



# Lecture 4. Industrial property subject matter

- ▶ 1. Industrial property subject matter
- ▶ 2. Patents and conditions of patentability
  
- ▶ The main objective of this lecture is to consider the industrial property subject matter on the example of Patent law of Kazakhstan.

# Kazakhstan's legislative base on IP:

- ▶ **The Constitution** of the Republic of Kazakhstan (adopted on August 30, 1995 at the republican referendum)
- ▶ **Civil Code** of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No 409 dated July 1, 1999
- ▶ **On copyright and the related rights.** The Law of the Republic of Kazakhstan dated 10 June, 1996 No 6.
- ▶ **Patent law of the Republic of Kazakhstan. The Law of the Republic of Kazakhstan of 16 July 1999 No. 427.**
- ▶ **On Trademarks, Service Marks and Appellation of Origin.** Law of the Republic of Kazakhstan of July 26, 1999 No. 456.
- ▶ **On Protection of Selection Achievements.** The Law of the Republic of Kazakhstan dated 13 July 1999 No. 422-I.
- ▶ **On the legal protection of integrated circuits topologies.** Law of the Republic of Kazakhstan of June 29, 2001 N 217
- ▶ **On informatization.** Law of the Republic of Kazakhstan dated 24 November 2015 № 418-V.

# Industrial property subject matter

Invention

Utility  
model

Industrial  
design

## Chapter 1. General provisions

### Article 1. Basic definitions used in this Law

- ▶ 1) “the exclusive right” means a property right of the patent owner to use the industrial property subject matter in any manner at his sole discretion;
- ▶ 2) “bulletin” means an official periodical on the protection of industrial property subject matter;
- ▶ 2-1) “Eurasian application” means an application filed in accordance with the Eurasian Patent Convention of 9 September 1994;
- ▶ 3) “intellectual property subject matter” means the results of intellectual activity and the means of ascertainment of participants in economic turnover, goods, works, and services;
- ▶ 4) “titles of protection” include innovation patents, patents for inventions, industrial design patents and utility models patents granted in conformity with this Law;
- ▶ 5) excluded by the Law of the RK of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication);
- ▶ 6) “license contract” means a contract under which the patent owner (the licensor) grants another party (the licensee) the right to temporarily use the industrial property subject matter in a particular manner;

- ▶ 7) “industrial property subject matter” means inventions, utility models and industrial design;
- ▶ 7-1) official industrial property subject matter - inventions, utility models, industrial designs created by an employee in the performance of his duties or specific tasks of the employer;
- ▶ 8) The Paris Convention means Paris Convention for the Protection of Industrial Property of March 20, 1983, with all further amendments and supplements.
- ▶ 9) “patent owner” means an owner of the title of protection;
- ▶ 10) “conditions of patentability” mean requirements provided for by this Law for the grant of legal protection for industrial property subject matter;
- ▶ 11) “patented industrial property subject matter” means an industrial property for which a title of protection has been granted;
- ▶ 12) “patent attorneys” means the citizens of the Republic of Kazakhstan, which in accordance with the legislation of the Republic of Kazakhstan have the right to represent individuals and legal entities to the authorized body and expert agency;
- ▶ 13) “international application” means an application filed under the Patent Cooperation Treaty of 19 June 1970.

## **Article 2. Relations governed by the Patent Law**

- ▶ 1. This Law shall regulate property and property related personal non-property relations, arising in connection with the creation, legal protection and use of industrial property subject matter.
- ▶ 2. Protection of other intellectual property subject matter (e.g. selection inventions, topographies of integrated circuits, trademarks, service marks, appellations of origin and other) shall be regulated by other legislative acts.

## **▶ Article 3. Scope of Application of this Law**

- ▶ 1. The provisions of this Law shall apply to industrial property subject matter, the titles of protection for which have been granted by the authorized body, as well as to industrial property subject matter, the patents for which have been granted under international treaties to which the Republic of Kazakhstan is party.
- ▶ 2. If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those which are contained in this Law, the rules of the international treaty shall be applied.

## Article 4. State authorized body in the sphere of protection of inventions, utility models, and industrial designs

- ▶ 1. The state authorized body in the field of protection of inventions, utility models, and industrial designs (hereinafter referred to as “the authorized body”) is a state body, authorized by the Government of the Republic of Kazakhstan and exercising the state regulation in the field of protection of inventions, utility models, and industrial designs.
- ▶ 2. The competences of the authorized agency shall include:
  - ▶ 1) participation in the implementation of the state policy in the field of legal protection of the subject of industrial property;
  - ▶ 2) development and approval of:
    - ▶ rules for examination of applications for the subjects of industrial property;
    - ▶ rules for registration of the subjects of industrial property with the State Register of inventions, the State Register of utility models, the State Register of Industrial Designs and issuance of protection documents and their duplicates, declaring invalid and early termination of patents;
    - ▶ rules for registration with the relevant State Registers of transfer of an exclusive right, granting of the right to use the subject of industrial property, an open or compulsory license;
    - ▶ rules for provision of extracts from the relevant State Registers;
    - ▶ rules of appeals hearing by the Board of Appeal;
    - ▶ rules for consideration of applications for the subjects of industrial property in accordance with international treaties ratified by the Republic of Kazakhstan;
    - ▶ provisions on the attestation commission;
    - ▶ provisions on the appeal board;
    - ▶ provisions on the appeal commission;
  - ▶ 3) determination of the order of publication information in the bulletin relating to the registration of the subjects of industrial property;
  - ▶ 4) attestation of candidates for patent attorneys and their registration with the Register of patent attorneys;
  - ▶ 5) organization of the activity of attestation commission, appeals board and appeal commission;
  - ▶ 6) exercise of other powers provided by this Law, other Laws of the Republic of Kazakhstan, Acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.



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Кыргызстан, Казахстан, Великобритания

Версия для слабовидящих

Поиск

**НАЦИОНАЛЬНЫЙ ИНСТИТУТ  
ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ**

Contact-center в городе Нур-Султан: **+7 (7172) 62-15-15**  
Contact-center: **+7 777 983 8583**  
**+7 775 708 5328**  
**kazpatent@kazpatent.kz**

**ИЗОБРЕТЕНИЯ**

**ПОЛЕЗНЫЕ МОДЕЛИ**

**ПРОМЫШЛЕННЫЕ ОБРАЗЦЫ**

**СЕЛЕКЦИОННЫЕ ДОСТИЖЕНИЯ**

**ТОВАРНЫЕ ЗНАКИ**

**НАИМЕНОВАНИЯ МЕСТ ПРОИСХОЖДЕНИЯ ТОВАРОВ**

**ТОПОЛОГИИ ИНТЕГРАЛЬНЫХ МИКРОСХЕМ**

**ДОГОВОРЫ КОММЕРЦИАЛИЗАЦИИ**

**АВТОРСКИЕ ПРАВА**

**О НАС**

**ПОДАТЬ ЗАЯВКУ НА РЕГИСТРАЦИЮ ОБЪЕКТА**

**ОФИЦИАЛЬНЫЙ БЮДЖЕТЕНЬ**

**ГОСУДАРСТВЕННЫЕ РЕЕСТРЫ**

## Article 5. Legal protection of the industrial property subject matter

- ▶ 1. The rights on invention, utility model, and industrial designs shall be protected by patent.
- ▶ 2. An utility model patent shall be granted based on the results of examination of the application for utility model patent.
- ▶ A patent for an invention or industrial design shall be granted after the formal examination and substantive examination of the application.
- ▶ Patent shall certify the priority, authorship and exclusive rights to the industrial property subject matter.
- ▶ 3. A patent for an invention shall be valid for twenty years from the date of filing the application.
- ▶ With respect to an invention related to a medicine, a pesticide, for the use of which it is required to obtain permits in the manner established by the legislation of the Republic of Kazakhstan on permits and notifications, the validity period of the exclusive right and the patent certifying this right may be extended at the request of the patent holder, but not more than by five years.
- ▶ The specified period is extended by the time elapsed from the filing date of the patent for the invention before the date of the first authorization to use the invention for less than five years.
- ▶ A patent for a utility model shall be valid for five years from the date of filing the application. Its validity can be extended upon the request of the patent owner for not more than three years.
- ▶ An industrial design patent shall be valid for fifteen years from the date of filing the application. Its validity can be extended upon the request of the patent owner for not more than five years.

- ▶ 4. The scope of legal protection provided by a patent shall be determined: for an invention and utility model - by their formula, and for an industrial design - by the combination of its essential features presented on images of the product appearance. For the interpretation of the formula of invention, utility model can be used description and drawings.
- ▶ The effect of a protection document granted for a method for obtaining a product shall apply to the product directly obtained by this method.
- ▶ Therewith, unless proven otherwise, a new product shall be considered as obtained by the protected method.
- ▶ 5. The right to be granted a title of protection, the rights arising from the registration of the application, the right to possess the title of protection and the rights under the title of protection may be transferred in whole or in part to another person.
- ▶ 6. No legal protection shall be granted under this Law for the industrial property subject matter that has been declared secret by the State. The procedure for handling the secret industrial property subject matters are to be determined by the authorized body.



## Chapter 2. Conditions of patentability of industrial property subject matter

### Article 6. Conditions of patentability of inventions

- ▶ 1. An invention shall be granted legal protection if it is new, involves an inventive step and capable of being industrially applicable.
- ▶ An invention shall be deemed new if it is not anticipated by prior state of art.
- ▶ An invention shall involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.
- ▶ The state of the art shall consist of any kind of information published anywhere in the world, and made available to the public, before the priority date of the invention.
- ▶ When the novelty of an invention is being determined, the state of the art shall also include, upon the condition of their earlier priority, all applications filed in the Republic of Kazakhstan by other applicants for inventions and utility models (except for the revoked ones), and inventions and utility models that have been patented in the Republic of Kazakhstan.
- ▶ An invention shall be deemed industrially applicable if it can be used in industry, agriculture, public health and other sectors of the economy.
- ▶ 2. Such technical solutions of any field that relate to the product (a device, substance, microorganism strain, the culture of plant cells or animals), method (the process of affecting a material object using material resources), as well as the application of known product or process for a new purpose, or the use of a new product for a particular purpose shall be protected as an invention.

- ▶ 3. The following shall not be recognized as patentable inventions:
  - ▶ 1) discoveries, scientific theories and mathematical methods;
  - ▶ 2) methods of organization and management of economy;
  - ▶ 3) symbols, schedules, rules;
  - ▶ 4) rules and methods of performing the mental activities, conducting the games;
  - ▶ 5) computer software and algorithms;
  - ▶ 6) projects and plans for structures, buildings, territories;
  - ▶ 7) proposals concerning solely the outward appearance of manufactured articles;
  - ▶ 8) proposals that are contrary to public interest, humanitarian principles or morality.
- ▶ 4. Public disclosure of information, relating to the invention, by the author (applicant) or any person having obtained the information directly or indirectly from them, including the demonstration of an invention as an exhibit at an official or officially recognized international exhibition organized in the state-party to the Paris Convention, shall not be deemed as affecting the patentability of the invention, if the application for the invention was filed within six months after said disclosure of information or displaying it at the exhibition. The burden of proof of the foregoing shall be on the applicant.

► **Literature:**

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3. Kudashov V.I. Intellectual property: protection and realization of rights, management: Textbook / V.I. Kudashov. - Minsk: BNTU, 2004. - 321 p. Dyzhova A.A. Fundamentals of intellectual property management: Lecture notes for students of all specialties. - Mogilev: UO MGUP, 2007. - 129 p.
4. Melissa Schilling: Strategic Management of Technological Innovation, McGrawHill, International Edition 2017.
5. Tidd, J., Bessant, J.R. 2014. Strategic innovation management. Wiley, Hoboken.

**Thank you for your attention!**