

KAZAKHSTAN

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Kazakhstan is a republic in Central Asia, one of the fifteen Republics that prior to 25 December 1991, have formed the former Soviet Union (USSR). Kazakhstan declared its independence on 16 December 1991.

Kazakhstan belongs to the Republics that, at the end of 1991, formed the so-called Commonwealth of Independent States (CIS).

The Kazakh Patent Office, the National Institute for Intellectual Property of the Ministry of Justice, was established on 23 June 1992.

PART 1 PATENTS

§1.01 SUMMARY

[A] Kinds of Patents

- National patent

[B] Duration of Patents

- 20 years from the filing date for full national patents

[C] Patentable / Not Patentable

- An invention is patentable if it is new, involves an inventive step, and is industrially applicable.
- The exceptions as mentioned in Rule 39 PCT apply.
- Also not patentable are algorithms and computer software, projects and plans of layouts of construction, appearance of an article.

[D] Novelty

- Absolute novelty for patents applies.
- 6 months grace period preceding filing/priority date applies.

[E] Filing Requirements and Application Procedure

- Filing languages: any
- Language of translation: Kazakh or Russian
- Time limit for filing translation: 2 months from filing
- A full national patent is granted after formal and substantive examination of the application

[F] Specific Aspects of Regional Patents

- Kazakhstan is a party to the Eurasian Patent Convention. Eurasian patents can be validated in Kazakhstan.

[G] Specific Aspects of International Patent Applications (PCT)

- Time limit for entering National/Regional Phase: 31 months from the priority date
- Time limit for filing translation: 2 months from the national phase entry deadline date (with possibility of further 2 months extension)
- Language of translation: Kazakh or Russian.

[H] Governmental Websites

- <http://www.kazpatent.kz>

§1.02 DETAILED INFORMATION

[A] Conventions and Legislation

[1] Conventions

The relevant patent conventions of Kazakhstan are as follows:

- Paris Convention (International Union), 1883–1967, effective from 25 December 1991;
- Convention Establishing the World Intellectual Property Organization (hereinafter ‘WIPO Convention’), 1967, effective from 25 December 1991;
- Patent Cooperation Treaty (PCT), 1970, effective from 25 December 1991;
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (hereinafter ‘Budapest Union’), 1977, effective from 24 April 2002;
- Hague Convention Abolishing Requirement for Legalization, 1961, effective from 30 January 2001;
- Eurasian Patent Convention, 1994, effective from 4 November 1995; and
- Patent Law Treaty, 2000, effective from 19 October 2011.

[2] Laws

- Patent Law No. 427-3IPK as of 16 July 1999, which entered into force on 21 August 1999 (the law governs patent protection of inventions, utility models and industrial designs).

[B] Kinds of Patents

The kinds of patents are as follows:

- Full National Patents for invention.

[C] Duration of Patents

The duration of a patent for invention is twenty years from the filing date for full national patents granted based on the results of substantive examination.

[1] Patent term extension / Supplementary protection certificate

The term of validity of a pharmaceutical and/or an agrochemical patent, the use of which requires obtaining a marketing authorization from a respective competent authority may be extended at a request of the patent owner by no more than five years.

[D] Requirements for Renewal

Annuities are payable to maintain both national patents beginning from the first year of issuance. The due date for payment is calculated from the anniversary of the date of filing of the application.

The Kazakhstan law does not provide for payment of the maintenance fees/annuities during the prosecution of the application.

Patent annuities are paid after grant.

The validity of the title of protection shall expire prematurely in the event of failure to pay the annual maintenance fee by the prescribed time limit as from the date of expiration of the said time limit. At the same time at the request of the patent owner the validity of the patent that has expired prematurely on the above mentioned ground may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the patent owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

[E] Patentable / Not Patentable

An invention is patentable if it is new, involves an inventive step, and is industrially applicable.

Patents can be granted for devices, products (including chemical and pharmaceutical products), processes (including diagnostic and therapeutic methods for animals and humans), known substances or strains used for a new indication.

The exceptions as mentioned in Rule 39 PCT apply.

The list of exceptions to patent protection includes the following:

- scientific discoveries and theories, mathematical methods;
- business methods;
- symbols, schedules and rules, methods of mental operations;
- algorithms and computer software;
- projects and plans of layouts of constructions;
- solutions regarding appearance of an article.

[1] Chemical compositions

Patents can be granted for chemical compositions that are patentable products or processes.

[2] Pharmaceuticals

Patents can be granted for pharmaceuticals that are patentable products or processes.

[3] Second use

The subject matter of an invention may be the use of a known device, process, substance or strain for a new purpose.

[4] Treatment of the human body

Patents can be granted for diagnostic and therapeutic methods for humans.

[5] Biological materials

A patent can be granted for a strain of microorganism, cells of plants and animals, as well as application of previously known strain for a new purpose.

[6] Plant varieties

Plant varieties are patentable.

[7] Software-related inventions

Algorithms and computer software are not patentable.

[8] Business methods

Business methods are not patentable.

[9] Immoral inventions or inventions contrary to public order

Inventions which are contrary to humanitarian principles, morality and public order may not obtain protection.

[10] Semiconductors

Topographies of integrated circuits are patentable.

[F] Novelty

Absolute novelty applies for national patents.

An invention is new if it supersedes the prior art.

[1] Grace period

The novelty grace period for an inventor is six months from the date of first disclosure.

Disclosure of an invention by the inventor or by a person who received information about the invention directly or indirectly from the inventor does not jeopardize novelty if such disclosure took place within six months preceding the filing date or, where priority is claimed, the date of priority.

[G] Ownership and related rights*[1] Applicant*

Individuals or legal entities are entitled to apply for a patent.

An inventor or employer of the inventor has a right to apply for a patent. No confirmation of a right to file an application by providing any document is required.

[2] Assignment

An owner of a patent is entitled to assign their rights to any person. An assignment must be in writing and signed by the parties.

If the applicant is not the inventor, a deed of assignment is not required, however there is a section in the request form where information on the way in which the applicant has acquired their rights to the invention is provided (through assignment, transfer, employment contract, etc.).

No requirement is provided for by Kazakhstan legislation to submit documents accompanying application if an applicant is not an inventor and the right to file an application has been granted to them based on inheritance, assignment, transfer, employment contract, etc.

Official registration of assignments is compulsory.

Information on assignment of rights to an invention is subject to recordal in the Register of Inventions.

For publication of particulars of assignments in the Register of Inventions, the following documents must be submitted to the Patent Office, namely:

- an application, which must refer to one assignment agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative, it must be accompanied by the Power of Attorney issued by one of the parties to an agreement. Notarization and legalization are required if the Power of Attorney was not stamped by a corporate seal.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement; each copy must contain the seal and signatures of the authorized persons of both parties;
- instead of the original copies of the agreement, the notarized copies of the agreement may be submitted;
- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative (Notarization and legalization are required if the Power of Attorney is not stamped by a corporate seal);
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in any other language, the application must be accompanied by their notarized translation into the Kazakh or Russian language.

Registration of an agreement on assignment of rights to an invention shall be carried out based on the results of an examination of the documents filed with the competent authority. An agreement on assignment of rights shall come into force as of the date of its registration in the competent government authority.

[3] Licenses

An owner of a patent is entitled to give authorization (grant a license) to any person to use the invention. A license agreement must be in writing and signed by the parties.

Official registration of licenses is compulsory.

Information on giving authorization (grant of a license) to use the invention is subject to recordal in the Register of Inventions.

For publication of particulars in the Register of Inventions the following documents must be submitted to the Patent Office, namely:

- an application, which must refer to one agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement; each copy must contain the seal and signatures of the authorized persons of both parties.

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case an application is filed by the patent attorney or other representative;
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of the license agreement to an invention shall be carried out based on the results of an examination of the documents filed with the competent authority. The license agreement shall come into force as of the date of its registration in the competent government authority.

The Kazakh patent law also includes provisions concerning compulsory licenses.

[4] Pledge and Seizure

The subject of a pledge shall be constituted by the property rights which may be alienated, in particular, copyrights, inventor's rights and other property rights.

A pledger has a right to, unless otherwise is provided for by the agreement and follows from the nature of a subject of a pledge, make use of the subject of a pledge according to its intended purpose, in particular, to derive benefits and profits from it. Furthermore, the pledger has a right to assign the subject of a pledge for the purposes of ownership, economic management or operation, to rent it or transfer to other person without compensation or otherwise to dispose of it only upon the consent of a pledgee.

An agreement which restricts the pledger's right to bequeath the pledged property shall be invalid.

A pledgee has a right to make use of the subject of a pledge transferred to them only in the cases provided for by the agreement. The reports on such use must be provided to the pledger on a regular basis. According to the provisions of the agreement, a pledger may be obliged to derive benefits and profits from the subject of pledge for the purposes of paying off primary obligations or in pledger's interests.

The relief of a pledger from the cost of a pledged property shall be made through legal proceedings, unless otherwise provided for by the Civil Code of Kazakh Republic or other legislative acts or by the agreement.

[H] Filing Requirements

[1] Obligation to file first with national office

Nationals of the Republic of Kazakhstan having their residence in its territory and legal entities of the Republic of Kazakhstan shall only file an application for the protection of industrial property subject matter with a competent international patent organization through the Kazakhstan Patent Office unless otherwise provided in the relevant international treaty.

Where an application for the protection of industrial property subject matter is filed with a competent authority of another State or with a competent international patent organization in a manner contrary to the prescribed procedure, no title of protection for the industrial property subject matter shall be granted in the Republic of Kazakhstan.

[2] Minimum requirements for obtaining filing date / Provisional applications

The filing date of an invention application shall be determined based on the date of receipt by the Patent Office of the following elements: the request for the grant of a title of protection, stating the surname and forename (and the middle name if there is a middle name) or the official name of the applicant, the description, the claims and the drawings if there is a reference to the drawings in the description.

Where not all elements of the invention application are furnished at the same time, the filing date shall be determined by the date of receipt of the last of the elements.

The request for the grant of the title of protection shall be written in the Kazakh or Russian language. Other elements of the application may be written in the Kazakh, Russian or in other languages.

Where elements of the application are written in a language other than the Kazakh or Russian, the application shall be accompanied by a Kazakh or Russian translation of those elements. The applicant may furnish a required translation within two months following the receipt by Kazpatent of the application containing elements written in another language.

This term may be extended for a period not exceeding two months subject to payment of the prescribed fee.

If the applicant fails, within the prescribed time limit, to furnish the required translation, the application shall be deemed not to have been filed.

The abstract must be filed together with the application.

[3] Request for grant

The patent application shall contain:

- the request for the grant of a title of protection, stating the names of the inventor (or inventors) and the person (or persons) in whose name the grant of a title of protection is sought, and the addresses of their residences or places of business;

- the description, disclosing the claimed invention in sufficient detail for it to be made;
- the claims, stating the essential features of the invention and fully supported by the description;
- the drawings;
- the abstract;
- a power of attorney if the application is filed through a patent agent.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language. Time limit for filing translation: two months.

The patent application shall be accompanied by proof of payment of the prescribed fee or of circumstances affording entitlement to a reduction in the amount of the prescribed fee which may be either furnished together with the application or within two months following the date of its receipt.

If the applicant is not the inventor, a deed of assignment is not required, however there is a section in the request form where information on the way in which the applicant has acquired their rights to the invention is provided (through assignment, transfer, employment contract, etc.).

No requirement is provided for by Kazakhstan legislation to submit documents accompanying application if an applicant is not an inventor and the right to file an application has been granted to them based on inheritance, assignment, transfer, employment contract, etc.

The request for the grant of the title of protection shall be written in the Kazakh or Russian language. Other elements of the application may be written in the Kazakh, Russian or in other languages.

[4] Appointment of Representative

Foreigners not resident in Kazakhstan must appoint an agent.

[5] Power of Attorney / Designation of inventor / Other documents

A Power of Attorney issued for representation before the Patent Office is executed in simple written form and does not require notarization.

The Power of Attorney must be signed by an authorized person and sealed/stamped. If the applicant has no corporative seal/stamp, the Power of Attorney must be notarized and preferably legalized or, alternatively, bearing an apostille. An original Power of Attorney should be submitted to the PTO with the application or can be filed within two months from the filing date of application.

The term of validity of the Power of Attorney shall not exceed three years. If the term of validity is not indicated in the Power of Attorney, the document shall be valid for one year as of the date of its issuance.

[6] Priority

Convention priority may be claimed. Priority document must be filed within six months from filing the application. Where the priority documents are written in a language other than the Kazakh or Russian, the application shall be accompanied by a Kazakh or Russian translation of those elements. The applicant may furnish a required translation within two months following

the receipt by Kazpatent of the priority document. This term may be extended for a period not exceeding two months subject to payment of the prescribed fee.

[7] Allowable language(s) upon filing / Language(s) of procedure

Applications must be filed in Kazakh or Russian language.

Where elements of the application are written in a language other than the Kazakh or Russian, the application shall be accompanied by a Kazakh or Russian translation of those elements. The applicant may furnish a required translation within two months following the receipt by Kazpatent of the application containing elements written in another language.

This term may be extended for a period not exceeding two months subject to payment of the prescribed fee.

The language of the procedure is Kazakh or Russian language.

[8] Description

The specification may initially be filed in any language, provided that a translation into Kazakh or Russian is filed within two months.

[9] Claims

The claims may be submitted in the original language, provided that a Kazakh or Russian translation is filed within two months from filing the application under the national procedure.

Multiple dependency of claims not allowed.

Additional claims fees do not apply.

[10] Abstract

An application for a patent for invention shall contain an abstract in Kazakh or Russian. The abstract must be filed together with the application.

The abstract is a brief presentation of the contents of the description of the invention including the title of the invention, description of the state of the art to which the invention relates, and (or) its intended purpose provided it is not clear from the title thereof, the description of the subject matter of the invention with indication of the technical result to be achieved. The subject matter of the invention is characterized in the abstract by free presentation of the claims mainly in the manner when all essential features of each independent claim are preserved.

[11] Drawings

The invention application shall contain the figures or other material, where indispensable for the understanding of the disclosure.

The drawings and other explanatory materials may be executed in the form of graphic materials (charts, figures, graphs, orthographic epures, oscillograms, etc.), photographs and tables. Figures are provided in the event if the invention cannot be illustrated by drawings or charts. Photographs are provided as a supplement to graphical images. In exceptional cases, photographs may be provided as a main form of the explanatory materials. Drawings, charts and figures are provided on separate (a separate) sheets (sheet).

[12] Payment of fees

The invention application shall be accompanied by proof of payment of the prescribed fee.

Patent annuities are paid after grant. Restoration is possible by request of the owner, filed within three years of the expiry date.

[I] Application Procedure*[1] Filing Authority*

An application for a patent for an invention shall be filed with the National Institute for Intellectual Property of the Ministry of Justice of the Republic of Kazakhstan (the Patent Office – Kazpatent).

[2] Online filing

Online filing is possible: www.kazpatent.kz

An online register search is possible.

[3] Formal examination

Upon the receipt of an application by the examining authority, the application is checked as to the availability of the application documents.

As soon as the application filing date is allocated, a formal examination of the application is carried out by the examining authority.

[4] Search

A patent search is conducted in order to determine the state of art. The patent search is conducted on the basis of the claims of the invention with consideration of the description and drawings (if there are any) and also taking into account the possible acceptable modifications in the claims.

The patent search is carried out using the patent information database of the Republic State Enterprise ‘National Institute of Intellectual Property’, including the patent databases of the Kazpatent, former USSR, and Russia, United States, European Union and other countries.

[5] Obligation to submit prior art, corresponding foreign search results and/or application numbers

Submitting foreign search results is not mandatory.

Should applicant provide the report on the search conducted by the competent International Searching Authority, the search is conducted only in respect of the data which could not be revealed by the International Searching Authority (in particular, applications filed with the Patent Office).

[6] Substantive examination

Substantive examination of the application is conducted after completion of a formal examination and upon providing a receipt confirming the payment of an examination fee. There is no need to request examination.

Substantive examination includes determining the possibility of qualifying a claimed proposal as an object subject to protection as an invention, carrying out the information search in respect of the claimed invention aiming at assessing prior art, checking whether the claimed object (objects) meets unity of invention requirement and patentability criteria.

[7] Accelerated examination / grant

Accelerated examination (within six months) is possible upon request of the applicant and payment of a fee.

[8] Amendments and corrections

Within two months of the date of receipt of the application, the applicant shall have the right to introduce amendments or corrections in the application on their own initiative, provided that the amendments or corrections do not modify the subject matter of the industrial property object, the application for registration of which has been filed.

Such amendments or corrections may be introduced into an application, subject to payment of the prescribed fee, upon expiry of the two months as of the filing date but not after a decision has been taken in respect of the application for registration of an industrial property object.

[9] Third Party Observations

Not applicable in this jurisdiction.

[10] Grant

After the completion of substantive examination, if an invention or a design meets the requirements of patentability, the Patent Office issues a granting decision.

The applicant shall, within three months following the date of the decision, furnish to Kazpatent a document confirming the payment of a respective fee for preparation for issue of a protection document and of a fee for publication of the mention about the grant of such document, as well as the payment of an official granting fee.

The average processing time from application to grant is two to three years.

[11] Opposition / Re-examination

A patent may be opposed at any time during its term (after grant) by any third party before the court or the Board of Appeals of the Ministry of Justice.

[12] Appeal

A decision refusing or allowing the grant of a patent may be opposed before the Board of Appeals.

Where the applicant wishes to contest a decision refusing the grant of a patent they may do so, within three months following its date, by lodging an appeal with the Board of Appeal.

A patent may be contested and revoked, either entirely or in part, at any time during its period of validity by the filing an opposition to the Board of Appeal.

Where the contestant or the patent owner wishes to contest the decision taken by the Board of Appeal they may do so, within three months following the date of receipt of the decision, by lodging an appeal with the court.

[13] Unity of invention

The application for the grant of an invention title of protection shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

If the application does not comply with the unity of invention requirement, the applicant shall be invited to state, within three months following the date of notification of non-compliance with the requirement, which of the solutions should be examined and to correct, if necessary, the elements of the initial application accordingly. Other solutions contained in the initial application may be submitted as divisional applications.

[14] Divisional applications / Continuation applications

Divisional applications may be filed. In this case the priority date shall be maintained.

Continuation applications are not applicable in this jurisdiction.

[15] Conversion

It is possible to convert an invention application into a utility model application.

[16] Publication / Public File Inspection

A mention about the grant of a patent for an invention is published by an examining authority in its official bulletin upon expiration of eighteen months from the filing date. At the request of an applicant the examining authority may publish a mention before expiration of the above-mentioned term.

[17] Withdrawal to prevent publication

The applicant shall have the right to withdraw an application prior to registration of the industrial property subject matter in the appropriate State Register of the Republic of Kazakhstan.

[J] Nullity and Revocation

A patent owner may at any time revoke their patent fully or in part by filing a relevant statement of revocation with the Patent Office.

A patent shall be revoked in the event of failure to pay the applicable annual fee for maintenance of the patent in force within the prescribed term.

A patent may be declared invalid by the Patent Office in the following cases: the patented invention does not meet the requirements of patentability; the claims contain features of the invention which were not present in the application as filed; the grant of the title of protection

was effected contrary to the prescribed by the law procedure of filing application abroad; the title of protection contains an incorrect indication of the author (or authors) or of the patent owner (or patent owners).

Such action may be initiated by any third party at any time after grant.

[K] Use Requirement

Working of a patent is compulsory. If the invention is not used during a period of three years after the publication of a patent, any person may obtain the right to use the invention based on a court decision in case where the patent owner refuses to issue a license. The use of an invention is constituted by manufacturing a product with the use of a patented invention, sale and importation.

[L] Marking

The patent owner may affix a warning sign indicating that the used industrial property subject matter is patented. Marked products have no implications for awarding compensation in case of past infringement.

[M] Infringement

[1] Infringing acts / Non-infringing acts

The performance of the following acts shall be deemed to constitute an infringement of the exclusive right of the patent owner or the title of protection: unauthorized manufacturing, utilization, importation, stocking, offering for sale, sale and any other distribution for commercial purposes of products incorporating the protected industrial property subject matter or the use of the patented process.

The following shall not constitute acts infringing the exclusive right of the patent owner:

- the use on board sea-going or river vessels of other countries or in the construction or operation of aircraft, space or land vehicles of other countries of devices incorporating protected industrial property subject matter, when such vessels or vehicles temporarily or accidentally enter the territory of the Republic of Kazakhstan, provided that such devices are used there exclusively for the needs of the vessel or vehicle. The above acts shall not constitute an infringement of the exclusive right of the patent owner where such sea-going or river vessels or aircraft, space or land vehicles belong to natural persons or legal entities of the countries affording reciprocal right to natural persons or legal entities of the Republic of Kazakhstan;
- the use of the subject matter incorporating the protected industrial property subject matter for scientific research and experimental purposes;
- the use of the devices incorporating the protected industrial property subject matter in cases of natural disasters, catastrophes or dramatic accidents, provided the owner of the patent is subsequently paid a commensurate compensation;
- the use of the subject matter incorporating the protected industrial property subject matter for private and non-commercial purposes;
- the use of the subject matter incorporating the protected industrial property subject matter for the preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription;

- the use of the subject matter incorporating the protected industrial property subject matter for the marketing purposes in the territory of the Republic of Kazakhstan where the act is done in a legal way.

[2] Prior user rights

The right of prior use is recognized under the Kazakh law.

Any person, whether a natural person or a legal entity, who, before the priority date of the protected industrial property subject matter and independently of the author, had conceived and was using in the territory of the Republic of Kazakhstan a solution similar to the protected industrial property subject matter or was making the necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of prior user).

The right of the prior user may only be transferred by the said prior user to another natural person or legal entity together with their enterprise in which the use or the necessary preparations for use have been made.

Any person, whether a natural person or a legal entity, who, after the priority date of the protected industrial property subject matter but before the date of publication of the particulars of the granted provisional patent for an invention, had started the use of the subject matter, shall, at the request of the patent owner, stop such use. The said person shall not be required to compensate the patent owner for damages sustained in the result of such use.

[3] Remedies

According to the Kazakh legislation, courts shall have the following powers relating to the protection of patent rights:

- cessation of an action constituting infringement of a person's right to an invention;
- compensation of the damages sustained, including moral damage to the owner;
- obligation to pay the owner the amount of profits derived from the unauthorized use of the protected industrial property subject matter, in place of compensation for damage sustained;
- obligation to pay the owner compensation the amount of which shall be from 10,000 to 50,000 times the monthly calculated index in accordance with legislation in force, in place of compensation for damages sustained or payment the amount of the derived profits;
- seize the infringing products that have been commercialized or stocked for commercial purposes as well as materials and implements that have been especially used in the manufacture of infringing products from sale in favour of the aggrieved patent owner;
- inform on the infringement, including the particulars of the owner of the infringed right, be published as a mandatory requirement.

According to the Kazakh legislation, the court may adopt a decision by which the products that infringe an intellectual property right and have been commercialized or stocked for commercial purposes as well as materials and implements that have been especially used in the manufacture of infringing products may be withdrawn from sale in favour of the aggrieved patent owner.

The issue of provisional (for the period of consideration of the case) removal of the said goods or materials (implements) from the civil turnover may be solved yet before filing a civil or economic claim or prior to initiation of the criminal case. In this case, the provisional removal of goods or materials (implements) means their seizure.

The issue of provisional (for the period of consideration of the case) removal of the said goods or materials (implements) from the civil turnover may be solved after filing a civil claim or prior to initiation of the criminal case. In this case, the provisional removal of goods or materials (implements) means their seizure.

[4] Penal provisions

The Article 199 of the Criminal Code of the Republic of Kazakhstan read:

Violation of rights to inventions, useful models, industrial designs, selection achievements or integrated circuit topographies:

- Divulgence, without the consent of a given author or declarant, of the essence of an invention, useful model, or industrial sample, selection achievement or integrated circuit topography prior to official publication of information concerning them, as well as illegal appropriation of authorship, or coercion to co-authorship, if these acts inflicted considerable damage to the author or any other right holder or a substantial infringement of their rights or interests, – shall be punished by a fine in an amount up to one hundred up monthly assessment indices, or by engagement in public works for a period up to 124 hours.
- Illegal use of an invention, useful model, industrial sample, selection achievement, or integrated circuit topography, if these acts are committed on a large scale, – shall be punished by a fine in an amount up to three hundred monthly assessment indices, or by engagement in public works for a period up to 240 hours, or by arrest for a term up to 75 days.
- Acts stipulated by the second part of this Article committed:
 - (1) by a group of persons upon a preliminary collusion;
 - (2) on a large scale or if they caused a considerable damage;
 - (3) by a person with appropriation of their corporate opportunities
 - (4) shall be punished by a fine up to five thousand monthly assessment indices, imprisonment for a period up to five years with forfeiture of property, or without it.

Acts stipulated by the second and third parts of this Article committed by a criminal group shall be punished by imprisonment for a period up to six years.

Notes:

- Acts envisaged by this article shall be deemed to cause considerable damage or be committed on a considerable scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 200 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.
- Acts envisaged by this article shall be deemed to cause a large damage or be committed on a large scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 1000 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.

[5] Enforcement and Customs

No customs means of protection of rights of the owner of the patent for the invention are provided for by the Kazakh legislation.

[N] Restoration after unintentional lapse

At the request of the patent owner the validity of the patent that has expired prematurely on the grounds of failure to pay the annual maintenance fee by the prescribed time limit may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the patent owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

Kazpatent shall publish information on restoration of the validity of patents in its Official Bulletin.

The date of restoration of the patent validity shall be the date of publication of the said information.

Any person, whether a natural person or a legal entity, who, during the period between the date of premature expiration of the patent validity and the date of restoration thereof, was using in the territory of the Republic of Kazakhstan the protected industrial property subject matter or was making necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of interim user).

Provided that a PCT application and a request for restoration is filed at the Receiving Office in this jurisdiction within fourteen months from the priority date, restoration of priority right under Rule 26*bis*.3 in the international phase of the PCT application may be possible.

If a priority right for a PCT application was restored by the Receiving Office, this may be recognized under Rule 49*ter*.1 PCT for the national phase application in this jurisdiction. Also a review of negative decision on the request for restoration by the Receiving Office may be requested in the national phase.

Furthermore, if a PCT application was filed within fourteen months from the priority date, but no request for restoration of priority right was filed at the Receiving Office, a request for restoration of priority right under Rule 49*ter*.2 PCT may be filed at the Designated Office within one month from the applicable time limit for the entry into the national phase.

[O] Specific Aspects of Regional Patents

Kazakhstan is a party to the Eurasian Patent Convention, and an application for a Eurasian Patent may be filed to cover Kazakhstan. A Eurasian patent application to cover Kazakhstan may also be filed by way of filing an international application under PCT.

[1] Filing Authority

Within the frame of Eurasian Patent Convention, an application for a patent for an invention may be filed with the Eurasian Patent Office of the Eurasian Patent Organization by an applicant personally or through the Patent Office of Republic of Kazakhstan.

However, nationals of the Republic of Kazakhstan having their residence in its territory and legal entities of the Republic of Kazakhstan shall only file an application for the protection of industrial property subject matter with a competent international patent organization through Kazpatent.

[2] Appointment of Representative

Any person who has the right to be a representative before the Kazpatent and who is registered with the Eurasian Patent Office as a patent agent may act as representative before the Eurasian Patent Office. Where the applicant does not have their residence or principal place of business in the territory of any Contracting State of Eurasian Patent Convention, they shall be required

to be represented by such a patent agent. Persons having their residence or principal place of business in the territory of any Contracting State may file Eurasian applications and act in all proceedings before the Eurasian Office, either personally or through patent agents or through representatives who are not patent agents.

[3] Validation

The legal protection conferred by the patent shall be extended to the Contracting States of the Eurasian Patent Convention mentioned by an applicant in an application for a patent.

Any dispute arising in respect of the validity or infringement of Eurasian patent in a Contracting State of Eurasian Patent Convention shall be resolved by the national courts or other competent authority of that State on the basis of this Convention and the Patent Regulations. The decision shall have effect only in the territory of the Contracting State.

[4] Authentic text

An application for the grant of a Eurasian patent shall be presented in Russian language. Other documents of the Eurasian application shall be presented in Russian or other language. If the documents of the Eurasian application are presented in other language, it must be accompanied with the translation of the said documents into Russian language. Russian translation of the documents may be furnished by the applicant within two months as of the date of receipt by the Eurasian Patent Office of Eurasian application containing the documents executed in other language. An applicant shall have the right to submit the Russian translation within the two months as of the date of expiration of the preceding two-month term provided the prescribed addition fee has been paid.

[5] Amendments and corrections

Before the technical preparation of the publication of Eurasian patent is completed, an applicant shall have the right to introduce amendments, clarifications or rectifications into the materials of Eurasian application. Introduction on an applicant's initiative of amendments and rectifications into the materials of the Eurasian application is performed upon payment of the prescribed additional fee.

A patent owner shall have a right to file with the Eurasian Patent Office a request for correction of mechanical and obvious errors in Eurasian patent. Filing the request for correction of errors in the Eurasian patent which occurred through the fault of an applicant is subject to payment of a prescribed official fee by the patent owner.

Based on the request filed by the patent owner the particulars of the group of inventors may be amended upon their mutual consent and upon the payment of a prescribed official fee.

Such amendments and corrections are published in the Bulletin of the Eurasian Patent Office.

[6] Publication

Information on the issuance of Eurasian patent is published by the Eurasian Patent Office in the Bulletin of the Eurasian Patent Office within six months as of the date of registration of this patent in the Register of Eurasian Patents.

[7] Provisional protection

After an application for the grant of a Eurasian patent has been published, the applicant shall enjoy provisional protection in conformity with the national legislation of the Contracting States of Eurasian Patent Convention.

[8] Simultaneous protection

No such provisions are set forth in the national legislation. However, in accordance with Article 20 Art of the Eurasian Patent Convention, the Patent Cooperation Treaty and its Regulations shall be applied in the Eurasian Patent System and, in the case of conflict between them and this Convention and its Regulations, the former shall prevail.

[9] Conversion

Before the expiry of six months from the date on which the applicant receives notice on the Eurasian Patent Office's refusal to grant a Eurasian patent or its refusal to allow an appeal lodged in accordance with the Eurasian Patent Convention, the applicant may file a request with the Eurasian Patent Office designating those Contracting States in which they wish to obtain national patents according to the national procedure.

The Eurasian application in respect of which such a decision has been taken and which is the subject of such request shall be treated in any Contracting State so designated as a regular national application filed with the national Office and having the filing date and the priority date, if any, of the Eurasian application, with all the consequences provided in the national legislation, and it shall be further processed by the national Office, provided that the applicant pays the prescribed national fees to the said national Office.

[10] Payment of fees

According to rule 40 of the Patent Instruction to the Eurasian Patent Convention, a temporary grace period for payment of a fee for filing Eurasian application is established for applicants in the Republic of Kazakhstan.

Filing Eurasian application is subject to the payment of the following fees:

- single procedural fee for filing a Eurasian application – in the amount of RUB 2,550;
- fee for conducting substantive examination per one IP object – in the amount of RUB 2,550; per group of inventions – RUB 4,450.

The tariff of the receiving office (Kazpatent) for checking and forwarding the documents is RUB 2760 + VAT 15%.

[P] Specific Aspects of International Patent Applications (PCT)

As from 16 February 1993, it is possible to designate Kazakhstan in international applications filed under the PCT of 1970. Kazakhstan is also bound by Chapter II of the PCT, and therefore it is possible to elect Kazakhstan under Chapter II.

[1] Receiving Office

Nationals of the Republic of Kazakhstan having their residence in its territory and legal entities of the Republic of Kazakhstan shall only file an application for the protection of industrial property subject matter with a competent international patent organization through Kazpatent.

[2] International Searching Authority

The competent International Searching Authority for international applications filed with the Kazakh Patent Office is the Russian Patent Office or the European Patent Office.

[3] International Preliminary Examining Authority

The Competent International Preliminary Examining Authority for such applications is the Russian Patent Office or the European Patent Office in cases where the European Patent Office has established the international search report.

[4] National phase / Regional phase

Additionally, being a party to the Eurasian Patent Convention, it may be designated for entering into the regional phase.

The national phase must be entered into within thirty-one months (both under PCT Chapter I and Chapter II) from the priority date.

A translation of the international application into Kazakh or Russian must be filed within two months after the time limit for entry into the national phase. This time limit can be extended by no more than a further two months if the applicant has paid additional fees.

[5] Payment of fees

Filing of an international application through the Patent Office of the Republic of Kazakhstan is subject to payment of the fee determined by the legislation. The amount of the fee for the further consideration of the application by the Competent International Searching Authority and the Competent International Preliminary Examining Authority is determined by and shall be paid to the International Bureau of WIPO.

By the decision of the PCT Assembly of 1 January 1996 the amount of the fee for filing international application is reduced to 75% for individual applicants who are citizens or residents of the states in which per capita income is less than USD 3,000 (Kazakhstan is among such countries).

[Q] Fees

The document confirming the payment of a fee for filing an application for a patent for an invention shall be provided together with an application or within two months as of the date of filing of an application with Kazpatent. In case of not submitting of the said document after the said term, an application shall be deemed as such as not filed.

[1] Table of official fees

	KZT
Filing application, including carrying out the formal examination of application for an invention patent (for legal entities)	20,320.16
Substantive examination (for legal entities):	
– One invention	66,959.20
– Additionally for each invention over one	53,519.20
Receiving and checking a title of protection (for legal entities)	33,253.92

Small and middle entities fee: .

	KZT
Filing application, including carrying out the formal examination of application for an invention patent (for legal entities)	16,256.13
Substantive examination (for legal entities):	
– One invention	53,567.36
– Additionally for each invention over one	43,815.36
Receiving and checking a title of protection (for legal entities)	18,651.14

Individuals fee: .

	KZT
Filing application, including carrying out the formal examination of application for an invention patent (for legal entities)	6,096.16
Substantive examination (for legal entities):	
– One invention	20,088.32
– Additionally for each invention over one	16,055.20
Receiving and checking a title of protection (for legal entities)	9,975.84

[R] Transitional Provisions

No relevant legislation in this jurisdiction.

[S] Specific Patent Issues

No relevant legislation in this jurisdiction.

[T] Governmental Websites

- <http://www.kazpatent.kz>

PART 2 TRADEMARKS

§2.01 SUMMARY

[A] Duration of Registration

- 10 years from the filing date, renewable for further periods of 10 years.

[B] Registrable / Not Registrable

- Registrable trade and service marks must have distinctive character, and can include devices, words, letters, digits, three-dimensional signs, sounds, or other signs and their combinations.

[C] Application Procedure

- Registration is granted after substantive examination on absolute and relative grounds.

[D] Governmental Websites

- <http://www.kazpatent.kz>

§2.02 DETAILED INFORMATION

[A] Conventions and Legislation

[1] Conventions

- Paris Convention (International Union), 1883–1967, effective from 25 December 1991;
- Madrid Agreement Concerning the International Registration of Marks, 1891–1967, effective from 25 December 1991;
- Madrid Protocol under the Madrid Agreement;
- WIPO Convention, 1967, effective from 25 December 1991;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957–1977, effective from 24 April 2002;
- Trademark Law Treaty (TLT), 1994, effective from 7 November 2002;
- Hague Convention Abolishing Requirement for Legalization, 1961, effective from 30 January 2001; and
- Singapore Treaty on the Law of Trademarks, 2006.

[2] Laws

- Law on Trademarks, Service Marks and Appellations of Origin as of 26 July 1999, which entered into force on 4 September 1999.

[B] Duration of Registration

The duration of a certificate is ten years from the filing date, and may be renewed at the owner's request for further periods of ten years.

[C] Requirements for Renewal

To renew a certificate, the trademark owner needs to submit a request and pay the renewal fee before the expiration of the current term of the certificate. The renewal fee may be paid within six months after the expiration of the prescribed term with a 50% fine for late payment.

[D] Registrable / Not Registrable

Registrable trade and service marks include devices, words, letters, digits, three-dimensional signs or other signs and their combinations, including sounds.

The following signs are exempt from protection:

- national armorial bearings, flags and emblems;
- official names of states;
- emblems, abbreviated or full names of international interstate organizations;
- official check, warranty and standard marks, stamps; and
- awards and other decorations.

Furthermore, protection is not granted to designations which:

- lack distinctive character and have not acquired distinctiveness in the course of their use;
- are generally used as the designations of goods and services of certain kinds;

- are indicative of the type, quality, quantity, properties, purpose, value of goods and services, as well as of the place and time of manufacture or selling of goods, or rendering of services;
- are false or may cause confusion with respect to the goods, services or person manufacturing the goods or providing services; and
- are commonly used symbols and terms.

Signs may also not be registered:

- if these are identical or confusingly similar to the marks previously registered or applied for in the Republic of Kazakhstan in the name of other persons with respect to similar goods and services;
- if these are identical or confusingly similar to the well-known trademarks in relation to any goods and services ;
- if these are appellations of origin, with the exception of cases where these are included into the mark as a non-protected element and are registered in the name of the persons enjoying the right to use such names;
- if these are industrial designs, rights to which belong to other persons in Kazakhstan;
- if these are titles of the known works of science, literature and art, or quotations and characters there from, without the consent of the copyright owners or their successors;
- if these are names, pseudonyms and derivatives thereof, portraits and facsimiles of persons known in Kazakhstan without having obtained their consent.

[1] Colour marks

A trademark may be registered in any colour or combination of colours. A single color is not protectable as it has no distinctive ability, but the combination (two and more) of colors is protectable.

[2] Three-dimensional marks

Three-dimensional marks can be protected.

[3] Collective marks

Collective marks are recognized in Kazakhstan as trademarks owned by an association (a union) or any other association of legal entities or individual enterprisers and used for distinguishing goods and services which they produce or render.

Owners of collective marks may use their individual marks along with the collective mark on the goods which they produce.

[4] Certification / guarantee marks

Certification marks and conformity marks can be protected.

Kazakhstan has products certification system including obligatory and voluntary certification; the purpose of obligatory certification is prevention of sale of products dangerous to life, health, property and environment. To be able to conduct manufacture and further sale in the territory of Kazakhstan of products (goods) subject to state certification, the manufacturer must pass a respective certification procedure. Should a positive decision of a certification

authority be taken, an applicant is granted a certificate and a right to mark products with a special mark of conformity, i.e., a conformity mark.

[5] Associated marks

Not applicable in this jurisdiction.

[6] Series of marks

Registrable.

[7] Other marks

Legal protection may be granted to sound signs.

Tastes are not registrable as trademarks.

Fragrances are not registrable as trademarks.

Music notes are not registrable as trademarks.

[E] Ownership and related rights

[1] Applicant

Both an individual and a legal entity may be an applicant.

[2] Establishment of rights “first-to-file / first-to-use”

There is a first to file system in Kazakhstan.

[3] Assignment

A trademark owner may transfer their property rights in full or for part of the goods and services listed in the certificate based on an assignment agreement. Assignment of rights is prohibited if it can result in misleading consumers as to the goods or services, or as to the person manufacturing goods or rendering services.

An assignment agreement is not effective unless these are in writing and signed by the parties.

Registration of an assignment is compulsory.

Information on assignment of rights to the trademark is subject to recordal in the State Register of the Trademarks.

For publication of particulars of assignments in the State Register of Trademarks, the following documents must be submitted to the Patent Office, namely:

- an application, which must refer to one assignment agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative, it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement; each copy must contain the seal and signatures of the authorized persons of both parties.

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative (Notarization and legalization are required if the Power of Attorney was not stamped by a corporate seal.);
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of an agreement on assignment of rights to the trademark shall be carried out based on the results of an examination of the documents filed with the Patent Office. An agreement on assignment of rights shall come into force as of the date of its registration in the competent government authority.

[4] Licenses and Registered Users

A trademark owner also has the right to give authorization (grant a license) to any person to use the mark under a license agreement. A license agreement must contain the provision that the quality of goods produced under the license agreement or services rendered shall not be inferior to the quality of goods produced or the services rendered by a certificate owner, and that the certificate owner must control fulfilment of this condition.

A license is not effective unless these are in writing and signed by the parties.

Registration of a license is compulsory.

Information on giving authorization (grant of a license) to use the trademark is subject to recordal in the State Register of Trademarks.

For publication of particulars in the State Register of Trademarks the following documents must be submitted to the Patent Office, namely:

- an application, which must refer to one agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement; each copy must contain the seal and signatures of the authorized persons of both parties.

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative;
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of the license agreement to the trademark shall be carried out based on the results of an examination of the documents filed with the competent authority. The license agreement shall come into force as of the date of its registration in the competent government authority.

[5] Pledge and Seizure

The subject of a pledge shall be constituted by the property rights which may be alienated, in particular, copyrights, inventor's rights and other property rights.

A pledger has a right to, unless otherwise is provided for by the agreement and follows from the nature of a subject of a pledge, make use of the subject of a pledge according to its intended purpose, in particular, to derive benefits and profits from it. Furthermore, the pledger has a right to assign the subject of a pledge for the purposes of ownership, economic management or operation, to rent it or transfer to other person without compensation or otherwise to dispose of it only upon the consent of a pledgee.

An agreement which restricts the pledger's right to bequeath the pledged property shall be invalid.

A pledgee has a right to make use of the subject of a pledge transferred to them only in the cases provided for by the agreement. The reports on such use must be provided to the pledger on a regular basis. According to the provisions of the agreement, a pledger may be obliged to derive benefits and profits from the subject of pledge for the purposes of paying off primary obligations or in pledger's interests.

The relief of a pledger from the cost of a pledged property shall be made through legal proceedings, unless otherwise provided for by the Civil Code of Kazakh Republic or other legislative acts or by the agreement.

[F] Filing Requirements

[1] Request for registration

The following documents are necessary for filing a trademark application:

- trademark;
- list of goods and services which must be submitted in Kazakh or Russian translation. Multiple class applications are accepted;
- for a collective mark, a statute of association;
- a graphical representation of the mark;
- the name and address of the applicant.

[2] Classification

Kazakhstan adheres to the International Classification of Goods and Services (Tenth edition).

[3] Multi-class applications

Multi-class applications are acceptable.

[4] Appointment of Representative

Applicants not residing or having a principal place of business in Kazakhstan must appoint an admitted patent attorney as an agent.

[5] Power of Attorney

Power of Attorney must be signed by an authorized person and sealed/stamped. If the applicant has no corporative seal/stamp the Power of Attorney must be notarized and preferably legalized or, alternatively, bearing an apostille.

An original of Power of Attorney should be submitted to the PTO with the application or can be filed within three months from the filing date.

[6] Priority

If priority is claimed, a certified priority document must be filed within two months from the filing date.

[7] Graphical representations

Fifteen representations of the sign to be protected (size 8 × 8 cm) must be submitted. If a label is applied for registration as a trademark, the print size must not be more than 21 × 29.7 cm.

[G] Application Procedure

[1] Filing Authority

An application for a registration certificate for a trademark shall be filed with the Patent Office – the National Institute for Intellectual Property of the Ministry of Justice of the Republic of Kazakhstan (the Kazpatent).

[2] Online filing

- Online filing is possible: <http://www.kazpatent.kz>

An online register search is possible.

[3] Search

In the course of examination of a trademark applied for registration, the checking is conducted as to its identity and confusing similarity with other intellectual property objects registered or applied for registration. An identity or confusing similarity search is conducted among the following signs:

- trademarks registered in the Republic of Kazakhstan earlier and signs applied for registration as trademarks earlier, in respect of which the earlier priority right exists;
- well-known trademarks;
- names of the place of goods' origin registered earlier and applied for registration prior to the registration priority date;
- industrial designs registered earlier or applied for registration with an expert organization in the name of third persons, which enjoy an earlier priority right.

In the course of conducting a search, the trademarks owned by the third persons and protected in Kazakhstan based on international agreements are taken into account.

[4] Examination

Examination of an application is carried out by the Kazpatent on a step-by-step basis and consists of a preliminary and complete (substantive, on absolute and relative grounds) examination.

Preliminary examination is carried out within 10 working days from the date of the receipt of an application and in the course of this examination the contents of an application and the availability of the required documents is checked.

Complete examination is carried out within seven months from the filing date and in the course of this examination a sign applied for registration is checked as to its conformity with the registrability requirements.

Based on the results of the preliminary examination, an applicant is notified on the acceptance of an application for consideration, allocation of a respective filing number, filing date and priority date or on the refusal to accept an application for consideration in the form of a reasoned opinion.

Based on the results of a complete examination, an examining authority shall take a decision on registration of a trademark or on refusal in its registration within fifteen business days.

Restoration is possible after an unintentional failure to meet a time limit in the examination process, by filing a request within 2 months and payment of a fee.

[5] Registration

Based on a decision on registration of a trademark, upon confirmation of the payment of a respective fee for preparation for the issue of a certificate and of a state granting fee, the trademark is registered in the State Register of Trademarks of the Republic of Kazakhstan. The document confirming the payment of a fee for preparation for the issue of a trademark registration certificate and of a fee for publication of a mention about the grant of a certificate

is provided within three months from the date of forwarding of a notice about the grant of a certificate.

Provided that a respective fee has been paid, a deadline missed by an applicant may be renewed, but for not more than six months.

The property right in a mark is attested by a certificate.

[6] Opposition / Observations

There is no provision for third party opposition before registration. Any interested party may file an objection against the registration of the trademark with the Board of Appeals of Kazpatent after such registration.

[7] Appeal

The decisions of the Patent Office may be appealed against before the Board of Appeals within three months from the date of receipt of such decision.

[8] Alteration after Registration

The owner of a trademark shall notify the Patent Office about the changes to be made: name of the trademark owner, surname, first name, reduction of the list of goods in respect of which the trademark is registered, changes of certain elements of the trademark that do not alter its essence and other changes related to the registration of a trademark.

The changes shall be entered to the Register and to the Certificate of a trademark provided that appropriate fee is paid.

[9] Publication / Public File Inspection

The particulars of a trademark are published in the Official Bulletin before (after the preliminary examination) and after the official registration in the State Register.

[H] Nullity and Revocation

Cancellation is possible during the whole term of the certificate.

Any interested party may file an objection against the registration with the Kazakh Patent Office. The Board of Appeals must consider such objection within six months from the date of its receipt. The information about cancellation of a registration is entered into the State Register.

Trademark registration may be contested and invalidated either entirely or in part at any time during the following periods:

- the whole term of validity of trademark registration where the requirements of trademark registration provided for by the legislation were not met;
- or within five years as of the date of registration of a trademark if it was affected with the following violation, namely when the registered mark is identical or confusingly similar with:
 - (1) the trademarks registered in the Kazakh Republic with an earlier priority date in the name of another person in respect of similar goods and services;

- (2) the trademarks well known in the Kazakh Republic in respect of any goods and services;
- (3) with signs, application for registration of which have been filed with the Kazakpatent with an earlier priority date by another person in respect of similar goods and services (except for those, application for registration of which have been withdrawn).

An expired trademark cannot be re-registered within one year from the date of the expiration of the registration by any other person, but its former owner.

[I] Use Requirement

[1] Before registration

Not applicable in this jurisdiction.

[2] After registration

Use is compulsory. Non-use within three years within three years preceding filing an objection by a third party may result in cancellation of such registration in full or in part.

The use is constituted by its application on any goods for which it was registered and/or their package, its use in advertising, in print, in business papers, on signboards, by displaying the goods at exhibitions.

[J] Marking

The owner of a trademark certificate may add alongside the trademark a special marking by Latin letter ® or by verbal signs 'trademark' or 'registered trademark' indicating that the used sign is registered in Kazakhstan as a trademark. Marked products have no implications for awarding compensation in case of past infringement

[K] Infringement

[1] Infringing acts / Non-infringing acts

The owner of the trademark shall have the exclusive right of use and disposal thereof in relation to the goods and services specified in the certificate. No one may use a trademark protected in the Republic of Kazakhstan without the consent of the owner thereof.

Any person who uses the protected trademark or a sign that is confusingly similar to it without the consent of the owner or violating requirements of the legislation of the Republic of Kazakhstan, shall be liable to sanctions under the one.

Provided that the use of the protected trademark means the use of a one on goods for which they are protected and/or on the packaging thereof, manufacture, use, importation, storage, offering for sale, sale of goods designated by a trademark or by an appellation of origin, use on signs, in advertising, in printed publications or in other business documents as well as any other form of marketing.

[2] Remedies

The competence of the courts shall extend to disputes relating to:

- lawfulness of the grant of a certificate;
- non-use of the trademark;
- infringements of the exclusive right of a trademark owner or of the owner of the right to use the appellation of origin;
- conclusion and execution of license agreements regarding the use of the trademark;
- lawfulness of the recognition trademark as well-known;
- cancellation of the trademark which is identical or confusingly similar to the well-known trademark, if the use of such trademark may mislead the public in relation to goods or producer of goods;
- other disputes arising from the protection of rights conferred by a certificate.

According to the Kazakh legislation, the court may adopt a decision by which the products that infringe a trademark right and have been commercialized or stocked for commercial purposes as well as materials and implements that have been especially used in the manufacture of infringing products may be withdrawn from sale in favour of the aggrieved trademark owner.

The issue of provisional (for the period of consideration of the case) removal of the said goods or materials (implements) from the civil turnover may be solved yet before filing a civil or economic claim or prior to initiation of the criminal case. In this case, the provisional removal of goods or materials (implements) means their seizure.

The issue of provisional (for the period of consideration of the case) removal of the said goods or materials (implements) from the civil turnover may be solved after filing a civil claim or prior to initiation of the criminal case. In this case, the provisional removal of goods or materials (implements) means their seizure.

[3] Penal provisions

The Article 222 of the Criminal Code of Republic of Kazakhstan read:

- Illegal use of someone else's trademark, service mark, firm's name, name of the place of goods' origin, or illegal use of marks similar to them for similar goods or services, if this act is caused large damage, – shall be punished by a fine in an amount up to eighty monthly assessment indices, or by engagement in public works for a period up to eighty hours, or by detention under arrest for a period up to twenty days.
- Illegal use of warning instructions with regard to a trademark, or name of the place of goods' origin, which is not registered in the Republic of Kazakhstan, if this act is caused large damage, – shall be punished by a fine in an amount up to eighty monthly assessment indices, or by engagement in public works for a period up to eighty hours, or by detention under arrest for a period up to twenty days.

Notes:

- Acts envisaged by this article shall be deemed to cause a large damage if the volume of damage or a value of rights to use intellectual property objects, namely trademarks, exceeds by 2000 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.

[4] Enforcement and Customs

A person which is the owner of property rights to intellectual property objects according to Kazakh legislation has a right to file with the specially authorized central body of executive power in the area of customs practice an application for introducing the information on the

intellectual property object owned by them into the customs registry of intellectual property objects.

According to the Kazakh legislation a trademark may be registered in the Customs Registry.

The term of protection of rights of a right holder by the customs authorities shall be two years of the date of including an intellectual property object into the Register of protected intellectual property objects. The said term may be extended at the request of the right holder and upon payment of a respective fee.

[L] Well-known and Reputed Marks

Well-known trademarks are protected in Kazakhstan under the provisions of Article *6bis* of the Paris Convention and the current Trademark law, based on the recognition of the trademark as well-known by the Ministry of Justice of the Republic of Kazakhstan on evidences provided by interested parties.

[M] Trademarks and Trade Names

The trade name of a legal entity is established when the legal entity is registered in the State Register of Legal Entities.

Conflicts between the trademark and trade name are resolved by establishing who was the first to register a respective sign, be it a trademark or a trade name.

[N] Trademarks and Domain Names

For the time being, the current Kazakh legislation does not provide for an express indication that the domain names belong to intellectual property objects.

However, it is established in the Civil Code of the Kazakh Republic that ‘other means of individualization may be further qualified as intellectual property objects’.

In Kazakhstan the registration of the second level domain names in ‘.KZ’ address space is carried out by a non-commercial organization ‘Kazakh Network Information Center’ (‘KazNIC’).

In case if the domain name contains a trademark owned by another person, KazNIC may cancel registration of a domain name; however, this may be done only under the court decision.

Before the court decision is taken, KazNIC may assign a disputable domain a status ‘On-Hold’, provided that the owner of a trademark submits the following documents:

- an original certificate and its notarized copy (which was made no earlier than six months before such submission) for a trademark which is identical by full name with a second level domain name (not including .KZ) granted by an authorized or equivalent registrar of any country;
- the copy of a preliminary written notice sent to a Registrant of a domain name with regard to a complaint and a delivery confirmation containing information about the delivery method and the factual basis for proving that the notice was received by the Registrant.

[O] Trademarks and Appellations of Origin / Trademarks and Geographical Indications

Legal protection of appellations of origin shall be granted in the Republic of Kazakhstan on the basis of their registration.

Signs may not be registered as trademarks that are identical or confusingly similar to appellations of origin protected in the Republic of Kazakhstan.

The validity of a trademark registration shall be terminated in case of registration of an appellation of origin which is identical with or confusingly similar to such trademark.

[P] Restoration after unintentional lapse

In the event of registered trademark owner's failure to pay the annual fee for the maintenance of the registration in force within the prescribed term, a registration shall be revoked beginning from the first day of the year, for which the annual fee has not been paid. At the same time, the respective annual fee may be paid by the trademark owner within the next six months. The registration of trademark shall be reinstated upon payment of this amount.

[Q] Specific Aspects of Regional Trademark Registration

To date it is not applicable in this jurisdiction, but taking into account that Kazakhstan is a member of The Eurasian Union (Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan) it is expected in the future that Eurasian trademarks would be applicable.

[R] Specific Aspects of International Trademark Registration

Kazakhstan is a member of the Madrid Agreement and Protocol Concerning the International Registration of Marks. Consequently, it is possible for those applicants being entitled to benefit from the Madrid Agreement or Protocol to obtain trademark protection in Kazakhstan through the filing of an international trademark application under the Madrid System designating Kazakhstan.

[S] Fees

[1] Table of official fees

	KZT
Filing application for trademark up to three classes of ICGS and its preliminary examination and full examination	60,599.84.
– Each class of ICGS over 3	-16,993.76
Preparation of documents for issue a trademark certificate and publication of the issue particulars	35,544.48

Small entity fees reductions are not possible.

[T] Transitional Provisions

No relevant legislation in this jurisdiction.

[U] Specific Trademark Issues

No relevant legislation in this jurisdiction.

[V] Governmental Websites

- <http://www.kazpatent.kz>

PART 3 UTILITY MODELS**§3.01 SUMMARY****[A] Duration of Registration**

- 5 years from the filing date, with possibility of 3 years extension.

[B] Registrable / Not Registrable

- A utility model is patentable if it is new and industrially applicable.

[C] Novelty

- Absolute (worldwide) novelty applies.
- 6 months grace period preceding filing/priority date applies.

[D] Filing Requirements and Application Procedure

- Filing languages: any
- Language of translation: Kazakh or Russian
- Time limit for filing translation: 2 months
- A utility model registration is granted after formal examination only.

[E] Governmental Websites

- <http://www.kazpatent.kz>

§3.02 DETAILED INFORMATION

[A] Conventions and Legislation

[1] Conventions

- Paris Convention (International Union), 1883–1967, effective from 25 December 1991;
- WIPO Convention, 1967, effective from 25 December 1991;
- Patent Cooperation Treaty, 1970, effective from 25 December 1991; and
- Hague Convention Abolishing Requirement for Legalization, 1961, effective from 30 January 2001.

[2] Laws

- Patent Law No. 427-3IPK as of 16 July 1999, which entered into force on 21 August 1999 (the law governs patent protection of inventions, utility models and industrial designs).

[B] Duration of Registration

The duration of a utility model is five years from the filing date with possibility of extension for three more years.

[C] Requirements for Renewal

Annuities are payable to maintain utility model registrations, beginning from the first year of issuance. The due date for payment is calculated from the anniversary of the date of filing of the application.

The Kazakhstan law does not provide for payment of the maintenance fees/annuities during the prosecution of the application.

The validity of the registration shall expire prematurely in the event of failure to pay the annual maintenance fee by the prescribed time limit as from the date of expiration of the said time limit. At the same time at the request of the owner the validity of the registration that has expired prematurely on the above mentioned ground may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

A utility model owner has a right to apply for the renewal of a utility model. An application shall be filed within the last year of validity of the utility model. Where there are justifiable reasons, the deadline for filing an application may be extended for up to six months. The application must be accompanied with the document confirming the payment of a fee for the renewal of a utility model.

[D] Registrable / Not Registrable

A utility model is patentable if it is new and industrially applicable. Utility model shall be construed as a new construction to means of production and consumer articles or parts thereof.

The following shall not be protected as utility models:

- scientific discoveries and theories, mathematical methods;

- business methods;
- symbols, schedules and rules, methods of mental operations;
- algorithms and computer software;
- projects and plans of layouts of constructions;
- solutions regarding appearance of an article.

[E] Novelty

A utility model shall be new if the sum of its essential features is not anticipated by prior art. Absolute (worldwide) novelty applies.

[1] Grace period

The novelty grace period for an inventor is six months from the date of first disclosure.

Disclosure of utility model by the inventor or by a person who received information about the utility model directly or indirectly from the inventor does not jeopardize novelty if such disclosure took place within six months preceding the filing date or, where priority is claimed, the date of priority.

[F] Ownership and related rights

[1] Applicant

Individuals or legal entities are entitled to apply for a utility model. According to an inventor or employer of the inventor has a right to apply for a utility model. No confirmation of a right to file an application by providing any document is required.

[2] Assignment

An owner of a patent is entitled to assign their rights to any person. An assignment must be in writing and signed by the parties.

Official registration of assignments is compulsory.

Information on assignment of rights to the utility model is subject to recordal in the Register of Utility models.

For publication of particulars of assignments in the Register of Utility models the following documents must be submitted to the Patent Office, namely:

- an application which must refer to one assignment agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement, together with a title page; each copy must contain the seal and signatures of the authorized persons of both parties;

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative;
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of an agreement on assignment of rights to a utility model shall be carried out based on the results of an examination of the documents filed with the competent authority. An agreement on assignment of rights shall come into force as of the date of its registration in the competent government authority.

[3] Licenses

An owner of a utility model is entitled to give authorization (grant a license) to any person to use the utility model. A license agreement must be in writing and signed by the parties.

Official registration of licenses is compulsory.

Information on giving authorization (grant of a license) to use the utility model is subject to recordal in the Register of Utility models.

For publication of particulars in the Register of Utility models the following documents must be submitted to the Patent Office, namely:

- an application, which must refer to one agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement, together with a title page; each copy must contain the seal and signatures of the authorized persons of both parties;

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession.;

- a Power of Attorney in case if an application is filed by the patent attorney or other representative;
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of the license agreement to a utility model shall be carried out based on the results of an examination of the documents filed with the competent authority. The license agreement shall come into force as of the date of its registration in the competent government authority.

The law also includes provisions concerning compulsory licenses.

[4] Pledge and Seizure

The subject of a pledge shall be constituted by the property rights which may be alienated, in particular, copyrights, inventor's rights and other property rights.

A pledger has a right to, unless otherwise is provided for by the agreement and follows from the nature of a subject of a pledge, make use of the subject of a pledge according to its intended purpose, in particular, to derive benefits and profits from it. Furthermore, the pledger has a right to assign the subject of a pledge for the purposes of ownership, economic management or operation, to rent it or transfer to other person without compensation or otherwise to dispose of it only upon the consent of a pledgee.

An agreement which restricts the pledger's right to bequeath the pledged property shall be invalid.

A pledgee has a right to make use of the subject of a pledge transferred to them only in the cases provided for by the agreement. The reports on such use must be provided to the pledger on a regular basis. According to the provisions of the agreement, a pledger may be obliged to derive benefits and profits from the subject of pledge for the purposes of paying off primary obligations or in pledger's interests.

The relief of a pledger from the cost of a pledged property shall be made through legal proceedings, unless otherwise provided for by the Civil Code of Kazakh Republic or other legislative acts or by the agreement.

[G] Filing Requirements

[1] Obligation to file first with national office

Nationals of the Republic of Kazakhstan having their residence in its territory and legal entities of the Republic of Kazakhstan shall only file an application for the protection of industrial property subject matter with a competent international patent organization through the Kazakhstan Patent Office unless otherwise provided in the relevant international treaty.

Where an application for the protection of industrial property subject matter is filed with a competent authority of another State or with a competent international patent organization in a manner contrary to the prescribed procedure, no title of protection for the industrial property subject matter shall be granted in the Republic of Kazakhstan.

[2] Minimum requirements for obtaining filing date

The filing date of a utility model application shall be determined by the date of receipt by Kazpatent of the following elements: the request for the grant of a title of protection, stating the surname and forename (and the middle name if there is a middle name) or the official name of the applicant, the description, the claims and drawings.

Where not all elements of the utility model application are furnished at the same time, the filing date shall be determined by the date of receipt of the last of the elements.

The request for the grant of the title of protection shall be written in the Kazakh or Russian language. Other elements of the application may be written in the Kazakh, Russian or in other languages.

Where elements of the application are written in a language other than the Kazakh or Russian, the application shall be accompanied by a Kazakh or Russian translation of those elements. The applicant may furnish a required translation within two months following the receipt by Kazpatent of the application containing elements written in another language.

This term may be extended for a period not exceeding two months subject to payment of the prescribed fee.

If the applicant fails, within the prescribed time limit, to furnish the required translation, the application shall be deemed not to have been filed.

The abstract must be filed together with the application.

[3] Request for registration

An application for a patent for a utility model shall relate to one utility model only (the requirement of unity of a utility model).

The utility model application shall contain:

- the request for the grant of a title of protection, stating the names of the creator (or creators) and the person (or persons) in whose name the grant of a title of protection is sought, and the addresses of their residences or places of business;
- the description, disclosing the claimed utility model in sufficient detail for it to be made;
- the claims, stating the essential features of the utility model and fully supported by the description;
- the drawings;
- the abstract;
- a power of attorney if the application is filed through a patent agent.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language. Time limit for filing translation: two months.

The utility model application shall be accompanied by proof of payment of the prescribed fee or of circumstances affording entitlement to a reduction in the amount of the prescribed fee which may be either furnished together with the application or within two months following the date of its receipt.

[4] Appointment of Representative

Foreigners not resident in Kazakhstan must appoint an agent.

[5] Power of Attorney / Designation of creator / Other documents

A Power of Attorney issued for representation before the Patent Office is executed in simple written form and does not require notarization.

The term of validity of the Power of Attorney shall not exceed three years. If the term of validity is not indicated in the Power of Attorney, the document shall be valid for one year as of the date of its issuance. The Power of Attorney must be provided within 2 months of filing.

[6] Priority

Convention priority may be claimed. Priority document must be filed within six months from filing the application.

[7] Allowable language(s) upon filing / Language(s) of procedure

Applications must be filed in Kazakh or Russian language.

Where elements of the application are written in a language other than Kazakh or Russian, the application shall be accompanied by a Kazakh or Russian translation of those elements. The applicant may furnish a required translation within two months following the receipt by Kazpatent of the application containing elements written in another language.

This term may be extended for a period not exceeding two months subject to payment of the prescribed fee.

The language of the procedure is Kazakh or Russian language.

[8] Description

The specification may initially be filed in any language, provided that a translation is filed within two months.

[9] Claims

The claims may be submitted in the original language, provided that a Kazakh or Russian translation is filed within two months from filing the application under the national procedure.

Multiple dependency of claims is allowed.

[10] Abstract

An application for a patent for utility model shall contain an abstract. The abstract must be filed together with the application.

The abstract is a brief presentation of the contents of the description of the invention including the title of the invention, description of the state of the art to which the invention relates, and (or) its intended purpose provided it is not clear from the title thereof, the description of the subject matter of the utility model with indication of the technical result to be achieved. The subject matter of the utility model is characterized in the abstract by free presentation of the claims mainly in the manner when all essential features of each independent claim are preserved.

[11] Drawings

The utility model application shall contain the figures or other material, where indispensable for the understanding of the disclosure.

The drawings and other explanatory materials may be executed in the form of graphic materials (charts, figures, graphs, orthographic epures, oscillograms etc.), photographs and tables. Figures are provided in the event if the invention cannot be illustrated by drawings or charts. Photographs are provided as a supplement to graphical images. In exceptional cases, photographs may be provided as a main form of the explanatory materials. Drawings, charts and figures are provided on separate (a separate) sheets (sheet).

Drawings, charts and figures shall not be included in the description and in the claims of a utility model.

[12] Payment of fees

The utility model application shall be accompanied by proof of payment of the prescribed fee. Patent annuities are paid after its grant.

[H] Application Procedure*[1] Filing Authority*

An application for a patent for the utility model shall be filed with the National Institute for Intellectual Property of the Ministry of Justice of the Republic of Kazakhstan (the Patent Office – Kazpatent).

[2] Online filing

Online filing is possible: www.kazpatent.kz
An online register search is possible.

[3] Examination

In the course of an examination, an application is checked as to the availability of the required documents and their conformity with the requirements provided for by the law, priority date is established as well as a possibility of qualifying a claimed proposal as an object subject to protection as a utility model, the compliance of a utility model with the requirement of unity is also checked.

A utility model claimed is not checked as to its compliance with the patentability criteria provided for by the law. The patent is granted at the risk and under the responsibility of an applicant.

[4] Amendments and corrections

Within two months of the date of receipt of the application the applicant shall have the right to introduce amendments or corrections in the application on their own initiative, provided that the amendments or corrections do not modify the subject matter of the industrial property object, the application for registration of which has been filed.

Such amendments or corrections may be introduced into an application, subject to payment of the prescribed fee, upon expiry of the two months as of the filing date but not after a decision has been taken in respect of the application for registration of an industrial property object.

[5] Registration

The applicant shall not file special request for registration of the patent for the utility model.

Based on the decision on grant of a patent, the Patent Office shall carry out the official registration of a patent by entering the relevant particulars in the State Register of the Utility Models.

The official registration of a patent for a utility model shall be carried out, provided that the receipts for payment of the official duty for grant and the official publication fee have been submitted. Said duty and fee shall be paid after the receipt of the decision of grant by an applicant within three months.

[6] Accelerated registration

No relevant legislation in this jurisdiction.

[7] Opposition / Re-examination

Opposition cannot be filed before registration. However, after registration, a utility model registration may be opposed at any time during its term by any third party before the court or the Board of Appeals of the Patent Office.

[8] Appeal

A decision refusing or allowing the grant of a utility model registration may be opposed before the Board of Appeals.

Where the applicant wishes to contest a decision refusing the grant of a registration they may do so, within three months following its date, by lodging an appeal with the Board of Appeal.

A registration may be contested and revoked, either entirely or in part, at any time during its period of validity by the filing an opposition to the Board of Appeal.

Where the contestant or the owner wishes to contest the decision taken by the Board of Appeal they may do so, within three months following the date of receipt of the decision, by lodging an appeal with the court.

[9] Unity of creation

The application for a utility model registration shall relate to one utility model only or to a group of utility models so linked as to form a single general inventive concept.

If the application does not comply with the unity of the utility model requirement, the applicant shall be invited to state, within three months following the date of notification of non-compliance with the requirement, which of the solutions should be examined and to correct, if necessary, the elements of the initial application accordingly. Other solutions contained in the initial application may be submitted as divisional applications.

In this case the priority date shall be maintained.

[10] Divisional applications

Other solutions contained in the initial application may be submitted as divisional applications. In this case the priority date shall be maintained.

[11] Branched-off applications

Not applicable in this jurisdiction.

[12] Conversion

It is possible to convert a utility model application into a patent application.

[13] Publication / Public File Inspection

A mention of grant is published upon the expiration of twelve months from the filing date.

At the request of an applicant the examining authority may publish a mention before expiration of the above-mentioned term.

[14] Withdrawal to prevent publication

The applicant shall have the right to withdraw an application prior to registration of the industrial property subject matter in the appropriate State Register of the Republic of Kazakhstan.

[I] Nullity and Revocation

A utility model owner may at any time revoke their registration fully or in part by filing a relevant statement of revocation with the Patent Office.

A registration shall be revoked in the event of failure to pay the applicable annual fee for maintenance of the patent in force within the prescribed term.

A registration may be declared invalid by the Patent Office in the following cases: the utility model does not meet the requirements of patentability; the claims contain features of the invention which were not present in the application as filed; the grant of the title of protection was effected contrary to the prescribed by the law procedure of filing application abroad; the title of protection contains an incorrect indication of the author (or authors) or of the patent owner (or patent owners).

Such action may be initiated by any third party at any time after grant.

[J] Use Requirement

Working of a utility model is compulsory. If the utility model is not used during a period of three years after the publication of a registration, any person may obtain the right to use the invention based on a court decision in case where the owner refuses to issue a license. The use of a utility model is constituted by manufacturing a product with the use of a utility model, sale and importation.

[K] Marking

The utility model owner may affix a warning sign indicating that the used industrial property subject matter is protected. Marked products have no implications for awarding compensation in case of past infringement

[L] Infringement*[1] Infringing acts / Non-infringing acts*

Any person, who is using a protected industrial property object in contravention of the present Law, shall be considered to be an infringer of a registered utility model owner's exclusive right (infringer of rights conferred by a protection document).

The performance of the following acts shall be deemed to constitute an infringement of the exclusive right of the utility model owner or the title of protection: unauthorized manufacturing, utilization, importation, stocking, offering for sale, sale and any other distribution for commercial purposes of products incorporating the protected industrial property subject matter or the use of the patented process.

The following shall not constitute acts infringing the exclusive right of the registered owner:

- the use on board sea-going or river vessels of other countries or in the construction or operation of aircraft, space or land vehicles of other countries of devices incorporating protected industrial property subject matter, when such vessels or vehicles temporarily or accidentally enter the territory of the Republic of Kazakhstan, provided that such devices are used there exclusively for the needs of the vessel or vehicle. The above acts shall not constitute an infringement of the exclusive right of the owner where such sea-going or river vessels or aircraft, space or land vehicles belong to natural persons or legal entities of the countries affording reciprocal right to natural persons or legal entities of the Republic of Kazakhstan;
- the use of the subject matter incorporating the protected industrial property subject matter for scientific research and experimental purposes;
- the use of the devices incorporating the protected industrial property subject matter in cases of natural disasters, catastrophes or dramatic accidents, provided the owner of the patent is subsequently paid a commensurate compensation;
- the use of the subject matter incorporating the protected industrial property subject matter for private and non-commercial purposes;
- the use of the subject matter incorporating the protected industrial property subject matter for the preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription;
- the use of the subject matter incorporating the protected industrial property subject matter for the marketing purposes in the territory of the Republic of Kazakhstan where the act is done in a legal way.

[2] Prior user rights

The right of prior use is recognized under the Kazakh law.

Any person, whether a natural person or a legal entity, who, before the priority date of the protected industrial property subject matter and independently of the author, had conceived and was using in the territory of the Republic of Kazakhstan a solution similar to the protected industrial property subject matter or was making the necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of prior user).

The right of the prior user may only be transferred by the said prior user to another natural person or legal entity together with their enterprise in which the use or the necessary preparations for use have been made.

Any person, whether a natural person or a legal entity, who, after the priority date of the protected industrial property subject matter but before the date of publication of the particulars of the granted provisional patent for an invention, had started the use of the subject matter, shall, at the request of the patent owner, stop such use. The said person shall not be required to compensate the patent owner for damages sustained in the result of such use.

[3] Remedies

According to the Kazakh legislation, courts shall have the following powers relating to the protection of utility model rights:

- cessation of an action constituting infringement of a person's right to an invention;
- compensation of the damages sustained, including moral damage to the owner;
- obligation to pay the owner the amount of profits derived from the unauthorized use of the protected industrial property subject matter, in place of compensation for damage sustained;
- obligation to pay the owner compensation the amount of which shall be from 10,000 to 50,000 times the monthly calculated index in accordance with legislation in force, in place of compensation for damages sustained or payment the amount of the derived profits;
- seize the infringed products that have been commercialized or stocked for commercial purposes as well as materials and implements that have been especially used in the manufacture of infringing products from sale in favour of the aggrieved owner;
- inform on the infringement, including the particulars of the owner of the infringed right, be published as a mandatory requirement.

[4] Penal provisions

The Article 199 of the Criminal Code of the Republic of Kazakhstan read:

Violation of rights to inventions, useful models, industrial designs, selection achievements or integrated circuit topographies:

- Divulgence, without the consent of a given author or declarant, of the essence of an invention, useful model, or industrial sample, selection achievement or integrated circuit topography prior to official publication of information concerning them, as well as illegal appropriation of authorship, or coercion to co-authorship, if these acts inflicted considerable damage to the author or any other right holder or a substantial infringement of their rights or interests, – shall be punished by a fine in an amount up to one hundred up monthly assessment indices, or by engagement in public works for a period up to one hundred twenty hours.
- Illegal use of an invention, useful model, industrial sample, selection achievement, or integrated circuit topography, if these acts are committed on a large scale, – shall be punished by a fine in an amount up to three hundred monthly assessment indices, or by engagement in public works for a period up to two hundred forty hours, or by arrest for a term up to seventy five days.
- Acts stipulated by the second part of this Article committed:
 - (1) by a group of persons upon a preliminary collusion;
 - (2) on a large scale or if they caused a considerable damage;
 - (3) by a person with appropriation of their corporate opportunities

shall be punished by a fine up to five thousand monthly assessment indices, imprisonment for a period up to five years with forfeiture of property, or without it.

Acts stipulated by the second and third parts of this Article committed by a criminal group shall be punished by imprisonment for a period up to six years.

Notes:

- Acts envisaged by this article shall be deemed to cause considerable damage or be committed on a considerable scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 200 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.
- Acts envisaged by this article shall be deemed to cause a large damage or be committed on a large scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 1000 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.

[5] Enforcement and Customs

No relevant legislation in this jurisdiction.

[M] Restoration after unintentional lapse

At the request of the utility model owner the validity of the registration that has expired prematurely on the grounds of failure to pay the annual maintenance fee by the prescribed time limit may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

Kazpatent shall publish information on restoration of the validity of utility models in its Official Bulletin.

The date of restoration of the registration validity shall be the date of publication of the said information.

Any person, whether a natural person or a legal entity, who, during the period between the date of premature expiration of the patent validity and the date of restoration thereof, was using in the territory of the Republic of Kazakhstan the protected industrial property subject matter or was making necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of interim user).

[N] Utility Model Application Based on International Patent Application (PCT)

A utility model may also be applied for in an international application. The wish to obtain a utility model is to be indicated in Box No. V of the international request form.

[O] Fees

The document confirming the payment of a fee for filing an application for a utility model shall be provided together with an application or within two months as of the date of filing of an application with Kazpatent. In case of not submitting of the said document after the said term, an application shall be deemed as such as not filed.

[1] Table of official fees

	KZT
Filing application, including carrying out the formal examination of application for a utility model	16,450.56
Receiving and checking a title of protection	33,253.92

[P] Transitional Provisions

No relevant legislation in this jurisdiction.

[Q] Specific Utility Model Issues

No relevant legislation in this jurisdiction.

[R] Governmental Websites

– <http://www.kazpatent.kz>

PART 4 INDUSTRIAL DESIGNS AND MODELS**§4.01 SUMMARY****[A] Duration of Registration**

- 15 years from the filing date, with possibility of 5 years extension, for a maximum term of 20 years.

[B] Registrable / Not Registrable

- An industrial design is registrable if it is new and original.

[C] Novelty

- Absolute novelty applies.
- 6-month grace period preceding filing/priority date applies.

[D] Application Procedure

- A design registration is granted after formal and substantive examination.

[E] Governmental Websites

- <http://www.kazpatent.kz>

§4.02 DETAILED INFORMATION

[A] Conventions and Legislation

[1] Conventions

The relevant industrial design conventions of Kazakhstan are as follows:

- Paris Convention (International Union), 1883–1967, effective from 25 December 1991;
- WIPO Convention, 1967, effective from 25 December 1991;
- Locarno Agreement Establishing an International Classification for Industrial Designs, 1968, effective from 7 November 2002;
- Berne Convention 1886–1971, effective from 12 April 1999; and
- Hague Convention Abolishing Requirement for Legalization, 1961, effective from 30 January 2001.
- Protocol on Protection of Industrial designs to Eurasian Patent Convention, 1994, ratified on 23 November 2020 and became effective on 12 April 2021

[2] Laws

- The basis for the national system of intellectual property protection became the first Patent Law No. 427-3IPK as of 16 July 1999, entered into force on 21 August 1999 (the law governs patent protection of inventions, utility models and industrial designs).

[B] Duration of Registration

The duration of an industrial design registration is fifteen years from filing, extendible by five years for a maximum term of twenty years.

[C] Requirements for Renewal

Annuities are payable to maintain design registrations, beginning from the first year of issuance. The due date for payment is calculated from the anniversary of the date of filing of the application.

The Kazakhstan law does not provide for payment of the maintenance fees/annuities during the prosecution of the application.

The validity of the title of protection shall expire prematurely in the event of failure to pay the annual maintenance fee by the prescribed time limit as from the date of expiration of the said time limit. At the same time at the request of the owner the validity of the patent that has expired prematurely on the above mentioned ground may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

An industrial design owner has a right to apply for the renewal of an industrial design. An application shall be filed within the last year of validity of industrial design. The application shall be accompanied with the document confirming the payment of a fee for the renewal of the industrial design.

[D] Registrable / Not Registrable

In the definition of the law, an industrial design is an artistic and a structural solution which defines the appearance of an article. An industrial design is registrable if it is new and original.

The following may not be protected as designs:

- designs which result from function of the article;
- those relating to constructional form with the exception of small architectural forms;
- articles of unstable shape; and
- designs contrary to public interest and morality may not obtain protection.

[E] Novelty

Absolute novelty applies.

An industrial design shall be deemed new if the sum of its essential features appearing on the photographs of the design and in the description of its essential features, was not known from information generally available in the world before the priority date of the design.

[1] Grace period

The law provides for a novelty grace period of six months. Disclosure of an industrial design by the author or by a person who received information about the industrial design directly or indirectly from the author does not jeopardize novelty if such disclosure took place within six months preceding the filing date or, where priority is claimed, the date of priority.

[F] Ownership and related rights*[1] Applicant*

Individuals or legal entities are entitled to apply for a patent.

An author or employer of the author has a right to apply for a design registration. No confirmation of a right to file an application by providing any document is required.

[2] Assignment

An owner of a registered design is entitled to assign their rights to any person. An assignment must be in writing and signed by the parties.

Official registration of assignments is compulsory.

Information on assignment of rights to an industrial design is subject to recordal in the Register of Industrial designs.

For publication of particulars of assignments in the Register of Industrial designs the following documents must be submitted to the Patent Office, namely:

- an application which must refer to one assignment agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement, together with a title page; each copy must contain the seal and signatures of the authorized persons of both parties.

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative;
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of an agreement on assignment of rights to an industrial design shall be carried out based on the results of an examination of the documents filed with the competent authority. An agreement on assignment of rights shall come into force as of the date of its registration in the Patent Office.

[3] Licenses

An owner of a registration is entitled to give authorization (grant a license) to any person to use the design. A license agreement must be in writing and signed by the parties.

Official registration of licenses is compulsory.

Information on giving authorization (grant of a license) to use the design is subject to recordal in the Register of Industrial designs.

For publication of particulars in the Register of Industrial designs the following documents must be submitted to the Patent Office, namely:

- an application which must refer to one agreement.

An application shall be filed by one of the parties to an agreement or their heirs, successors, representatives or by a patent attorney. An application shall be signed in the name of one of the parties by a manager or other person duly authorized to sign the document according to the statutory documents of a legal entity with indication of the title thereof.

Upon the filing of the application by an heir or a successor, such application shall be accompanied with the notarized copy of the document confirming the inheritance right or right of succession.

Upon the filing of an application by a patent attorney or other representative it must be accompanied by the Power of Attorney issued by one of the parties to an agreement.

An application shall be accompanied by the following documents, namely:

- four copies of the original of the agreement, together with a title page; each copy must contain the seal and signatures of the authorized persons of both parties.

Instead of the original copies of the agreement the notarized copies of the agreement may be submitted.

- a copy of the document confirming the inheritance right or a right to succession;
- a Power of Attorney in case if an application is filed by the patent attorney or other representative (Notarization and legalization are required if the Power of Attorney is not stamped by a corporate seal);
- the document confirming the payment of a respective fee at a standard rate according to the tariff.

An application shall be filed in Kazakh or Russian language. Foreign names of persons or legal entities must be provided in Kazakh or Russian transliteration.

The documents enclosed to the application may be submitted in Kazakh, Russian or other languages. Should the documents be submitted in other language, the application must be accompanied by their notarized translation into the official or Russian language.

Registration of the license agreement to an industrial design shall be carried out based on the results of an examination of the documents filed with the competent authority. The license agreement shall come into force as of the date of its registration in the Patent Office.

The Kazakh law also includes provisions concerning compulsory licenses.

[4] Pledge and Seizure

The subject of a pledge shall be constituted by the property rights which may be alienated, in particular, copyrights, inventor's rights and other property rights.

A pledger has a right to, unless otherwise is provided for by the agreement and follows from the nature of a subject of a pledge, make use of the subject of a pledge according to its intended purpose, in particular, to derive benefits and profits from it. Furthermore, the pledger has a right to assign the subject of a pledge for the purposes of ownership, economic management or operation, to rent it or transfer to other person without compensation or otherwise to dispose of it only upon the consent of a pledgee.

An agreement which restricts the pledger's right to bequeath the pledged property shall be invalid.

A pledgee has a right to make use of the subject of a pledge transferred to them only in the cases provided for by the agreement. The reports on such use must be provided to the pledger on a regular basis. According to the provisions of the agreement, a pledger may be obliged to derive benefits and profits from the subject of pledge for the purposes of paying off primary obligations or in pledger's interests

The relief of a pledger from the cost of a pledged property shall be made through legal proceedings, unless otherwise provided for by the Civil Code of Kazakh Republic or other legislative acts or by the agreement.

[G] Filing Requirements

[1] Request for registration

The application for the grant of an industrial design title of protection shall relate to one industrial design only or to a group of industrial designs so linked as to satisfy unity of industrial design requirement.

The industrial design application shall contain:

- the request for the grant of a title of protection, stating the name of the creator (or creators) and the person (or persons) in whose name the grant of a title of protection is sought, and the addresses of their residences or places of business;
- a set of photographs of the manufactured article (or articles) or model providing full and detailed view of its outward appearance and capable of reproduction;
- the drawings, affording general views of the manufactured article, ergonomic scheme, or confection chart where indispensable for the understanding of the disclosure;
- the description of the industrial design including the totality of its essential features;
- a power of attorney if the application is filed through a patent agent.

The industrial design application shall be accompanied by proof of payment of the prescribed fee or of circumstances affording entitlement to a reduction in the amount of the prescribed fee which may be either furnished together with the application or within two months following the date of its receipt.

[2] Classification

The eleventh edition of the Locarno Classification is applicable.

[3] Appointment of Representative

Foreigners not resident in Kazakhstan must appoint an agent.

[4] Power of Attorney

A Power of Attorney issued for representation before the Patent Office should be executed in simple written form and does not require notarization.

The term of validity of the Power of Attorney shall not exceed three years. If the term of validity is not indicated in the Power of Attorney, the document shall be valid for one year as of the date of its issuance.

[5] Priority

Convention priority may be claimed. A certified priority document must be filed within six months from filing the application.

[6] Description

The description may initially be filed in English, French or German, provided that a translation into Kazakh or Russian is filed within two months.

[7] Graphical representations

The representation of the appearance of an article constitutes the main document containing information about the industrial design, applied for registration, which is used for determination of the scope of legal protection of an industrial design; and information about the set of the characteristics of an industrial design, included in the list of its essential features.

The representations of articles shall be executed on a neutral background and be distinct, clear, non-conventional, without any foreign objects, and shall identify the design without any additional explanations the elements of the appearance of an article both on its lighted and shady sides.

[8] Multiple deposits

The application for the grant of an industrial design title of protection shall relate to one industrial design only or to a group of industrial designs so linked as to satisfy unity of industrial design requirement.

An application shall relate to a group of industrial designs if they are linked so as to:

- form a single creative concept;
- constitute the designs of the same article;
- characterize the basic dominating composition elements, determining the same basic aesthetic and/or ergonomic characteristics of an article;
- differ only in an insignificant part of essential features, complementing the above-mentioned characteristics.

[H] Application Procedure

[1] Filing Authority

An application for a registered design shall be filed with the National Institute for Intellectual Property of the Ministry of Justice of the Republic of Kazakhstan (the Patent Office – Kazpatent).

[2] Online filing

Online filing is possible: www.kazpatent.kz

An online register search is possible.

[3] Search

At the stage of conducting a substantive examination an informational search is carried out in respect of the industrial design applied for registration in order to determine its art and design level.

Based on the results of the informational search the design (industrial design) applied for registration is assessed for its compliance with the requirements of registrability.

[4] Examination

Kazpatent shall carry out both a formal and a substantive examination of an industrial design application.

After two months has elapsed following the date of receipt of the application, Kazpatent shall carry out a formal examination.

A formal examination shall be carried out in order to verify the presence of the required documents and their compliance with the prescribed conditions, to determine the filing date of the application, and to ascertain whether the claimed solution relates to industrial property

subject matter eligible for legal protection as well as to verify whether the unity of industrial design requirement is satisfied.

If the results of the formal examination are positive, the Kazpatent conducts the substantive examination. The substantive examination shall comprise a state-of-the-art search in respect of the claimed invention in order to verify its compliance with conditions of patentability

[5] Registration

The applicant shall not file special request for registration of the industrial design. If the formal requirements are met, the Patent Office issues a registration certificate, and registration particulars are published in the Official Bulletin.

After the completion of substantive examination, if a design meets the requirements of registrability, the Patent Office issues a granting decision.

The official registration of a design shall be carried out, provided that the receipts for payment of the official duty for grant and the official publication fee have been submitted. Said duty and fee shall be paid after the receipt of the decision of grant by an applicant within three months.

[6] Opposition / Re-examination

A registration may be opposed at any time during its term (after grant) by any third party before the court or the Board of Appeals of the Patent Office.

[7] Appeal

A Patent Office decision refusing or allowing the grant of a registered design may be opposed before the Board of Appeals.

[8] Publication / Deferred Publication / Public File Inspection

A mention of grant is published upon the expiration of twelve months from the filing date.

At the request of an applicant an examining authority may publish a mention before the above-mentioned term.

[I] Nullity and Revocation

A design registration owner may at any time revoke their registration fully or in part by filing a relevant statement of revocation with the Patent Office.

A registration shall be revoked in the event of failure to pay the applicable annual fee for maintenance of the patent in force within the prescribed term.

A registration may be declared invalid by the Patent Office in the following cases: the design does not meet the requirements of registrability; the availability in the set of essential features of an industrial design of features which were absent in the initial application materials; the grant of the title of protection was effected contrary to the prescribed by the law procedure of filing application abroad; the title of protection contains an incorrect indication of the author (or authors) or of the patent owner (or patent owners).

Such action may be initiated by any third party at any time after grant.

[J] Use Requirement

Working of a registered design is compulsory. If the design is not used during a period of three years after the publication of a registration, any person may obtain the right to use the design based on a court decision in case where the owner refuses to issue a license. The use of a design is constituted by manufacturing a product with the use of a design, sale and importation.

[K] Marking

The registered owner may affix a warning sign indicating that the used industrial property subject matter is patented. Marked products have no implications for awarding compensation in case of past infringement

[L] Infringement*[1] Infringing acts / Non-infringing acts*

Any person, who is using a protected industrial property object in contravention of the present Law, shall be considered to be an infringer of the owner's exclusive right (infringer of rights conferred by a protection document).

The performance of the following acts shall be deemed to constitute an infringement of the exclusive right of the design owner or the title of protection: unauthorized manufacturing, utilization, importation, stocking, offering for sale, sale and any other distribution for commercial purposes of products incorporating the protected industrial property subject matter.

The following shall not constitute acts infringing the exclusive right of the registered owner:

- the use on board sea-going or river vessels of other countries or in the construction or operation of aircraft, space or land vehicles of other countries of devices incorporating protected industrial property subject matter, when such vessels or vehicles temporarily or accidentally enter the territory of the Republic of Kazakhstan, provided that such devices are used there exclusively for the needs of the vessel or vehicle. The above acts shall not constitute an infringement of the exclusive right of the owner where such sea-going or river vessels or aircraft, space or land vehicles belong to natural persons or legal entities of the countries affording reciprocal right to natural persons or legal entities of the Republic of Kazakhstan;
- the use of the subject matter incorporating the protected industrial property subject matter for scientific research and experimental purposes;
- the use of the devices incorporating the protected industrial property subject matter in cases of natural disasters, catastrophes or dramatic accidents, provided the owner of the patent is subsequently paid a commensurate compensation;
- the use of the subject matter incorporating the protected industrial property subject matter for private and non-commercial purposes;
- the use of the subject matter incorporating the protected industrial property subject matter for the preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription;
- the use of the subject matter incorporating the protected industrial property subject matter for the marketing purposes in the territory of the Republic of Kazakhstan where the act is done in a legal way.

[2] Prior user rights

The right of prior use is recognized under the Kazakh law.

Any person, whether a natural person or a legal entity, who, before the priority date of the protected industrial property subject matter and independently of the author, had conceived and was using in the territory of the Republic of Kazakhstan a solution similar to the protected industrial property subject matter or was making the necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of prior user).

The right of the prior user may only be transferred by the said prior user to another natural person or legal entity together with their enterprise in which the use or the necessary preparations for use have been made.

Any person, whether a natural person or a legal entity, who, after the priority date of the protected industrial property subject matter but before the date of publication of the particulars of the granted provisional patent for an invention, had started the use of the subject matter, shall, at the request of the patent owner, stop such use. The said person shall not be required to compensate the patent owner for damages sustained in the result of such use.

[3] Remedies

According to the Kazakh legislation courts shall have the following powers relating to the protection of registered design rights:

- cessation of an action constituting infringement of a person's right to an invention;
- compensation of the damages sustained, including moral damage to the owner;
- obligation to pay the owner the amount of profits derived from the unauthorized use of the protected industrial property subject matter, in place of compensation for damage sustained;
- obligation to pay the owner compensation the amount of which shall be from 10,000 to 50,000 times the monthly calculated index in accordance with legislation in force, in place of compensation for damages sustained or payment the amount of the derived profits;
- seize the infringed products that have been commercialized or stocked for commercial purposes as well as materials and implements that have been especially used in the manufacture of infringing products from sale in favour of the aggrieved patent owner;
- inform on the infringement, including the particulars of the owner of the infringed right, be published as a mandatory requirement.

[4] Penal provisions

The Article 199 of the Criminal Code of the Republic of Kazakhstan read:

Violation of rights to inventions, useful models, industrial designs, selection achievements or integrated circuit topographies:

- Divulgence, without the consent of a given author or declarant, of the essence of an invention, useful model, or industrial sample, selection achievement or integrated circuit topography prior to official publication of information concerning them, as well as illegal appropriation of authorship, or coercion to co-authorship, if these acts inflicted considerable damage to the author or any other right holder or a substantial infringement of their rights or interests, – shall be punished by a fine in an amount up to one hundred up monthly assessment indices, or by engagement in public works for a period up to one hundred twenty hours.

- Illegal use of an invention, useful model, industrial sample, selection achievement, or integrated circuit topography, if these acts are committed on a large scale, – shall be punished by a fine in an amount up to three hundred monthly assessment indices, or by engagement in public works for a period up to two hundred forty hours, or by arrest for a term up to seventy five days.
- Acts stipulated by the second part of this Article committed:
 - (1) by a group of persons upon a preliminary collusion;
 - (2) on a large scale or if they caused a considerable damage;
 - (3) by a person with appropriation of their corporate opportunitiesshall be punished by a fine up to five thousand monthly assessment indices, imprisonment for a period up to five years with forfeiture of property, or without it.

Acts stipulated by the second and third parts of this Article committed by a criminal group shall be punished by imprisonment for a period up to six years.

Notes:

- Acts envisaged by this article shall be deemed to cause considerable damage or be committed on a considerable scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 200 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.
- Acts envisaged by this article shall be deemed to cause a large damage or be committed on a large scale if the volume of damage or a value of rights to use intellectual property objects, namely inventions, useful models and industrial samples, exceeds by 1000 times a monthly calculation base established by legislation of the Republic of Kazakhstan at the moment of committing of a crime.

[5] Enforcement and Customs

No customs means of protection of rights of the owner of the patent for an industrial design are provided for by the Kazakh legislation.

[M] Restoration after unintentional lapse

At the request of the design owner the validity of the registration that has expired prematurely on the grounds of failure to pay the annual maintenance fee by the prescribed time limit may be yet restored, within three years following the date of expiration of the time limit for payment the annual maintenance fee, provided that the owner presents legitimate reasons to justify their failure and furnishes a document containing proof of payment of the prescribed restoration fee.

Kazpatent shall publish information on restoration of the validity of designs in its Official Bulletin.

The date of restoration of the registration validity shall be the date of publication of the said information.

Any person, whether a natural person or a legal entity, who, during the period between the date of premature expiration of the patent validity and the date of restoration thereof, was using in the territory of the Republic of Kazakhstan the protected industrial property subject matter or was making necessary preparations for such use, shall have the right to proceed with that use free of charge provided the scope thereof is not extended (right of interim user).

[N] Specific Aspects of Regional Design Registration

Eurasian patents on Industrial designs are validated in Kazakhstan. Kazakhstan has ratified a Protocol on Protection of Industrial designs to the Eurasian Patent Convention and an application for a Eurasian Industrial Design may be filed to cover Kazakhstan. The procedure would be similar to procedure to that of registration of an Eurasian patent of invention.

[O] Specific Aspects of International Design Registration

Not applicable in this jurisdiction.

[P] Design and Copyright Protection

Copyright protection begins when a copyright work is actually created and fixed in a tangible form. To benefit for the protection no formal requirements should be met, i.e., no formalities are required for arising and further exercising the copyright.

At the same time the property right to an industrial design is conferred by a patent which is granted for an industrial design meeting such criterion of patentability as novelty.

Although the copyright is mostly concerned with aesthetic creations the prior copyright may prejudice the novelty of an industrial design as far as both copyrighted work and industrial design refers to the creative activity and one of the purposes of the design protection is stimulation of the design element in the production.

In order to defend a person's copyrights, for which no respective certificate has been issued, in the event of the conflict with an owner of a patent to an industrial design, it is necessary to submit due and strong evidence of priority in creating an object of copyright protection.

[Q] Fees

The document confirming the payment of a fee for filing an application for an industrial design shall be provided together with an application or within two months as of the date of filing of an application with Kazpatent. In case of not submitting of the said document after the said term an application shall be deemed as such as not filed.

[1] Table of official fees

	KZT
Filing application, including carrying out the formal examination of application for an industrial design	18,039.84
Substantive examination:	
– One industrial design	36,804.32
– Additionally for each design over one	4,382.56
Receiving and checking a title of protection	33,253.92

Small and middle entities fee:

	KZT
Filing application, including carrying out the formal examination of application for an industrial design	14,431.87

Substantive examination:	
– One industrial design	29,443.46
– Additionally for each design over one	3,605.05
Receiving and checking a title of protection	18,651.14

Individuals fee:

	KZT
Filing application, including carrying out the formal examination of application for an industrial design	5,411.84
Substantive examination:	
– One industrial design	11,040.96
– Additionally for each design over one	1,314.88
Receiving and checking a title of protection	9,975.84

[R] Transitional Provisions

No relevant legislation in this jurisdiction.

[S] Specific Industrial Design and Model Issues

No relevant legislation in this jurisdiction.

[T] Governmental Websites

- <http://www.kazpatent.kz>