

**THE LAW OF REPUBLIC TAJIKISTAN
ABOUT INDUSTRIAL DESIGNS**

Title 1. GENERAL PROVISIONS

Article 1. Relations governed the Law

This Law shall govern the property and connected to them personal non-property relations arising out of creation, legal protection and use of industrial designs within Republic of Tajikistan.

Article 2. State Patent office of the Republic Tajikistan

The State Patent office (hereinafter referred to as a Patent office) shall carry out an integrated state policy in the field of legal protection, in particular, industrial designs. It shall receive applications for the protection of industrial designs, effect the examination and state registration thereof, publish official information and issue patent regulations, and shall perform other functions laid on it.

The activities of Patent office shall be financed from the budget and payments made for the services and materials provided by Patent office.

Appeal council is acting at Patent office which is obligatory initial administrative body under the sanction of the questions at issue concerning a right protection of objects of the industrial property operates. Appeal council carries out the powers on the basis of the current legislation and Positions about Appeal council.

Article 3. Legal protection of Industrial Designs

The right in industrial designs shall be protected by the government and shall be certified by patent.

The patent for an industrial designs shall certify the priority date of an industrial design, the authorship thereof and exclusive right to use the industrial designs.

The scope of the legal protection conferred by an industrial design patent shall be determined by the sum of essential features as shown on the photographs of the article (model, design).

The term of an industrial design patent shall be ten years from the receipt of the application by the Patent office. The term of industrial design certificate may be extended by the Patent office, at the request of the Patent owner, for a period not exceeding five years.

Title II. THE PATENTABILITY OF INDUSTRIAL DESIGNS

**Article 4. Conditions of patentability of
Industrial Design**

The industrial designs represents the art - design decision of a product determining its form.

An industrial design shall be granted protection if it is new and original.

An industrial design shall be deemed new if the sum of its essential features, defining the special aesthetic and functional aspects of the manufactured article, was not known from information generally available in the world before the priority date of the design.

When the novelty of an industrial design is determined. due regard shall be had to earlier applications that have been filed in Republic of Tajikistan by other persons, benefit from an earlier priority date and have not been withdrawn, and also to industrial designs that have been patented in the Republic of Tajikistan.

An industrial design shall be deemed original if its essential features determine the creativeness of the special aesthetic of the manufactured article.

Disclosure of information that otherwise would affect the patentability of the industrial design claimed in the application shall not do so where the information was disclosed, during the six months preceding the filing date of the application, applicant (author) or by any person having obtained the information directly or indirectly from them. The burden of proof of the foregoing shall be on the applicant.

The following shall not be recognized as patentable as industrial designs:

- solutions that are determined exclusively by the technical function of an article;

- solutions that relate to architectural works (with the exception of minor architectural forms) and industrial, hydraulic and other stationary structures;

- solutions that relate to printed matter as such;

- solutions that relate to subject matter of unstable shape such as liquids, gaseous and dry substances;

- articles that are contrary to the public interest, humanitarian principles or morality.

Title III. SUBJECTS OF THE RIGHT ON THE INDUSTRIAL DESIGN

Article 5. Author of an Industrial Design

A natural person whose creative work resulted in the industrial design shall be recognized as the author thereof.

Where industrial design matter is the result of the joint creative work of two or more natural persons, those persons shall be recognized as the joint authors thereof. The conditions for exercising the rights in the industrial design matter shall be determined by agreement between them.

Natural persons shall not be recognized as joint authors where they have not made a personal creative contribution to the industrial design

matter, but have simply given the author (or authors) technical, organization or material assistance or helped him (or them) in securing the legal rights in the industrial design matter or in using it.

The authorship of industrial design matter shall be an inalienable personal right. That right shall enjoy protection of unlimited duration.

Article 6. The applicant

The right to hand in an application to a patent for industrial designs have:

- the author of industrial designs;
- the employer in the cases provided for in subsection 2 of the article 7 of this Law;
- the successors of the author (or authors) or the employer.

Article 7. Patent Owner

A patent shall be granted to a natural person specified by the applicant in the application for the grant of a patent for an industrial design.

The right to a patent for an industrial design that has been made by an employee in the line of duty, or as a result of a specific task entrusted to him by his employer, shall belong to the employer unless otherwise provided in the employment contract.

Where employer, within four months after having been notified by the author of the industrial design, has not filed an application with the Patent office, has not assigned his right to file an application to another person or has failed to notify the author of his decision to keep the corresponding object secret, the author shall have the right to file an application and to be granted a patent in his own name. The employer shall in that case be entitled to use the industrial design in his own manufacture, subject to the payment of compensation to the Patent owner.

The right on reception of the patent for the industrial designs created by the worker with use of experience, material, technical and other means of the employer, but not in connection with performance by the worker of official duties or the concrete task of the employer, belongs to the worker if the contract between them does not stipulate other. In this case the employer has the right to use of an industrial designs in own manufacture with payment of indemnification to Patent owner determined on a contractual basis.

Article 8. The right of the author of the industrial designs created In connection with performance of official duties

The author who does not possess the right on application for an industrial designs and reception of the patent, has the right to reception of the compensation from the employer proportional to benefit which is received by the employer or could be received by him at appropriate use of an industrial designs, in cases:

Receptions of the patent by the employer ;

Transfers of the right on reception of the patent to other person by the employer ;

Acceptances by the employer of the decision on preservation of an industrial designs as fiduciary;

Non receipt of the patent under the application sent by the employer for an industrial designs for the reasons dependent on the employer.

Compensation is paid in size and on the conditions determined on the basis of the agreement between the author and the employer.

In a case of unattainment of the agreements between the sides about the size and the order of payment of compensation or indemnification dispute is considered in court.

For delayed payment of compensation or indemnification, determined by the contract, the employer guilty of it, bears the responsibility according to the current legislation.

Other relations arising in connection with creation by the worker of an industrial designs, are adjusted appropriate by acts.

Title IV. APPLICATION FOR THE GRANT OF THE INDUSTRIAL DESIGN

Article 9. Filing of the Patent Application

An application for the grant of a patent shall be filed with Patent office by the applicant in title (hereinafter referred to as applicant).

Applications for the grant of patents may be filed through patent agents registered with the Patent office. Natural persons having their residence or foreign legal entities having their principal place of business outside of Republic Tajikistan, and also their professional representatives, shall be required to act through patent agents registered with Patent office. The powers of the patent agent shall be the applicant. The requirements to be met by patent agents and the procedure for their qualification shall be stipulated in the Statute on Patent Agents.

Article 10. The content of application

The application for the grant of an industrial design patent shall relate to one industrial design only and may include its variants (unity of industrial requirement).

The industrial design application shall contain:

- 1) the request for the grant of a patent, stating, the name of industrial design, the name of the creator (or creators) and the person (persons) in whose name the grant of a patent is sought, and the addresses of their residences or places of business;
- 2) a set of photographs of design, providing full and detailed views of its outward appearance;
- 3) the description of the industrial design, covering all its essential features;

4) the drawings, affording general views of the manufactured article and its functional characteristics, or an assembly diagram where indispensable for the understanding of the disclosure.

The industrial design application shall be accompanied by proof of payment of the prescribed fee or of circumstances affording entitlement to exemption from payment, or also a reduction in the amount, of the prescribed fee.

The conditions to be met by the elements of the industrial design application shall be determined by Patent office.

Article 11. Correction of the application on the Applicant's initiative

Within three months after the filing date of the application the applicant shall have the right to amend or correct elements of the application on his own initiative, without the changing of the applied industrial design essence.

Such amendments or corrections may be also presented after the ending the three month period, but not a decision has been taken on the substantive examination, in case if corresponding duty will be paid.

Article 12. Date of application

Date of application is established by date of receipt in Patent office of all materials of the application listed in items 1, 2, 3 paragraphs of the present Law second article 10.

The decision on an establishment of date of application goes to the applicant after receipt to Patent office of the document confirming payment of the duty on application in the established size.

In case of infringement of requirements of article of the present Law the application is considered not sent.

Article 13. Confidentiality of office-work Under the application

Within the framework of office-work under the application Patent office closes access to the application to any person before the publication of data on distribution of the patent, except for cases when there is a request or the sanction of the applicant. Access means any actions, including the personal message with which help the third parties can receive the information on the application.

TITLE V. PRIORITY OF INDUSTRIAL DESIGN

Article 14. Conditions priority statute

Priority may be determined by the filing date of the application according to the article 12 of this Law.

Priority may be determined by the date of receipt by the Patent office of additional documents if they are submitted by the applicant as a separate application, provided that it has been filed within three months following the date of receipt by the applicant of a notification from the

Patent office to the effect that additional documents will not be taken into consideration since they are recognized as modifying the subject matter of the claimed solution.

Priority may be determined by the date of receipt of an application by the Patent office filed by the same applicant disclosing the industrial design, on condition that the application claiming such priority has been received by the Patent office no later than six months from the date of receipt of the earlier industrial design application. In such a case the earlier application shall be deemed to have been withdrawn. Priority may be determined on the basis of several earlier applications provided that meets the aforementioned conditions. Priority may not be determined by the date of receipt of an application in which an earlier priority has already been claimed.

The priority of an industrial design based on a divisional application shall be determined by the date of receipt by the Patent office of the initial application disclosing the industrial property subject matter, provided that the divisional application is final decision refusing the grant of a patent has been taken on the said initial application or, where a patent has been granted on the initial application, before the date of registration of the State Register of Inventions.

Where the examination finding that the same priority date is claimed for similar industrial property subject matter, the patent shall be granted for the application having a proven earlier mailing date, or, where the mailing dates coincide, for the application having an earlier registration number at the Patent office, unless otherwise agreed between the applicants.

Article 15. Convention priority

Priority may be fixed by the filing date of the first application in any State party to the Paris Convention for the Protection of Industrial Property where the industrial design application has been filed with Patent office within six months from the said date. Where an application claiming Convention priority cannot, for reasons beyond the applicant's control, be filed within the prescribed time limit, the latter may be extended for a period not exceeding two months. The application wishing to enjoy Convention priority shall make a declaration to that effect to be submitted to the Patent office when filing the application or within two months following the date of receipt of the application by the Patent office, and shall attach thereto a copy of the first application or shall furnish it no later than three months from the date of receipt of the application by the Patent office.

Title VI. EXAMINATION OF APPLICATION

Article 16. Formal examination of application

After three months from the date of application Patent office carries out on it formal examination. Under the written petition of the applicant

formal examination can be started before the expiration of the specified term. In this case the applicant from the moment of submission of the petition loses the present Law of the right stipulated by article 11 on corrections and specification of documents of the application under the initiative without payment of the duty.

During carrying out of formal examination of the application presence of necessary documents and observance of the established requirements to them is checked according to articles 9 and 10 present Laws and the question on is considered, whether the declared art - design decision concerns to industrial designs to which the right protection is given according to article 3 of the present Law.

If according to article 11 of the present Law the applicant represents additional materials under the application, during examination is checked, whether they change essence of the declared industrial designs.

Additional materials change essence of the declared industrial designs if they contain the attributes subject to inclusion in the list of essential attributes and absent in initial materials of the application. Additional materials regarding, changing essence of the declared industrial designs, by consideration of the application in attention are not accepted and can be made out by the applicant as the independent application.

If the application for an industrial designs is made out with observance of all established requirements, the applicant is notified on positive result of formal examination.

Under the application which has been made out with infringement of requirements to its documents, the applicant with the offer the inquiry goes to bi-monthly term from the date of its reception to present the corrected or absent documents. In case the applicant will not present required materials or the petition for prolongation of a target date to the specified term, the application is considered withdrawn.

Under the application sent with infringement of the requirement of unity of an industrial designs, it is offered to the applicant within two months from the date of reception of the corresponding notice by him to inform what from offers should be considered, and if necessary bring in specifications to documents of the application. On other industrial designs including in materials of the initial application, the applicant has the right of registration of the allocated applications.

In case the applicant within two months after reception of the notice on infringement of the requirement of unity of an industrial designs will not inform, what from art - design decisions is necessary for considering and will not present the specified documents, consideration of the art - design decision specified in the application first, and also other variants is carried out.

At disagreement with the decision of examination the applicant has the right in four-monthly term from the date of removal of the decision to

submit objection to Appeal council. The objection should be considered within two months.

Article 17. Examination of the application in essence

Examination of the application is in essence carried out under the petition of the applicant (or the third parties) which can be sent in time, not exceeding twelve months from the date of receipt in Patent office of the complete set of materials of the application listed in article 10 of the present Law, after payment of the corresponding duty.

If the petition for carrying out of examination in essence will not be sent in twelve months term, the application is considered withdrawn.

During examination of the application the priority of the invention is in essence established and conditions of patentability of an industrial designs are checked according to article 4 of the present Law.

At carrying out of examination of the application in essence Patent office has the right to request additional materials of the applicant. The additional materials changing set of essential attributes of an industrial designs are not accepted to consideration. They can be made out by the applicant as the independent application with an establishment of a priority by date of their receipt in Patent office.

If as a result of examination of the application in essence Patent office will establish, that the declared industrial designs in inquired the applicant volume of a right protection corresponds to the conditions of patentability determined by article 4 of the present Law, is made a decision about distribution of the patent.

At an establishment of discrepancy of the declared industrial designs in inquired volume of a right protection to conditions of patentability it is made a decision about refusal in distribution of the patent.

The applicant has the right to get acquainted with the materials specified in inquiry of examination, in the decision of examination or in the report on search. Copies of patent materials required by the applicant go Patent office within two months from the date of reception of inquiry.

In case of disagreement with the decision on refusal in distribution of the patent the applicant has the right to submit corresponding objection to Appeal council within four months from the date of reception of the decision. The objection should be considered by Appeal council in six-monthly term from the date of his.

At disagreement of the applicant with the decision of Appeal council he can address in court in six months term from the date of reception of the decision.

The terms of representation of materials missed by the applicant by inquiry of examination and submission of objection in Appeal council can be restored by Patent office under the petition of the applicant sent not later of twelve months from the date of the expiration of missed term, under condition of payment of the corresponding duty.

Article 18. Publication of Particulars of the Patent Grant

Patent office in six-monthly term from the date of decision-making on distribution of the patent for an industrial designs publishes in the official bulletin of data on the patent, including a name of the author(authors) (at their consent) and patent owner, the name, date of a priority, the list of essential attributes, the image of an industrial designs, and also other necessary data determined by Patent office.

Title VII. GRANTING OF THE RIGHT PROTECTION

Article 19. Registration of Industrial Design and grant of the patent

Patent office within three months from the date of reception of documents on payment of the duty for registration and grant of the patent brings an industrial designs in the State register of industrial design of Republic Tadjikistan, and gives out patent owner the patent.

The structure of the data brought in the State register of industrial design of Republic Tadjikistan and structure of data, indicated in the patent, is established by Patent office.

At presence of several persons addressed to which the patent was asked, he is given out one patent. To the author(authors) of an industrial designs Patent office gives out the certificate confirming authorship to the author(authors) of an industrial designs.

At unrepresented when due hereunder the document confirming payment of the duty on registration and grant of the patent, registration of an industrial design and distribution of the patent is not made, the corresponding application is considered withdrawn.

Article 20. A response of the application

The applicant has the right to withdraw given by him the application before date of registration of an industrial design.

Title VIII. The EXCLUSIVE RIGHT TO USE of the INDUSTRIAL DESIGNS

Article 21. Rights Patent Owner

The patent owner has the exclusive right to use of an industrial design protected by the patent at own discretion if such use does not break the rights of others patent owners, including the right to forbid use of an industrial design belongs to other persons, except for cases when such use according to the present Law is not infringement of the patent owner right.

Mutual relations on use of an industrial design, the patent on which belongs to several persons, are defined by the agreement between them. At absence of such agreement each of owners of the patent can use a protected industrial design at own discretion, but have no right to give on him the license or to transfer the patent to other person without the consent of other owners of the given patent.

If patent owner cannot use an industrial design, not breaking thus of the rights of another patent owner, he has the right to demand from last conclusion of the license contract.

Patent owner has the right to concede the received patent to any physical or legal person. The contract about a concession of the patent is subject to registration in Patent office without which it is considered void.

The exclusive right patent owner is valid operates from the date of the publication of data on grant of the patent in the official bulletin.

The patent for an industrial design and the right for its reception devolve.

Article 22. Granting of the right of use Industrial designs

Any person who is not being patent owner, has the right to use the industrial design protected by the patent, only from the sanction patent owner on the basis of the license contract.

Under the license contract patent owner (licensor) undertakes to concede a right to use of an industrial design in the volume stipulated by the contract, to other person (licensee), and last takes up a duty to carry out all actions stipulated by the contract.

At the exclusive license to the licensee in the limits stipulated by the contract, with preservation for the licensor of the right the exclusive right to use of an industrial design is transferred to his use regarding, not transmitted to the licensee.

At the non-exclusive license the licensor, giving the licensee the right of use of an industrial design, reserves all rights confirmed with the patent, including the right on granting of licenses to the third parties.

The license contract is subject to registration in Patent office and without registration it is considered void.

Patent owner can submit to Patent office the application for granting to any person of the right of use of an industrial design (the open license). In this case the duty on maintenance of the patent in force is reduced on 50 percent since one the year following after year of publication by Patent office of data on such application.

In case of a response of the open license patent owner the duty on maintenance of the patent in force during time of action of the open license is not subject to surcharge, and further is paid in the full size.

The person who has expressed desire to get the open license, is obliged to conclude with patent owner the contract about payments. Disputes on conditions of the conclusion of the contract are considered by court.

Article 23. The compulsory license

Patent owner is obliged to use an industrial design. At non-use or insufficient use by patent owner an industrial design within four years from the date of the publication of data on distribution of the patent the person wishing and ready to use an industrial design, in default patent

owner from the conclusion of the license contract can address in court with the claim for granting to it the compulsory license for use of the specified industrial design.

If the owner of the patent will not prove, that non-use or insufficient use of an industrial design is caused by the valid reasons, the court gives the compulsory license.

By granting the compulsory license by court limits of use of an industrial design should be determined, the patent on which belongs to other person, in the volume necessary for use of other industrial design, patented by the person demanding granting to him of the compulsory license, and also the size, terms and the order of payments.

In interests of national safety, and also at force majeure (disasters, accidents, crashes), the Government of Republic Tadjikistan has the right to make the decision on distribution of the compulsory license with payment to the owner of the patent of proportional indemnification, and, the volume and duration of use of the patented industrial designs are limited to the purposes for which it was authorized. The compulsory license is the non-exclusive license, it cannot be conceded to other person. The disputes arising as a result of such use, are resolved by court.

The compulsory license is subject to obligatory registration in Patent office without which it is considered void.

Article 24. Infringement of the exclusive right

Any natural or legal person using an industrial design in the contradiction with the present Law, is considered the infringer of the exclusive right patent owner (the infringer of the patent).

Infringement of the exclusive right patent owner (infringement of the patent) manufacturing, application, import, storage, sale, other introduction in economic circulation or storage with this purpose of the product containing the patented industrial design without the consent patent owner admits as infringement of the exclusive right.

The product admits containing a protected industrial design if it contains all its essential attributes submitted on images of a product and resulted in the description of an industrial design.

Patent owner have the right to demand:

the terminations of infringement of the patent;

compensation by the person guilty of infringement of the patent, the caused losses, including the missed benefit, and indemnifications of moral damage;

collectings of the income received as a result of illegal use of an industrial design;

Withdrawals in the benefit of the products entered into economic circulation or stored with this purpose and recognized breaking patent, and also the means specially intended for infringement of the patent;

Publications in official publications of Patent office of a judgement with a view of restoration of the business reputation.

Requirements to the infringer of the patent can be declared also by the owner of the exclusive license if other is not stipulated by the license contract, or the owner of the non-exclusive license if it is stipulated by the license contract.

Article 25. The actions which are not recognized as infringement of the exclusive right

Do not admit as infringement of the exclusive right patent owner:

application of the means containing industrial designs, protected by patents, in a design or at operation of vehicles (ground, air, water) other countries provided that the specified means temporarily or casually are in territory of Republic Tajikistan and are used for needs of a vehicle. Such actions do not admit as infringement of the exclusive right patent owner if vehicles belong to physical or legal persons of the countries giving the same rights to owners of vehicles of Republic Tajikistan;

carrying out of scientific research or experiment with the means containing an industrial design, protected by the patent;

application of the means containing an industrial design, protected by the patent, at force majeure (acts of nature, accidents, large failures), with the subsequent payment patent owner proportional indemnification;

application of the means containing an industrial design, not for reception of the income;

Application, the offer to sale, sale, import or storage for these purposes of the product containing an industrial design protected by the patent if this product is entered into economic circulation in Republic Tajikistan by lawful way.

Article 26. The right of previous use

Any natural or legal person who before date of a priority of an industrial design irrespective of its author has created and used the decision identical to an industrial design in territory of Republic Tajikistan or has made necessary preparations for this, keeps the right on its further gratuitous use without expansion of volume of such use.

The right of previous use can be transferred to other person only together with manufacture on which use of an identical industrial design took place or have been made necessary for this preparation.

Title IX. CANCELLATION OF THE PATENT

Article 27. Contest of the patent

The patent during all validity can be challenged by any person and is nullified in full or in part in cases:

revealings of discrepancy of an industrial designs to conditions of the patentability established by the present Law;

presence of the essential attributes absent in initial materials of the application;

The wrong indication in the patent of the author(authors) or patent owner.

The objection against distribution of the patent on the bases stipulated by paragraphs of second and third present article, moves in Appeal council and should be considered within six months from the date of receipt. Thus patent owner should be acquainted with objection.

At disagreement with the decision of Appeal council on the objection challenging the patent, any of the sides within six months from the moment of decision-making can address in court.

Articl 28. Preschedule cancellation of the patent

Action of the patent stops preschedully:

At a recognition of the patent void completely according to article 27 of the present Law;

On the basis of the application sent by patent owner in Patent office;

At non-payment when due hereunder duties on maintenance of the patent in force.

Patent office publishes in the official bulletin of data on preschedule cancellation of the patent.

Article 29. Restoration of action of the patent

The right of afterusing

The action of the patent stopped on the basis, specified in the paragraph of the fourth part of first article 28 of the present Law, can be restored under the petition of patent owner within eighteen months from the date of expiry of the term of payment for maintenance of the patent in force at presence of the valid reasons and representation of the document on payment of the duty for restoration of action of the patent.

Patent office publishes in the official bulletin of data on restoration of action of the patent.

Any person who during the period between date of the termination and date of restoration of action of the patent started use in territory of Republic Tajikistan of a protected industrial designs or has made necessary preparations for this, keeps the right on its further gratuitous use without expansion of volume of such use (the right of afterusing).

The right of afterusing can be transferred to other person only together with manufacture on which use of an industrial design took place or necessary preparations for this have been made.

Title X. FINAL PROVISIONS

Article 30. Consideration of disputes

The disputes connected to infringement of a right protection of industrial design, are considered by Appeal council within the limits of its competence.

At disagreement with the decision of Appeal council any of the sides has the right to address in court.

Courts according to their competence consider the following disputes:

- about authorship to an industrial design;
- about distribution of the patent;
- about an establishment of patent owner;
- about distribution of the compulsory license;
- about infringement exclusive right on use of an industrial design and other property rights of patent owner;
- about the conclusion and execution of license contracts on uses of industrial design;
- about the right of previous and afteruse;
- about payment of compensation to the author employer according to the contract stipulated by article 8 of the present Law;
- other disputes connected to a right protection of industrial design.

Article 31. The responsibility for infringement of the rights of authors

Assignment of authorship, compulsion to the co-authorship, illegal disclosure of data on an industrial designs entail the responsibility according to the legislation of Republic Tajikistan.

Article 32. Duties

For application, for distribution of the patent, for its maintenance in force, for prolongation and restoration of the missed terms, and also for fulfilment of other legal significant actions are collected duties, the Full list *действии* for which fulfilment are collected duties, their size and terms of payment, and also the basis for clearing of payment, Reduction of the size or return of duties established by Government Republik Tajikistan.

Article 33. Patenting of Industrial Designs in foreign countries

Patenting of the industrial designs created in Republic Tajikistan in foreign countries natural and legal persons of Republic Tajikistan is carried out only after application in Patent office of Republic Tajikistan. Thus the applicant should inform about patenting in foreign countries.

Article 34. Rights of foreign physical and legal persons

Foreign physical and legal persons have the rights stipulated by the present Law, level with physical and legal persons of Republic Tadjikistan if other does not follow from the present Law and other acts of the legislation of Republic Tadjikistan