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September 2026

Someone Else's Patent Is Blocking Your Business. Here's What You Can Do



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A practical guide for owners and executives — no legal jargon

The situation that starts it all

You are launching production or bringing a product to the Kazakhstan market. And then it turns out that another company holds a patent on the technical solution you are planning to use.

From here, there are three options:

1. **Negotiate** — buy a license or the patent itself.
2. **Design around it** — change the solution so it no longer falls under the patent claims.
3. **Challenge it** — prove in court that the patent should never have been granted.

The first option is the fastest, but the patent holder is not obliged to agree and often names a price that kills the project's economics. The second requires engineering work. The third is what this article is about.

It is important to understand the scale of the risk: if you use someone else's patent without permission anyway, the patent holder is entitled to demand not only that you stop production and compensate losses, but also pay damages of **from 10,000 to 50,000 MCI (Monthly Calculation Index)** — instead of having to prove actual losses. That is not a sum you can write off as a “cost of doing business.”

Two types of patents in force in Kazakhstan		
	National patent	Eurasian patent
Who issues it	Kazakhstan expert organisation (NIIS)	Eurasian Patent Office (EAPO)
What it covers	Inventions, utility models, industrial designs	Inventions and — since 2021 — industrial designs
Territory	Kazakhstan only	Up to 8 EAPC member states from a single application in Russian
Fees	Paid to one office	Paid separately in each country (you can choose which ones)

Members of the Eurasian Patent Convention: Kazakhstan, Russia, Belarus, Azerbaijan, Armenia, Kyrgyzstan, Tajikistan, and Turkmenistan.

What matters here for business: regardless of whether the patent is national or Eurasian, a dispute over its validity **within Kazakhstan** is heard by a Kazakhstani court under Kazakhstani law. There is no need to litigate in the patent holder's home country.

What changed after 2019: previously, Eurasian patents were not explicitly mentioned in the Patent Law, and courts sometimes redirected claimants to “the place where the foreign patent holder is lo of the Republic of Kazakhstan”. Since 2022, Article 30 of the Law explicitly names the Eurasian patent alongside the national protection document. This removed much of the earlier uncertainty.

Where to file: court only

A granted patent can be invalidated **only through the courts**. There is no mandatory pre-trial procedure for this.

This is a common point of confusion, so let's clarify: the Board of Appeal under the authorized body does exist, and a mandatory pre-trial appeal to it does apply — but **only to an applicant who was refused a patent**. If the patent has already been granted and you want to have it removed, you go straight to the court.

The dispute is heard by a specialized inter-district economic court. In our

practice, that means the court at the location of the expert organization (NIIS, Astana), which is also joined to the proceedings. The law still does not clearly define the procedural status of the expert organization and the patent holder — who is the defendant, who is the co-defendant, who is a third party — and this remains a risk area at the very start of a case: an incorrectly defined set of defendants is the most common cause of lost time at the outset.

Grounds for invalidating a patent:

There are four grounds:

- 1. The solution does not meet the conditions of patentability.** This is the ground behind the vast majority of cases. We cover it in detail below.
- 2. The patent claims contain features that were not in the original application.** In plain terms, the applicant “added on” to the invention during examination.
- 3. The filing rules under international treaties were violated** (PCT, EAPC).
- 4. The inventor or patent holder is incorrectly named.** A classic corporate dispute: an employee leaves and registered a patent in his own name.

The conditions of patentability, in plain terms

Condition	What it means	What it applies to
Novelty	The solution did not exist in publicly available sources anywhere in the world before the priority date	Inventions, utility models, industrial designs
Inventive step	The solution is not obvious to a person skilled in the field — it is not simply “combining what is already known”	Inventions only
Industrial applicability	The solution can actually be used in production	Inventions, utility models
Originality	The product’s appearance results from creative design, not merely its technical function	Industrial designs only

Note one nuance for utility models: information about a utility model being used **outside Kazakhstan** does not count as prior art. In other words, a solution long used abroad but never published can still be lawfully patented here.

The weakest link: utility model patents

This is a key practical point every business should know.

When granting a utility model patent, the expert organization **does not check** novelty or industrial applicability. The law states plainly that the patent is granted “at the applicant’s own risk and responsibility.” Only the completeness of the documents is checked.

What this means in practice:

- Getting a utility model patent in Kazakhstan is relatively easy.
- Such a patent is the most vulnerable to challenge.
- If a competitor suddenly confronts you with a utility model patent, do not rush to give in. First check whether it would survive a patent search.

The same logic applies to Eurasian patents: the Kazakhstani office only conducts a formal review and forwards the materials to the EAPO, which carries out the substantive examination.

What determines the outcome of a case

A patent information search. The task is to find, across global sources — both patent and non-patent, including articles, catalogues, GOST standards, dissertations, and trade-show presentations — solutions that were publicly available **before the priority date** of the disputed patent and that undermine its novelty or inventive step. This is the foundation of the entire case.

Specialists (experts). In complex cases, the court will typically bring in specialists — either at a party’s request or on its own initiative. In one of our cases challenging a pharmaceutical patent, the judge brought in **three specialists**, and the case file ended up with three opinions reaching fairly contradictory conclusions.

Requirements for such a specialist: an advanced degree or deep expertise in the relevant field (chemistry, pharmaceuticals, mechanical engineering) — and, ideally, training in patent law. An engineer with no understanding of patent law will produce an opinion the court cannot actually use.

The takeaway for your project budget: a patent dispute runs on three roles

working together: litigation counsel, a patent attorney (specifically a patent attorney, not a trademark one), and an industry expert. Cutting corners on any one of them usually ends up costing more than the dispute itself.

What you get if you win

The patent is invalidated retroactively — as of the date its application was filed. Legally, it is treated as if it never existed. The grant decision is reversed, and the entry in the state register is cancelled.

Two points worth knowing in advance:

License payments are not refunded. License agreements remain valid to the extent they were already performed by the time of the court decision. If you paid royalties for three years under a patent that was later invalidated, you will not get that money back.

A patent can survive in a narrowed form. Under the current wording of law, the patent holder may amend the claims, description, or drawings so that what remains meets the conditions of patentability. In that case the patent is invalidated **partially** and continues to be in force under the same number, just with a narrower scope.

This last point is important to build into your strategy: a “partial win” is a quite plausible outcome. Sometimes it is enough — the narrowed claims no longer cover your product — and sometimes it is not.

Checklist: where to start

1. **Check the type of patent.** A utility model? Your odds are significantly better, since no substantive examination was ever carried out.
2. **Check whether the patent is still in force.** If the annual fees were not paid, the patent may have lapsed early — and you may not need to litigate at all.
3. **Order a patent search** before making any decisions. It is a relatively inexpensive step that shows how the case is likely to play out.
4. **Compare it against the alternatives:** designing around the patent, a licence, a compulsory licence (if the patent holder has not used the patent for more than 3 years), or prior-use rights, if you were already using the same solution before the priority date.
5. **Gather evidence of your own activity before the priority date —**

contracts, shipments, technical documentation. This can also help if you end up on the defence.

In short

Patent disputes are no longer a niche topic for inventors — they are a competitive tool with direct consequences for revenue and production plans. A patent in force does not mean an unchallengeable patent, especially if it is a utility model. But challenging one is not a formality either: the outcome hinges on the quality of the patent search, the competence of the specialists involved, and a well-built procedural strategy from day one.