the public may access them from a place and at a time individually chosen by them;

“cable transmission to the public” means transmission of a work, phonogram, performance, TV or cable program for the public by cable, wire, optical fiber, or similar means;

“technical aid” means any equipment, product or component, which is an integral part of a method, equipment or product designated for prevention of or protection against violation of any copyrights and related rights protected under this Law;

“authorized body” means a governmental body whose authority in the field of the state regulation of copyright and related rights relations is defined in the legal acts, acts of the President of the Republic of Kazakhstan, and of the Government of the Republic of Kazakhstan, as well as in other regulations;

“phonogram” means any fixation of exclusive sound performances or of other sounds or their representations. A fixation of sounds incorporated in an audio-visual work is not a phonogram;

“copy of a work” means a copy of a work in any material form;

“copy of a phonogram” means a copy of a phonogram on any medium, made directly or indirectly from the phonogram and including all sounds or part of sounds fixed in the phonogram;

2) in Article 5:

in paragraph 1:

to add words “in the territory of the Republic of Kazakhstan” after “communicated to the public” in subparagraph (1);

to set subparagraph (3) in the following version:

“3) works communicated to the public beyond the boundaries of the Republic of Kazakhstan or the works that have not been communicated to the public, but exist outside of the Republic of Kazakhstan in a material form, and is recognized as belonging to authors that are citizens or residents of the Republic of Kazakhstan, to their legal successors as well as to other people in accordance with the international agreements, ratified by the Republic of Kazakhstan, taking into account subparagraphs (1) and (2) of paragraph 1 of this Article”;

to add paragraph 4 as follows:

“4. A work is protected in accordance with the international treaties ratified by the Republic of Kazakhstan if it has not become a public property in the country of origin due to expiration of the copyright period in that country as defined by the rules of the correspondent international treaty ratified by the Republic of Kazakhstan, and if it has not become a public property in the Republic of Kazakhstan due to expiration of the copyright period.”;

3) to set the second part of the Article 6 paragraph 5 in the following version:

“Cession of the property right or the ownership right for any material object do not entail transfer of the author right for the work expressed in such object except for cases stipulated by this Law.”;

4) to remove words “(cinematographic, television, and video films, film-strips, and other cinematographic and television works)” in the Article 7 paragraph 1 subparagraph (6);

5) in the Article 9:

to set paragraph 1 in the following version:

“1. The author’s right for a work of science, literature, and art accrues due to the fact of its creation. An author needs no registration of the work, nor any other special arrangement of the work or observing any formalities so as to enjoy the copyright.

“To inform about his or her exclusive property rights, the author and/or rightholder can use the copyright protection symbol, which is placed on every copy of the work and consists of three elements:

“1) Latin letter “C” in circle: ©;

“2) name of the exclusive author rights holder;

“3) the year of the first publication of the work.

“To certify his or her personal non-property rights for a work that has not been communicated to the public, the author, as well as the rightholder for confirmation of his or her exclusive property rights for the work, can register them in official registers at any time during the copyright protection period or the period of validity of the relevant international treaties.”;

to add paragraph 1-1 as follows:

“1-1. Works used (designated) for distinction of goods (services) of persons or legal entities from congeneric goods (services) of other persons or legal entities cannot be registered as copyright objects.”.

6) to add paragraph 3 in the Article 10 as follows:

“3. Each co-author has the right to take measures under this Law and other regulations to protect his or her rights on his or her own behalf, even without the permission of the other co-authors, unless otherwise agreed between them.”;

7) to set the heading of the Article 11 in the following version:

“Article 11. Author right for compound works”;

8) to set the heading of the Article 12 in the following version:

“Article 12. Author right for derivative works”;

9) to replace words “*izgotovitel'yu*” and “*Izgotovitel'*” with “*proizvoditel'yu*” and “*Proizvoditel'*”;

10) to set the Article 14 paragraphs 4 and 5 as follows:

“4. If the employer has not been using the property rights, granted by the author through the agreement, for company purposes, within 10 years, the rights go to the author of the work or his/her heirs without any indemnification for the employer.

“5. The provisions of this Article do not cover encyclopaedias, collections of treaties, and other periodicals listed in the Article 11 paragraph 2 of this Law.”;

11) in the Article 16:

to replace words “*sdavat' vnayem*” with “*sdavat' v prokat (vnayem)*” in paragraph 2 subparagraph (2)”;

to set paragraph 5 in the following version:

“5. The author or the rightholder shall enjoy the right for remuneration for every kind of use of the work, the amount and calculation method being defined in the author agreement as well as in the agreements made by organizations managing the property copyrights on collective term.”;

to add words “and rightholder” in paragraph 6;

12) to add the Article 16-1 as follows:

“Article 16-1. Minimal rates of remuneration for the author”

The Government of the Republic of Kazakhstan has the right to set minimal rates of author's remuneration in cases when individual practical exercise of (exclusive) property rights is impossible due to the nature of the work or the specifics of its use (public performance, including radio and television broadcast, reproduction of a mechanical, magnetic recording or other fixation, reproducing, etc).”;

13) to add paragraph 3 in the Article 17 as follows:

“3. Transfer of the property right for an art work from the author to another person (for value or for free) means the first sale of the work.”;

14) in the Article 18:

to add words “or the rightholder” after the word “the author” in the heading;

to add words “or the rightholder” after the word “the author” in paragraph 1;

15) in the Article 19:

to add words “or the rightholder” after the word “the author” in the heading;

to add words “or the rightholder” after the word “the author” in the first paragraph;

to add words “or cinematography” after the word “photography” in subparagraph (5);

16) to set article 21 as follows:

“Article 21. Free use of works permanently placed in places open for free access

Reproduction and transmission to the public of works of architecture, photography, and arts that are permanently placed in a place open for free access is permitted without the authority of the author or the rightholder and free from author's fee, except for the cases when the image of the work is the main object of such a reproduction and transmission to the public, or when the image of the work is used for commercial purposes.”;

17) in the Article 24 paragraph 1:

to replace words “concerning functioning” with “necessary for functioning” in subparagraph (1);

to add words “or to order to produce” after the word “to produce” in subparagraph (2);

to add subparagraph (3) as follows:

“3) to make an adaptation of a computer program (software) or a database,”;

18) in the Article 25:

in the first paragraph:

to replace words “other copyright holder” with “the rightholder”;

to replace word “communication” with “transmission”;

to add words “or the rightholder” after the word “the author” in subparagraph (2);

19) to set the Article 26 paragraph 2 as follows:

“2. Remuneration for the reproduction as defined in paragraph 1 herein shall be paid by persons producing or importing equipment and material media used for such reproduction.

The list of such equipment and material media shall be approved by the Government of the Republic of Kazakhstan.”;

20) to add paragraph 9 in the Article 28 as follows:

“9. When granting protection of a work in accordance with the international treaties ratified by the Republic of Kazakhstan, the period of the validity of the copyright cannot exceed the period defined in the country of origin of the work (Article 5 paragraph 4 of this Law).

The periods stipulated herein shall be applied in all cases when the legal fact, which is used for the beginning of the period, took place no earlier than 50 years before this Law took effect.”;

21) to remove the Article 29 paragraph 2;

22) to set the Article 31 paragraph 1 as follows:

“1. The property rights of the author defined in the Article 16 herein can be ceded entirely or in part as well as they can be transferred for use by a publishing agreement on cession of exclusive rights or by a publisher’s agreement on transfer of non-exclusive rights.

“Any cession of the property rights shall be arranged with the agreement in writing, signed by the author and the cessionary.”;

23) in Article 32:

to replace words “five years” with “one year”, words “six months” with “three months” in paragraph 2;

to add “except for cases stipulated by articles 14 and 33 of this Law” after the word “in the future”;

to set paragraph 12 as follows:

“12. It is possible to apply other forms of contracts and the order of their conclusion as set by the laws of the Republic of Kazakhstan when selling copies of works, expressed in electronic form, including computer programs (software) and databases, as well as when providing mass users the right of access to them.”;

24) in the Article 36:

to replace words “broadcast by wire or wireless means” with “to broadcasting or cable organizations”;

to set paragraph 4 as follows:

“4. The related rights of foreign persons or legal entities are recognized in the territory of the Republic of Kazakhstan in accordance with the international treaties ratified by the Republic of Kazakhstan if a correspondent performance, phonogram, program of a broadcasting or cable organization has not become public domain in the country of its origin as defined by the rules of the relevant international treaty ratified by the Republic of Kazakhstan, due to expiration of the validity period set in that country for related rights, and if it has not become public domain in the Republic of Kazakhstan due to expiration of the related rights validity period.”;

25) in the Article 37:

to set paragraph 1 subparagraph (2) as follows:

“2) the right for protection of the performance from any mutilation or any other encroachment capable of harming the honor and/or dignity of the performer (the right for protection of reputation);”;

to add paragraph 1-1 as follows:

“1-1. The performer shall enjoy personal non-property rights regardless of his property rights and reserve them in case of cession of exclusive property rights for the use of the performance.”;

to set paragraph 2 as follows:

“2. Exclusive rights of the performer for the use of the performance means the right to permit or forbid the following actions:

“1) fixate a performance that has not been fixated before;

“2) reproduce directly or indirectly a fixation of a performance in any form;

“3) broadcast, transmit to the public by cable or make available to the public a performance without using a fixation of the performance;

“4) broadcast, transmit to the public by cable or make available to the public a fixation of performance except for the cases stipulated in article 39 paragraph 1 of this Law;

“5) rent a phonogram containing a fixation of a performance by the performer published for commercial purpose. When concluding an agreement on fixation of the performance in the phonogram, this right transfers to the producer of the phonogram. In doing this, the performer reserves the right for the fee for renting of copies of such phonogram.”;

26) to set the Article 38 paragraph 2 as follows:

“2. Exclusive rights for the use of a phonogram means the right to permit or forbid the following actions:

“1) reproduce a phonogram directly or indirectly and in any form;

“2) distribute the original and copies of a phonogram, including import, by means of a sale or any other form of transferring the property right;

“3) give for rent, even after its distribution by the producer of the phonogram or with his permission;

“4) change or alter the phonogram by any means;

“5) make the phonogram available to the public.”;

27) in the Article 40:

in paragraph 2:

to set the first paragraph as follows:

“2. Exclusive rights for the use of a program means the right to permit or forbid the following actions:”;

to set subparagraph (1) as follows:

“1) broadcast;”;

to add subparagraph (6) as follows:

“6) make the program available to the public.”;

to add words “and cable” after “broadcasting” in paragraph 3 subparagraph (1);

28) in the Article 41:

in paragraph 1:

to replace words “broadcasting, transmission by cable” with “programs of broadcasting to cable organizations” in the first paragraph;

to replace word “*fonogramm*” with “*fonogrammy*”;

to replace words “broadcasting or transmitting by cable” with “broadcasting to cable organizations” in subparagraph (1);

to set subparagraph (3) as follows:

“3) for quotation in form of small passages from a performance, phonogram, program of broadcasting or cable organization, provided that such a quotation is used for informative purpose. In doing this, a broadcasting or cable organization only can use copies of a phonogram, published for commercial purposes, for broadcasting, transmission to the public by cable, or making them available to the public under the provisions of article 39 herein;”;

to replace words “literature, science” with “science, literature” in subparagraph (4);

in paragraph 2:

to replace words “broadcast or transmit by cable” with “broadcasting or cable organization”;

to add words “exclusively” after words “as well as reproduction of a phonogram”;

in paragraph 3:

to add words “or cable organization” after “broadcasting organization” in the first paragraph;

in subparagraph (2):

to remove word “six months”;

to replace words “literature, science” with “science, literature”;

to replace words “a single copy, which can be stored in the official archive on the basis of” with words “fixation, which can be stored in official archives on the basis of”;

in paragraph 4:

to replace words “broadcast or transmit by cable” with “broadcasting or cable organization”;

to replace words “literature, science” with “science, literature”;

29) in the Article 42:

to add words “capable of infringing the honor and/or virtue of the performer” after “infringement” in paragraph 1;

to replace words “the first transmission” with “the first communication to the public” in paragraph 4;

to replace words “broadcast or transmit by cable” with “broadcasting or cable organization” in paragraph 8;

to add paragraph 9 as follows:

“9. Expiration of the validity period of the related rights for a performance, staging, phonogram, program of a broadcasting or cable organization means their transferring to the public domain.

“Provisions of the Article 29 of this Law with taking into account articles 34-42 herein shall be applied to the objects of related rights that became a public domain.”;

30) to set the Article 43 paragraph 3 as follows:

“3. It is impermissible for two or more collective leadership organizations to manage similar property rights on the behalf of similar categories of rightholders with similar methods of using the works and the objects of the related rights. Such organizations shall only be created by authors, rightholders, or holders of the related rights and shall work in accordance with their statutory documents, authority granted and licenses obtain under the regulations of the Republic of Kazakhstan for management of property author and related rights on collective basis”;

31) in the Article 47:

to remove paragraph 1 subparagraph (4);

to remove paragraph 2.

2. To the Law of the Republic of Kazakhstan “On protection of selection achievements” as of 13 July 1999 (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, # 19, p. 655):

1) in the Article 2:

to replace word “Kazpatent” with “authorized body” in subparagraph (2);

to remove word “Kazpatent” in subparagraph (3);

in subparagraph (10):

to add words “of the republic of Kazakhstan” after “citizens”;

to replace word “Kazpatent” with “authorized body and expert organization”;

2) in the Article 3:

to set paragraph 2 as follows:

“2. The authorized state body (hereinafter referred to as ‘the authorized body’) participates in the implementation of the state policy in the field of protection of selection achievements, accepts applications for selection patents, and performs other functions assigned by the legislation.

“An expert organization subordinated to the authorized body (hereinafter referred to as ‘expert organization’) shall examine selection achievements, keep the State Register of Selection Achievements, and publish information about selection achievements.”;

in the Article 5:

to replace word “Kazpatent” with “expert organization” in the first part;

to replace word “Kazpatent” with “the authorized body” in the second part;

3) in the Article 4:

in paragraph 2:

to remove words “for patent” in the first part;

to remove the last sentence in the second part;

4) in the Article 5:

to set the heading as follows:

“Article 5. Application for a selection achievement”;

in paragraph 1:

to set the first part as follows:

“Applications for selection achievements shall be submitted to an expert organization.”;

to remove words “for issuing the patent” in the second and the third parts;

to replace word “Kazpatent” with “the authorized body” in the first part of paragraph 2;

in paragraph 3:

in the first part:

to remove words “for issuing the patent”;

to replace words “issuing the patent” with “making examination” in subparagraph (1);

to set the second and the third parts as follows:

“A selection achievement application shall be enclosed a document confirming the payment for the examination services of the expert organization. The fee size shall be set in accordance with the legislation of the Republic of Kazakhstan. Application is not accepted without payment documents.”;

to remove words “for issuing the patent” in paragraph 4;

to replace word “Kazpatent” with “the authorized body” in paragraph 5;

5) in the Article 6:

to replace words “patent issuing” with “selection achievement” in paragraph 2;

to replace word “Kazpatent” with “expert organization” in paragraph 3;

6) in the Article 7:

to replace word “Kazpatent” with “expert organization”;

to remove words “containing the patent application and the selection achievement blank” in paragraph 1;

7) in the Article 8:

to set paragraph 1 as follows:

“1. Upon two months after the application submission the expert organization makes a preliminary examination, review of the documents required for eligibility, defines the date of the application submission and the grounds for a priority. Preliminary examination of the patent application shall be made within two months.

“The applicant has the right to make changes and corrections in the application within two months since the submission provided that the essence of the application remains the same.”;

to set paragraph 3 as follows:

“3. If the results of the preliminary examination are positive, the expert organization shall send copies of the selection achievement application and form to the corresponding state commission for further consideration of the application.”;

to replace word “Kazpatent” with “the authorized body” in paragraph 5;

to set paragraph 6 as follows:

“6. The expert organization shall publish the information about the application that positively passed preliminary examination in the newsletter within 18 months since the application submission. The materials of the application can be published before the stated time period by the applicant’s request.”;

8) in the Article 10:

to add words “and issuing the selection achievement patent” in the heading;

to remove parts three and four from paragraph 1;

to set paragraphs 4, 5, and 6 as follows:

“4. If the sort and kind of patentability are adequate, the state commission makes an official description of the sort and kind.

“5. Upon the examination in the state commission, the applicant submits a selection achievement patent application to the authorized body. The following documents shall be enclosed to the application:

1) positive decision of the state commission;

2) copy of the selection achievement application;

3) letter of attorney, if the documents are submitted through an attorney.

“6. After submission of the documents specified in paragraph 5 herein, the authorized body processes them and makes a decision about refusing or issuing the selection achievement patent.

“The patent is issued after the payment of the state fee in accordance with tax legislation upon submission of the documents certifying the payment.”;

“7. The applicant can raise an objection to the authorized body against the decision on refusal in patent issuing within three months since the date of its receipt. The objection shall be processed by the board of appeals within three months since the receipt.

“The decision of the board of appeals can be falsified in the court by the applicant’s appeal within six months since the date of the receipt of that decision by the applicant.

“8. The applicant can learn all materials provided by the expert commission for opposition. The expert organization or the state commission shall send the copies of the materials requested by the applicant within one month since the date of the request.”;

9) to set the Article 12 paragraph 2 as follows:

“2. The authorized body gives an official certificate acknowledging author rights to the author of a selection achievement registered in the State Register who is not a patent holder.”;

10) in the Article 13 subparagraph (3):

to replace words “issuing patent” with “selection achievement”;

to replace words “Kazpatent before the registration of the selection achievement in the State Register of Selection Achievements” with “the authorized body before the date of making a decision on issuing the selection achievement patent”;

11) in the Article 14:

in paragraph 3:

to remove subparagraph (3);

to add the second part as follows:

“A selection achievement significantly inheriting characteristics of another (source) selection achievement is such a selection achievement that is obviously different from the source:

“inherits the most significant characteristics of the source selection achievement or such a selection achievement that inherits the significant characteristics of the source selection achievement, preserving the main features reflecting the genotype or combination of genotypes of the source selection achievement;

“matches the genotype or combination of genotypes of the source selection achievement, with exception to deviations caused by such methods as individual selection from the source sort or kind, selection of an induced or selfreproducing mutant, back-crossing, and gene engineering.”;

to remove paragraph 4;

- 12) to add words “or in the order of legal succession” in article 16;
- 13) to replace word “Kazpatent” with “the authorized body” in article 18 paragraph 4;
- 14) to replace word “Kazpatent” with “the authorized body” in article 19;
- 15) to replace word “Kazpatent” with “the authorized body” in article 21 paragraph 2;
- 16) to replace word “Kazpatent” with “the authorized body” in article 22;
- 17) to remove the Article 25;
- 18) in the Article 26:

to replace words “Kazpatent issues a newsletter to publish information” with “the authorized body publishes information pertaining to the registration of selection achievements in the newsletter” in paragraph 1;

to set paragraph 2 as follows:

“2. Anybody has the right to learn the application materials after publication of the application information.”;

- 19) to set the Article 27 as follows:

“Article 27. Patenting selection achievements abroad

“The applicant has the right to submit the first application for protection of a selection achievement to an authorized body of another state, provided that such a state and the Republic of Kazakhstan made a bilateral or multilateral agreement on protection of selection achievements.

“The applicant can submit the application to authorized bodies of other states before obtaining a protection document from an authorized body of the state to which he submitted the first application.

“The applicant shall incur the costs connected with protection of the rights for selection achievements abroad.”;

3. To the Law of the Republic of Kazakhstan “The patent law of the Republic of Kazakhstan ” as of 16 July 1999 (Newsletter of the Parliament of the republic of Kazakhstan, 1999, # 20, p. 718):

- 1) in the Article 1:

to remove word “Kazpatent” in subparagraph (1);

in subparagraph (9):

to add words “of the Republic of Kazakhstan” after “citizens”;

to replace word “Kazpatent” with “the authorized body and the expert organization”;

- 2) to replace word “Kazpatent” with “the authorized body” in article 3 paragraph 1;

- 3) to set the Article 4 as follows:

“Article 4. The authorized state body and the expert organization

“1. The authorized state body (hereinafter referred to as ‘the authorized body’) shall participate in the implementation of the state policy in the field of legal protection of the industrial property objects, accept applications for industrial property objects, issue documents of title, and execute other functions assigned by the Government.

“2. An expert organization subordinated to the authorized body (hereinafter referred to as ‘the expert organization’) shall examine industrial property objects, keep the State Registers of Industrial Property Objects, and publish information about industrial property objects under this Law.”;

4) in the Article 5:

to remove word “Kazpatent” in paragraph 3;

in paragraph 4:

to add words “and listed in the list of significant features of an industrial design” after “product (design)”;

to replace words “can be drawn” with “can be used”;

5) in the Article 10 paragraph 3:

to remove word “Kazpatent”;

to replace words “for application submission” with “for obtaining document of title”;

6) in the Article 11:

to add part two in paragraph 1 as follows:

“The patent holder shall enjoy the exclusive right for the use of the protected industrial property during the document of title’ period of validity, beginning from the date of publication of the information about the issue of such a document of title in the newsletter.”;

to replace word “them” with “patent holders” in part two of paragraph 3;

in paragraph 4:

to replace word “invention” with “industrial property object”;

to replace words “the invention has not been used” with “the industrial property object has not been used”;

to replace word “Kazpatent” with “the authorized body” in paragraph 6;

to set paragraph 8 as follows:

“8. The document of title shall be valid provided that the patent holder pays the annual fee for prolongation of the document of title in the amount and the order defined in the tax legislation.”;

7) in the Article 13:

in paragraph 1:

to add words “bona fide” after “created”;

to add words “of such a use” after “without increasing the amount”

to remove word “Kazpatent” in paragraph 3;

8) in the Article 14:

to replace word “Kazpatent” with “the authorized body” in paragraphs 4 and 5;

to add paragraph 5 as follows:

“If a license agreement is made, the payment for the prolongation of the document in title shall be made beginning from the subsequent year.”;

9) to add words “since the date of the first publication of information about the issue of the document in title” in article 15 paragraph 2 subparagraphs (2), (3), and (5);

10) to set the Article 16 as follows:

“Article 16. Application for a document of title

“A person enjoying the right for a document of title in accordance with article 10 paragraph 10 of this Law (hereinafter referred to as ‘the applicant’) shall submit an application for a document of title to the authorized body. The application for the document of title shall be in Kazakh and Russian.

“The following documents shall be enclosed to the application:

1) positive resolution of the expert organization;

2) a copy of the application for industrial property object;

3) a letter of attorney if the application is submitted by an attorney.”;

11) in the Article 17:

to set the heading as follows:

“Article 17. Application for invention”;

to set paragraph 1 as follows:

“1. The application for invention shall be submitted to the expert organization. The invention application shall cover one invention or a group of inventions interrelated to such an extent that they make one invention design (requirement for unity of invention).”;

in paragraph 2:

to replace words “issue of a document of title” with “examination” in subparagraph (1);

to set parts two and three as follows:

“The invention application shall be enclosed to the document certifying the payment for the examination services of the expert organization. The fee amount and payment order shall be defined under the laws of the Republic of Kazakhstan. Application is not accepted without the documents certifying the payment.”;

in paragraph 3:

to replace word “Kazpatent” with “the expert organization”;

to replace words “issue of the document of title for the invention” with “examination”;

to replace word “Kazpatent” with “the authorized body” in paragraph 4;

12) in the Article 18:

to set the heading as follows:

“Article 18. Application for useful model”;

to set paragraph 1 as follows:

“1. The application for a useful model shall be submitted to the expert organization. The useful model application shall cover one useful model or a group of useful models interrelated to such an extent that they make one invention design (requirement for unity of a useful model).”;

in paragraph 2:

to replace words “issue of a document of title” with “examination” in subparagraph (1);

to set parts two and three as follows:

“The useful model application shall be enclosed a document certifying the payment for the examination services of the expert organization. The fee’s sum and the payment order shall be defined under the laws of the Republic of Kazakhstan. Application is not accepted without the documents certifying the payment.”;

in paragraph 3:

to replace word “Kazpatent” with “the expert organization”;

to replace words “issue of a document of title for a useful model” with “examination”;

to replace word “Kazpatent” with “the authorized body” in paragraph 4;

13) in the Article 19:

to set the heading as follows:

“Article 19. Application for industrial design”;

to set paragraph 1 as follows:

“1. The application for an industrial design shall be submitted to the expert organization. The industrial design shall cover one industrial design or a group of industrial designs interrelated to such an extent that they make one design (requirement for unity of an industrial design).”;

in paragraph 2:

to replace words “issue of a document of title” with “examination” in subparagraph (1);

to set parts two and three as follows:

“The industrial design application shall be enclosed a document certifying the payment for the examination services of the expert organization. The fee’s sum and the payment order shall be defined under the laws of the Republic of Kazakhstan. Application is not accepted without the documents certifying the payment.”;

in paragraph 3:

to replace word “Kazpatent” with “the expert organization”;

to replace words “issue of a document of title for and industrial design” with “examination”;

to replace word “Kazpatent” with “the authorized body” in paragraph 4;

14) in the Article 20:

in paragraph 2:

to replace word “Kazpatent” with “the expert organization”;

to add word “a certified” after “to enclose” in part two;

in paragraph 3:

to replace word “Kazpatent” with “the expert organization”;

to add words “, and as of the date of its submission the application, by which the said additional materials were submitted, is not recalled and is not considered to be cancelled.”;

in part one of paragraph 4:

to replace word “Kazpatent” with “the expert organization”;

to add words “that is not recalled and is not considered as being cancelled as of the date of application submission” after “property”;

to set paragraph 5 as follows:

“5. The priority for an industrial property object by a divisional application is set in accordance with the date of the submission to the expert organization of the original application by the same applicant; and with the right to set an earlier priority by the original application, that is set in accordance with the date of its priority, if the divisional application had been submitted before the negative decision of the expert organization on the original application, the appealing opportunities for which had exhausted; and if the expert organization made a positive resolution on the said application, it is set as before the date of the submission of the application for a document of title to the authorized body.”;

in paragraph 7:

to replace words “than the document of title is issued upon the application” with “the priority is given by the same application”;

to replace word “Kazpatent” with “the expert organization”;

15) to set the Article 21 paragraph 2 as follows:

“2. Changes concerning the applicant’s order at a cession of the rights to obtain a document of title or resulting from the change in the name of the applicant, as well as technical mistakes corrections can be made in the documents of the application before the date when the authorized body makes a decision on the issuing of the document of title.”;

16) in the Article 22:

to replace word “Kazpatent” with “the expert organization” in paragraph 1;

to replace word “arrangement” with “to the documents” in part one of paragraph 3;

to replace word “independent” with “divisional” in part one of paragraph 4;

in the Article 5:

to replace words “a decision is made on the issuing of a preliminary patent” with “the expert organization makes a positive resolution for preliminary patent”;

to remove part two;

in paragraph 6:

in part one:

to replace words “a decision is made to refuse the preliminary patent” with “the expert organization makes a negative resolution”;

to replace words “a decision to refuse issuing preliminary patent is made” with “the expert organization makes a negative resolution”;

in part two:

to replace word “Kazpatent” with “the authorized body”;

to replace words “a decision to refuse issuing preliminary patent ” with “the negative resolution of the expert organization ”;

to set paragraph 7 as follows:

“7. The expert organization substantially examines the application by the request of the applicant or a third party, which shall be submitted after the publication of the preliminary patent information, but no later than in five years since the date of the application submission, provided that the preliminary patent validity period was extended in accordance with the Article 5 paragraph 3 of this Law. A substantial examination of the application includes data research pertaining to the submitted invention so as to determine the technical level , to check the conformity of the submitted invention tot he requirement of unity of invention and to patentability conditions defined in the Article 6 of this Law. The substantial examination shall only be made upon submission of a document certifying the payment of the fee for the application substantial examination service as well as a document certifying the payment of the fee for prolongation of the preliminary patent, if the application is submitted by the applicant.”;

in paragraph 8:

to replace word “Kazpatent” with “the expert organization” in part one;

to set part two as follows:

“Additional materials without changing the essence of the invention requested by the expert organization shall be submitted within three months since the dispatch of the request or a copy of the materials opposed to the application, provided that the said copies were requested by the applicant within two months since the date when the expert organization sent the request.”;

in paragraph 9:

in part one:

to replace word “Kazpatent” with “the expert organization”;

to replace words “a decision is made on patent issuing” with “the expert organization makes a positive resolution on the patent”;

to add words “with the definition of the priority set” after “agreed with the applicant”;

to remove part two;

in paragraph 10:

to replace words “the decision to refuse the patent issuing is made” with “the expert organization makes the negative resolution”;

to replace words “ the decision to refuse the patent issuing is made” with “the expert organization makes the negative resolution” in part two;

in part three:

to replace word “Kazpatent” with “the authorized body”;

to replace words “decision to refuse patent issuing” with “the negative resolution of the expert organization”;

in paragraph 11:

to replace words “Kazpatent has no right to make” with “the expert organization shall not make”;

to remove the last sentence;

to replace word “Kazpatent” with “the expert organization” in paragraph 12;

to set paragraph 13 as follows:

“13. If when processing the application it is concluded that it contains information, which is a state secret, the application is classified under the existing laws of the Republic of Kazakhstan.”;

17) in the Article 23:

to set paragraph 1 as follows:

“1. The expert organization makes a formal examination of the application after two months since the date of submission. Upon a request of the applicant in writing the formal examination can made before the said period. In this case the applicant foregoes the right stipulated in the Article 21 paragraph 1 of this Law since the moment of the request submission.

“The formal examination checks for the presence of all necessary documents and meeting the requirement set; determines the date of the application submission, the possibility of applying the submitted proposal to the objects protected as useful models, as well as it checks the unity of the useful model.

“No check of conformity of the declared useful model for the patentability requirements defined in the Article 7 paragraph 1 of this Law is made. The patent is issued on the risk and responsibility of the applicant.”;

in paragraph 2:

to replace words “a decision on the patent issuing is made” with “the expert organization makes the positive resolution on the patent” in part two;

to remove part three;

in paragraph 3:

in part one:

to replace words “ a decision to refuse the patent issuing is made” with “the expert organization makes the negative resolution on the patent”;

to replace words “decision to refuse the patent issuing” with “the negative resolution of the expert organization”;

in part two:

to replace word “Kazpatent” with “the authorized body”;

to replace words “decision to refuse the patent issuing” with “the negative resolution of the expert organization”;

18) to replace word “Kazpatent” with “the expert organization” in article 24 paragraph 1;

19) in the Article 25:

to replace word “Kazpatent” with “the expert organization” in paragraph 1;

to set paragraph 2 as follows:

“2. After the applicant submits the document specified in the Article 16 of this Law, the authorized body processes them and makes a resolution either to issue the document of title or to refuse it.

“The document of title is issued after the payment of the state fee in accordance with the tax legislation and upon submission of the payment certifying document to the authorized body.

“At the same time the expert organization publishes the information about the issuance of the document of title in the newsletter.

“If several persons request the document of title, they are given one document for all.”;

to replace word “Kazpatent” with “the authorized body” in paragraphs 3 and 4;

20) in the Article 26:

in paragraph 1:

to replace word “Kazpatent” with “the expert organization” in the first sentence;

to replace word “Kazpatent” with “the expert organization” in the second sentence;

to replace word “Kazpatent” with “the expert organization” in paragraph 2;

to replace word “Kazpatent” with “the expert organization” in paragraph 4;

to add words “and with the report on the data research by the expert organization”;

in paragraph 6:

to replace word “Kazpatent” with “the expert organization”;

to add words “as well as information about any changes in the entries in correspondent State Registers”;

21) in the Article 28:

in paragraph 1:

to replace words “make the decision” with “provide the resolution of the expert organization”;

to remove part two;

to replace words “making decision” with “provision of the expert organization resolution” in paragraph 2;

22) to replace word “Kazpatent” with “the authorized body” in article 29 paragraph 2;

23) in the Article 30:

in paragraph 2 subparagraph (1):

to replace word “Kazpatent” with “the authorized body”;

to add words “If a document of title is given for a group of industrial design objects, and the application of the patent holder only is submitted to a part of that group of industrial design objects, the validity of the document of title only expires concerning the industrial design objects defined in the application;”;

to replace word “Kazpatent” with “the expert organization” in paragraph 3;

24) in the Article 31:

in paragraph 1:

in part 1:

to remove words “due to reasonable excuses and”;

to replace words “restoration of the patent validity” with “for keeping the patent valid during the years missed”;

to replace word “Kazpatent” with “the expert organization”;

to add word “of such a use” after “amount” in part one of paragraph 2;

25) to replace word “Kazpatent” with “the authorized body” in article 32 paragraph 1;

26) to replace word “Kazpatent” with “the expert organization” in article 33 paragraph 2;

27) to remove article 35;

28) to set the Article 36 as follows:

“Article 36. Patent agents

“1. A patent agent can be resident/citizen of the Republic of Kazakhstan, whose qualifications meet the requirements. The qualification requirements to patent agents, the order of their attestation and registration shall be defined by the authorized body.

“2. The applicant, patent holder himself or a patent agent registered in the authorized body can deal with the authorized body and the expert organization.

“3. Persons living abroad or legal entities shall exercise the rights of the applicant, patent holder as well as the right of a person interested in the authorized body and the expert organization only through patent agents.

“Persons who are residents of the Republic of Kazakhstan but temporary stay abroad can exercise the rights of the applicant, patent holder, as well as the right of a person interested in the authorized body and the expert organization, without patent agents if they use the address for correspondence in the Republic of Kazakhstan.

“4. The information disclosed by the principle to the patent agent is confidential, unless other agreed or is explicit from his actions.

“Patent agent cannot accept the assignment if he had represented or consulted persons whose interests contradict to the interests of the person applying with the request to take the case; if he had participated in its processing as well as if a relative of the patent agent takes part in the process.

“5. The authority of the patent agent shall be confirmed by a letter of attorney made by the applicant or patent holder.”;

29) to replace word “Kazpatent” with “the expert organization” in article 37.

4. To the Law of the Republic of Kazakhstan “On trademarks, service marks, and names of the places of products’ origin” as of 26 July 1999 (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, # 21, p. 776):

1) in the Article 1:

to remove word “Kazpatent” in subparagraph (1);

to add word “of a trademark or” after “sale” in subparagraph (6);

in subparagraph (10):

to replace word “this” with “denomination used as a trademark or”;

to put words “recognized as public” in plural form (*in Russian*);

in subparagraph (11):

to add words “of the Republic of Kazakhstan” after “citizens”;

to replace word “Kazpatent” with “the authorized body and the expert organization;”;

2) to set the Article 3 as follows:

“Article 3. The authorized state body and the expert organization

“1. The authorized state body (hereinafter referred to as ‘the authorized body’) participates in the implementation of the state policy in the field of legal protection of trademarks, service marks, names of places of products’ origin; accepts applications for

registration of a trademark, registration and entitling with the right to use names of places of products' origin, as well as for recognition of a trademark as well known; issues certificates, and performs other functions assigned by the legislation.

“2. An expert organization subordinate to the authorized body examines the applications for a trademark, names of places of products' origin, as well as for recognition of a trademark as well known; keeps State Registers of Trademarks, names of places of products' origin, and well renown marks.”;

3) in the Article 6:

in paragraph 1:

to remove words “in particular”

to add subparagraphs (6), (7), (8), (9), (10), (11), (12), and (13) as follows:

“6) being in a direct descriptive and (or) associative connection with the goods or services, for denomination of which they are used;

“7) being lines, dots, simple geometric figures, as well as their combinations that do not make a single graphic composition and making no qualitatively new level of perception other than each of the components;

“8) being separate figures, characters, or letters combinations that do not have a word meaning, made in a regular font and comprising a combination of no less than three language units (letters and (or) figures, characters);

“9) being a three-dimensional object, which form is determined exclusively by its functional purpose;

“10) being of an advertising nature;

“11) complex compound artificially made words, even if every constituent has no distinctive capacity, and all together they do not make a qualitatively new level of perception;

“12) commonly accepted short names of organizations, economy industries, and their abbreviations;

“13) being unpatentable medicines.”;

in paragraph 2:

to add words “and their emblems, flags, and symbols” after “international organizations” in part one;

to set part two as follows:

“Such denominations can be used as unprotected elements, if the denomination do not comprise exclusively them, and provided that a correspondent authorized body or their owner granted a permission for that.”;

4) in the Article 7:

to remove word “Kazpatent” in paragraph 1 subparagraph (3);

in paragraph 2:

to remove subparagraph (2);

to set subparagraph (3) as follows:

“3) names of works of literature, science, and arts, well known in the Republic of Kazakhstan at the moment of submission of the application, pirated renown works of arts and their fragments, if the copyright of the latter had been registered under the laws of the Republic of Kazakhstan earlier than the date of priority of the trademark under registration;”;

5) in the Article 8:

in paragraph 1:

to replace words “for registration of a trademark” with “trademark”;

to replace word “Kazpatent” with “the expert organization”;

in paragraph 2:

to replace words “registration of a collective trademark” with “collective trademark”;

6) in the Article 9:

to replace words “registration of a trademark” with “trademark”;

in paragraph 2:

to set subparagraph (1) as follows:

“1) the request for examination of the denomination, specifying the applicant (applicants) as well as his (their) location or residence;”;

to remove words “, for which the registration of a trademark is requested” in subparagraph (3);

in paragraph 3:

to replace words “places of application” with “examination services of the expert organization. The sum of the payment is defined in accordance with the legislation of the Republic of Kazakhstan;”;

to add subparagraph (3) as follows:

“3) the by-law of the collective trademark (when applying for a collective trademark), including the name of the organization authorized to register the collective trademark, the purpose of the trademark registration, the list of subjects having the right to use the trademark, the list and description of qualities or other specifications of the goods or services to be denoted with the trademark, the terms of its use, the order of control over its use, responsibility for violation of the collective trademark by-laws provisions;”;

in paragraph 5:

to replace word “Kazpatent” with “the expert organization”;

to add words “and if the said documents were submitted at various time, than by the date of submission of the last document.”;

to replace word “Kazpatent” with “the authorized body” in paragraph 6;

7) in the Article 10:

to replace word “Kazpatent” with “the expert organization” in paragraph 1:

in paragraph 2:

to replace words “original application” with “original application(s)” in the first sentence;

to replace words “if the application came to Kazpatent” with “if the application has been submitted to the expert organization” in paragraph 3;

in paragraph 4:

to replace words “from the date of submission of the application to Kazpatent” with “since the date of the submission of the application to the expert organization”;

to add part two in paragraph 5 as follows:

“Priority on the divisional applications is set according to the priority date of the original application of the same applicant; and with the right for setting an earlier priority by the original application, according to the date of such a priority, provided that at the date of submission of the divisional application the original application has not been recalled and is not considered to be cancelled, and the divisional application is submitted before the resolution on the original application.”;

to add paragraph 6 as follows:

“6. A multiple priority of a trademark pertaining to various products can be set by requests of the applicant, provided that he submitted several applications for one denomination pertaining to various products.”;

8) in the Article 11:

in paragraph 1:

to replace word “Kazpatent” with “the expert organization”;

to replace words “since the date of the receipt of the application” with “since the date of submission of the application” in subparagraph (1);

to replace word “Kazpatent” with “the expert organization” in paragraph 2;

9) in the Article 12:

to set paragraphs 2, 3, 4, and 5 as follows:

“2. Upon the results of complete examination the expert organization makes either positive or negative resolution.

“3. If the applicant disagrees with the resolution of the expert organization, he can submit an objection to the authorized body within three months since the date of sending the resolution. The objection shall be processed by the board of appeals within four months since the date of the receipt.

“After the examination the applicant submits an application for registration of a trademark to the authorized body. The following documents shall be enclosed to the application:

“1) the positive resolution of the expert organization;

“2) a copy of the application for the trademark;

“3) a letter of attorney if the application is submitted through an agent.

“5. After the applicant submits the documents defined in paragraph 4 herein, the authorized body shall process them and make a resolution either to register the trademark or refuse it.

“The authorized body issues a certificate of approved design for the trademark registered under this Law.

“The certificate shall be issued after the payment of the state fee in accordance with the tax legislation and upon submission of the payment certifying document to the authorized body.”;

10) to add subparagraph (3-1) in the Article 13 as follows:

“3-1) to request division of the application at any phase of processing before the final examination, with division of goods and services listed in the original application between the separate applications;”;

11) in the Article 14:

to remove paragraph 1;

in paragraph 2:

to replace preposition “in” with words “with issuing a certificate for the trademark by the expert organization”;

to replace word “Kazpatent” with “the expert organization” in subparagraph (5);

to add words “, including information about the transfer of the rights for the protected trademark” in subparagraph (7);

to replace word “Kazpatent” with “the expert organization” in paragraph 3;

in paragraph 4:

to replace word “Kazpatent” with “the expert organization”;

to add words “, including information about changes: for legal entities – name, legal-organizational form and location; for persons – surname, first name, middle name, and place of residence.”;

to add paragraph 5 as follows:

“5. The expert organization makes entries about the changes defined in paragraph 4 herein as well as technical corrections in the State Register, and the authorized body, in the certificate of the trademark.”;

12) in the Article 16:

to replace word “Kazpatent” with “the expert organization”;

to add part two as follows:

“Information about the organizations having the right to use the collective trademark are entered in the State Register and the certificate additionally.”;

13) in the Article 18:

to remove paragraph 1;

to replace word “Kazpatent” with “the expert organization” in paragraph 3;

14) to add the Article 18-1 as follows:

“Article 18-1. Recognition of a trademark as renown

“1. Upon request of a legal entity or a person, the following trademark in the Republic of Kazakhstan can be recognized as renown: registered in the Republic of Kazakhstan or protected in accordance with international treaties trademark, as well as a denomination used as a trademark without its protection in the Republic of Kazakhstan, but which became well known in the Republic of Kazakhstan among certain groups of population due to an active use.

“2. A renown trademark is granted the legal protection as for a trademark under this Law.

“3. Upon recognition of a denomination or a trademark as renown in accordance with paragraph 1 herein, the owner is given a certificate valid for ten years since the date of recognition the trademark as renown.

“The validity period of the certificate can be extended for ten years more upon a request by the owner and submission of information confirming that the trademark is renown.

“The information about the registration of a renown trademark, its owner, and subsequent changes pertaining to such a registration shall be entered in the State Register of Renown Trademarks and published in the Newsletter.

“In making resolution on issuing a certificate, the provisions stipulated in the Article 12 paragraph 4 of this Law shall be applied.”;

15) in the Article 19:

in paragraph 4:

to replace word “Kazpatent” with “the authorized body” in part one;

to add words “by the owner of the trademark or the person who has been entitled such a right in accordance with agreement on transfer of the right for the trademark under the Article 21 paragraph 2 of this Law.” after word “packing” in part two;

to add part three as follows:

“Evidences of the use of the trademark, submitted by the holder of the trademark, shall pertain to the period of time specified in the objection.”;

to replace word “Kazpatent” with “the authorized body” in paragraph 5;

to add paragraph 6 as follows:

“6. Owners of trademarks identical or similar to the extent of being mistaken for a renown trademark, and registered before the recognition of the latter as renown, shall preserve the right for the use of such trademarks for the period defined by the authorized body, but no less than seven years.”;

16) to replace word “Kazpatent” with “the authorized body” in the Article 21 paragraphs 1 and 3;

17) to replace word “*peredayetsa*” with “*perehodit*” in part one of the Article 22;

18) to replace word “Kazpatent” with “the authorized body” in the Article 23 paragraph 2;

19) to replace word “Kazpatent” with “the expert organization” in the Article 24 paragraph 3;

20) in the Article 28:

to replace words “registration of the name” with “name”;

to replace word “Kazpatent” with “the expert organization”;

21) in the Article 29:

to set paragraph 2 subparagraph (1) as follows:

“1) request for examination of the name and (or) the right for the name, specifying the applicant(s) as well as his (their) location or place of residence;”;

to replace words “submission of the application” with “examination services of the expert organization. The sum of the fee shall be defined in accordance with the legislation of the Republic of Kazakhstan;” in paragraph 3 subparagraph (1);

22) in the Article 30:

to replace word “Kazpatent” with “the expert organization” in paragraph 1;

to replace word “Kazpatent” with “the expert organization” in paragraph 2;

23) to set the Article 31 as follows:

“Article 31. Resolution upon the examination results

“1. Upon the results of the preliminary examination the expert organization informs the applicant about acceptance of the application for processing, registering it under a correspondent number, setting the date of the submission and the date of priority, or about the refusal to accept the application for processing with argued resolution.

“2. Upon the results of complete examination the expert organization makes either positive or negative resolution.

“3. If the applicant disagrees with the resolution of the expert organization, he can submit an objection to oppose the resolution of the expert organization to the authorized body within three months since the dispatch of the resolution. The objection shall be processed by the board of appeals within four months since the date of its receipt.

“4. After the examination the applicant submits to the authorized body an application for registration of the name of the place of origin of the goods and (or) for granting the right for the use of the name of the product’s origin. The following documents shall be enclosed to the application:

“1) the positive resolution of the expert organization;

“2) a copy of the application;

“3) a letter of attorney if the application is submitted through an agent.

“5. Upon the submission of the documents defined in paragraph 4 herein, the authorized body shall process them and makes a resolution either to register the name of origin of the product and (or) granting the right for the use of the name of the product’s origin, or to refuse the registration.

“The authorized body issues a certificate of approved design for the trademark registered under this Law.

“The certificate shall be issued after the payment of the state fee in accordance with the tax legislation and upon submission of the payment certifying document to the authorized body.”;

24) in the Article 33:

to remove paragraph 1;

to replace preposition “in” with words “with issuing a certificate for right of the use of the name of the product’s place of origin by the expert organization in” in paragraph 2;

to replace word “Kazpatent” with “the expert organization” in paragraph 3;

to set paragraph 4 as follows:

“4. The State Register of the names of products’ places of origin is open for common access. Upon request of interested persons the expert organization makes a statement from the State Register of the names of products’ places of origin.”;

25) to replace word “Kazpatent” with “the expert organization” in the Article 34 paragraph 2;

26) to replace word “Kazpatent” with “the expert organization” in the Article 35;

27) in the Article 36:

to remove paragraph 1;

to replace word “Kazpatent” with “the expert organization” in paragraph 3;

28) to replace word “Kazpatent” with “the authorized body” in the Article 39 paragraph 2;

29) in the Article 40:

to replace word “Kazpatent” with “the authorized body” in paragraph 2 subparagraph (3);

to replace word “Kazpatent” with “the expert organization” in paragraph 4;

30) to replace word “Kazpatent” with “the authorized body” in the Article 41 paragraph 1;

31) in the Article 42:

to add subparagraph (3-1) in paragraph 1 as follows:

“3-1) about the lawfulness of recognition a trademark as renown;”;

to replace word “Kazpatent” with “the expert organization” in paragraph 2;

32) in the Article 43:

in paragraph 1:

to add words “, and in case of a renown trademark – concerning any goods and services”;

to add part two as follows:

“Unauthorized use of a trademark or the name of product’s place of origin in the world wide network Internet is also considered as violation of the rights of the owner of the trademark or violation of the right for the use of the name of product’s place of origin.”;

33) to remove the Article 45;

34) to set the Article 46 as follows:

“Article 46. Patent agents

“1. A patent agent can be a resident/citizen of the Republic of Kazakhstan, whose qualifications meet the requirements. The qualification requirements to patent agents, the order of their attestation and registration shall be defined by the authorized body.

“2. The applicant, patent holder himself or a patent agent registered in the authorized body can deal with the authorized body and the expert organization .

“Persons living abroad, or legal entities, shall exercise the rights of the applicant, owner of the trademark or the name of product’s place of origin, as well as the right of a person interested in the authorized body and the expert organization only through patent agents.

“Persons who are residents of the Republic of Kazakhstan but temporary stay abroad can exercise the rights of the applicant, owner of the trademark or the name of product’s place of origin, as well as the right of a person interested in the authorized body and the expert organization, without patent agents if they use the address for correspondence in the Republic of Kazakhstan

“4. The information disclosed by the principle to the patent agent is confidential, unless other agreed or is explicit from his actions.

“Patent agent cannot accept the assignment if he had represented or consulted persons whose interests contradict to the interests of the person applying with the request to take the case; if he had participated in its processing as well as if a relative of the patent agent takes part in the process.

“5. The authority of the patent agent shall be confirmed by a letter of attorney.”;

35) to replace word “Kazpatent” with “the expert organization” in part two of the Article 47.

5. To the Law of the Republic of Kazakhstan “On the legal protection of integrated circuits lay-outs” as of 29 June 2001 (Newsletter of the Parliament of the Republic of Kazakhstan, 2001, # 13-14, p. 181):

1) in the Article 1:

to replace words “the authorized body” with “on integrated circuits lay-outs protection matters” in subparagraph (1);

to add words “of the Republic of Kazakhstan” after “citizens” in subparagraph (6);

2) to replace words “and makes their examination” with “, processes them, and registers the lay-outs;”;

3) in the Article 11:

to remove paragraph 3 subparagraph (4);

in paragraph 4:

to add part two as follows:

“ The certificate shall be issued after the payment of the state fee in accordance with the tax legislation and upon submission of the payment certifying document to the authorized body.”;

to add part 4 as follows:

“The authorized body gives a certificate to the author of a lay-out who is not the rightholder so as to certify his authorship.”;

to remove paragraph 6.

Article 2. This Law takes effect on the day of its publication.

The President of the Republic of Kazakhstan