

## **On the Protection of Selection Achievements**

The Law of the Republic of Kazakhstan of 13 July, 1999 No. 422-I

### **Chapter 1. General provisions**

#### **Article 1. Relations regulated by this Law**

This Law defines the legal, economic and organizational basis for activities in the field of selection achievements, regulates property and related personal non-property relations arising in connection with the creation, identification, breeding, legal protection and use of selection achievements.

#### **Article 2. The basic concepts used in this Law**

In this Law the following basic concepts:

- 1) the exclusive right – property right of the patent owner to use the selection achievement by any means at own discretion;
- 2) Appeal Board – a division of the authorized body of pre-trial disputes; Explanatory note by RCLI!
- Subparagraph 3) as amended by the Law of the Republic of Kazakhstan No. 424-V of **27.11.2015** (entered into force six months after the date of its first publication).
- 3) animal breeding – pure-bred, high quality, highly productive animals, responsible type, direction and level of productivity of the breed, having booked breeding animal or breeding certificate; Explanatory note by RCLI!
- Subparagraph 4) as amended by the Law of the Republic of Kazakhstan of 27.11.2015 No. 424 -V (entered into force six months after the date of its first publication).
- 4) breeding products (material) – breeding and breeding animals and semen, embryos, hatching eggs, day-old chicks, eggs, larvae and young fish breeding uterine bee breeding, bee colonies and bee packages received from breeding animals;
- 5) The State Commission for Variety Testing of crops – an organization under the jurisdiction of the authorized body in the field of agriculture, carry out examination of plant varieties on patentability and serviceability;
- 6) Bulletin – an official periodical on the protection of breeding achievements;
- 7) the license agreement – an agreement in which the patent owner (licensor) grants the other party (licensee) the right to temporarily use a selection achievement in a certain way;
- 8) The state commission – the State Commission for Variety Testing of crops and the State Commission on testing and stock approbation of the authorized body in the field of agro-industrial complex;
- 9) planting – planting material of any kind, including reproductive and vegetative propagating material (seeds, seedlings, plants and plant parts intended for their reproduction);
- 10) the applicant – a natural or legal person who has applied for a patent for the selection achievement;
- 11) the patent owner – the owner of the patent;
- 12) patent attorneys – citizens of the Republic of Kazakhstan, which in accordance with the laws of the Republic of Kazakhstan have the right to represent natural and legal persons to the competent authority and expert organizations;

13) selection achievement – a new plant variety, a new breed of the animal, resulting from human creativity, which granted a patent;

14) The author of a selection achievement (the breeder) (hereinafter – author) – an individual who created, or discovered and brought variety or breed;

15) State Register of selection achievements – the State Register of the Republic of Kazakhstan of protected plant varieties and the State Register of the Republic of Kazakhstan of protected animal species, which include the variety or breed for which patents are granted;

16) State Register of selection achievements allowed to be used – the State Register of the Republic of Kazakhstan of breeding achievements permitted for use, which includes a variety or breed, approved for use in the manufacture of household;

17) grade – a group of plants of one culture, similar in economic and biological properties and morphological characteristics, related by birth, transmit their characteristics by inheritance to future generations and different from any other plant grouping of the same botanical taxon at least one attribute. The protected categories of varieties are: clone, line, first generation hybrid, population;

18) commodity animal – the animal used for production of commercial products;

19) the breed – a group of farm animals one kind of common origin, developed under the influence of human creativity in certain economic and natural conditions, quantitatively sufficient for cultivation “in itself” and having the economic and tribal values, supported the selection, assortment, establishment of their respective genotype technology conditions, as well as a certain specificity of morphological, physiological and economically beneficial properties that distinguish it from other breeds of the same species. The protected categories of breed are: type, cross, line;

20) State Commission on examining and approbation of breeds – an advisory body of the authorized body in the field of agriculture, carrying out examination of livestock breeds on patentability and serviceability;

21) seeds – all forms of botanical seed: the actual seeds, fruits, stems, fruits of the complex, bulbs and tubers.

Explanatory note by RCLI!

Subparagraph 22) excluded by the Law of the RK of 27.11.2015 No.424-V (entered into force six months after the date of its first publication).

22) Breeding animal – an animal that corresponds to the standard of a breed.

Footnote. Article 2 as amended by the Law of the Republic of Kazakhstan of 2 March, 2007 No. 237 (the act is entered into force since the day of its official publication); as amended by the laws of the Republic of Kazakhstan of 12.01.2012 No. 540-IV (the act is entered into force in ten calendar days after its first official publication); of 17.01.2014 No. 165-V (the act is entered into force in ten calendar days after its first official publication).

### **Article 3. Legal Protection of Selection Achievements**

1. The right to the selection achievement protected by the legislation of the Republic of Kazakhstan and confirmed by a patent. The patent certifies the exclusive right of the patent owner to use the selection achievement, his priority and authorship of the breeder.

2. (excluded )

3. Examination and testing of selection achievements on patentability and serviceability as an activity in the field of selection achievements made by the authorized body in the field of agriculture, which is the State Register of relevant breeding achievements permitted for use in the production.

4. The extent of protection conferred by a patent for a selection achievement is determined by a set of characteristics included in the description of the variety or breed.

5. The term of a patent for plant varieties is 25 years old, animal breeds – 30 years, for vines, woody decorative, fruit and forest cultures, including their rootstocks, is 35 years from the filing date in the expert organization.

The validity of a patent shall be extended by the authorized body at the request of the patent holder, but for no more than 10 years.

Article 3 as amended by the acts of the RK dated July 09, 2004 N 586; dated 02.03.2007 N237 (entered into force on the day of its official publication);

Footnote. Article 3 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No . 586; of 02.03.2007 No. 237 (the act is entered into force since the day of its official publication); of 10.01.2011 No. 383-IV (the act is entered into force in ten calendar days after its first official publication).

### **Article 3-1. The authorized state body in the field of selection achievements**

1. The authorized state body in the field of Selection Achievements (hereinafter – the authorized body) – is a government body, defined by the Government of the Republic of Kazakhstan and performing state regulation in the field of selection achievements.

2. The competence of the authorized body includes:

1) participation in the implementation of state policy in the field of legal protection of selection achievements;

2) issuance of patents for selection achievements;

2-1) approval of the application form for registration of the agreement of assignment of a patent or the right to obtain a patent for a selection achievement;

2-2) approval of the application form for registration of the license agreement or sub-license agreement for the use of the selection achievement;

3) monitor the activities of individuals and legal entities using selection achievements;

4) drawing up protocols and consideration of cases on administrative offenses, the imposition of administrative penalties;

5) exercise other powers stipulated in this Law, other laws of the Republic of Kazakhstan , acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

The Law is amended by article 3-1 in accordance with the RK Law N 586 dated July 9, 2004; with the change, made by laws of the Republic of Kazakhstan No. 452-IV dated 05.07.2011 ( entered into force 13.10.2011);

Footnote. The Act was completed with article 3-1 according to the Law of the RK of 09.07.2004 No. 586; as amended by the laws of the Republic of Kazakhstan of 05.07.2011 No. 452-IV (the act is entered into force since 13.10.2011); of 12.01.2012 No. 537-IV(the act is entered into force in 10 calendar days after its first official publication).

### **Article 3-2. State monopoly in the field of protection of selection achievements**

1. Activities for accepting applications and conducting a preliminary examination of applications for selection achievements, the examination of agreements for the assignment of a patent or the right to obtain a patent for a selection achievement, the license (sublicense) agreements, conducting the State register of

breeding achievements, publication of information on selection achievements, preparation for issue of protection documents, including changes in the application materials, protection documents and state registers of protected plant varieties and animal breeds; an extract from the State Register of selection achievements; Renewal of the term of payment by the applicant to six months from the date of expiry of the deadline; issuing certificates of the author, applications and their duplicates; maintaining in force, the extension of the protection document, receiving application for open license, examination of supplementary agreements to the agreements; publication of information about the registration of agreements; search for patent documents (numbering and names); implementation and publication of printed and electronic publications; examination of the pledge agreement, refers to a state monopoly, and made by expert organization established by a decision of the Government of the Republic of Kazakhstan in the legal form of the republican state enterprise on the right of economy conducting.

2. The activities technologically related to the activities of expert organizations, include:

- 1) production of a copy of the application;
- 2) submission of certificates, statistical data on protection documents on selection achievements;
- 3) resettlement and confirmation of payments.

3. The prices for goods (works, services) produced and (or) sold subject to a state monopoly, established by the authorized body in agreement with antimonopoly agency.

Footnote. It was completed with article 3-1 according to the Law of the RK of 9 July, 2004 No. 586; as amended by the Law of the Republic of Kazakhstan of 10.07.2012 No. 34-V (the act is entered into force since the day of its official publication); as amended by the laws of the Republic of Kazakhstan of 29.09.2014 No. 239-V (the act is entered into force in ten calendar days after its first official publication).

## **Chapter 2. Patentability of selection achievement**

### **Article 4. Conditions for patentability of a selection achievement**

1. A patent is granted for a selection achievement, which has the novelty, distinctness, uniformity and stability.

2. Variety, breed considered new if on the date of filing the seeds or other planting material, breeding material of this selection achievement are not sold or transferred to other persons by the author or his successor for use of the variety or breed in the territory of:

- 1) the Republic of Kazakhstan – earlier than one year before the filing date;
- 2) any other State – earlier than four years for annual crops and earlier than six years for perennial crops, breeds before the filing date.

Variety, breed, which on date of inclusion of relevant genera and species in the State Register of selection achievements, have been registered in the State register of breeding achievements permitted for use, may be deemed patentable without requirements of novelty to a variety or breed.

The validity of the patent referred to in Article 3 of this Law, for such selection achievements is reduced for the period from the year of admission to the use till the year of granting a patent. With respect to such selection achievements not apply provisional legal protection provided for in Article 9 of this Law.

3. Variety, breed meets the criteria of distinctness, if they are clearly distinguishable from any other variety or breed which existence at the time of application is well known. Applying for a patent or application of a variety or breed in the official register of new varieties, breeds in any country makes variety

or breed generally known from the filing date, provided that the application leads to issue of patent or the variety, breed were included in these registries.

Common knowledge of varieties, breeds can also be established by cultivation, use and publication. Signs to help you determine the descriptive and distinctive features of the variety or breed should fall for restoration and accurate description.

4. Variety, breed considered homogeneous when considering the characteristics of their reproduction, plants of the variety or breed is uniform in the selectable characters.

5. Sort, breed meets the criterion of stability if their basic characteristics remain unchanged after each reproduction, and in the case of reproduction of a particular cycle – at the end of each such cycle.

Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan of 9 July, 2004 No. 586.

## **Article 5. Application for a selection achievement patent**

1. An application for a patent is served in the expert organization.

An application may be filed as an electronic document, certified by digital signature.

The right to file an application for a patent belongs to the author or his successor.

If the selection achievement created, discovered or deduced in performing official tasks or duties, the right to file an application for a patent belongs to the employer unless the agreement between the author and the employer does not provide otherwise.

An application may be filed by several applicants, if they jointly created or discovered and brought out a selection achievement or are the successors of the authors.

An application may be filed through a representative, who in virtue of the powers based on power of Attorney, conduct business related to obtaining a patent.

1-1. Employees of the State Commission for Variety Testing of crops during the period of the commission does not have the right to apply for a patent of the Republic of Kazakhstan for a selection achievement, except breeding work on creation, identify and nurture the selection achievement, carried out prior to the implementation of labor functions in the state commission .

2. Individuals residing outside of the Republic of Kazakhstan or foreign entities doing business to obtain patents and keeping them in force, filing an objection to the Appeals Board and take part in their examination through the patent attorneys registered in the authorized body.

Individuals permanently residing in the Republic of Kazakhstan but temporarily are abroad may conduct business related to patents, without a patent attorney when specifying an address for correspondence in the Republic of Kazakhstan.

The authority of a patent attorney shall be certified by a power of attorney issued by the applicant or patentee.

3. An application for a patent for a selection achievement is issued to each plant variety or breed of animal and should contain:

- 1) application for grant of a patent;
- 2) the form of the selection achievement;
- 3) the power of attorney in the case of work through a representative.

An application for a patent for a selection achievement accompanied by proof of payment of the application in the prescribed amount, and a document certifying the reduction of its size that can be submitted together with the application or within two months from the date of receipt of the application. With appropriate payment, this period may be extended, but not more than two months.

In case of non-submission of documents on payment within the prescribed period the application shall be recognized as not having been filed.

4. An application for a patent is submitted in the state or Russian language.

5. The requirements for application documents and proceedings are determined by the authorized body. Other documents and materials required for the examination of the claimed variety or breed, are submitted upon request of the State Commission.

The procedure for examining an application for substantive examination is determined by the authorized body in the field of agribusiness development.

Footnote. Article 5 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No . 586; of 02.03.2007 No. 237 (the act is entered into force since the day of its official publication); of 10.01.2011 No. 383-IV (the act is entered into force in ten calendar days after its first official publication); of 12.01.2012 No. 537-IV (the act is entered into force in 10 calendar days after its first official publication); of 29.09.2014 No. 239-V (the act is entered into force in ten calendar days after its first official publication); of 07.04.2015 No . 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 6. Name of the selection achievement**

1. Name of the selection achievement should allow to identify the selection achievement, to be brief, differ from the names of existing selection achievements of the same or similar botanical or zoological species. It should not consist solely of figures, misleading with respect to the properties, origin, significance of the selection achievement or the identity of the breeder, should not contradict the principles of humanity and morality.

Validation of the proposed denomination of the selection achievement carried out by state commissions, within two months from the date of receipt of the application materials from the expert organization.

2. If the application for a selection achievement for the same variety or breed is supplied to the Republic of Kazakhstan and other countries, the name of the same variety or breed shall be identical, except for the cases when the name of the variety or breed does not meet the requirements of paragraph 1 of this article.

3. If the name of the variety or breed does not meet the requirements set forth in paragraphs 1 and 2 of this article, at the request of the expert organization the applicant must, within two months to propose a new name.

If within that period, the applicant does not propose a new name corresponding to the specified requirements, or does not contest the failure to approve the name of the selection achievement in the Appeals Board, competent authority shall refuse to register the selection achievement.

4. Any person using the selection achievement shall be obliged to indicate the name of the variety or breed under which they are registered in the State register of selection achievements, even after the expiry of the patent.

Footnote. Article 6 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No . 586; of 02.03.2007 No. 237 (the act is entered into force since the day of its official publication); of 10.01.2011 No. 383-IV (the act is entered into force in ten calendar days after its first official publication); of 12.01.2012 No. 537-IV (the act is entered into force in ten calendar days after its first official publication).

## **Article 7. Priority of selection achievement**

1. The priority of the variety or breed is established by the filing date of the application in the expert organization.

If at the same time expert organization received two or more applications for a patent for the same selection achievement, a priority set by the earlier date of sending the application. If these applications have the same date, the patent shall be granted for the application having an earlier registration number assigned by the expert organization, if an agreement between the applicants does not provide otherwise.

2. Priority may be determined by the filing date of the first application in a member country of the International Convention on the Protection of Selection Achievements (convention priority). The applicant has a right of convention priority of the first application within 12 months from the date of its filing.

An applicant wishing to exercise the right of convention priority should be in the order directed to the expert organization, specify the priority date of the first application and, within three months from the date of filing the subsequent application to provide a copy of the first application certified by the authority with which that application was filed.

Under these conditions, the applicant may not submit additional documentation and material required for testing within three years from the date of filing of the first application.

Footnote. Article 7 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No . 586; of 02.03.2007 No. 237 (the act is entered into force since the day of its official publication); of 10.01.2011 No. 383-IV (the act is entered into force in ten calendar days after its first official publication).

## **Chapter 3. Examination of an application for selection achievements patent**

### **Article 8. Preliminary examination**

1. At the end of two months from the date of filing the expert organization shall carry out a preliminary examination. In the course of the preliminary examination established the priority date of the application, checks for the necessary documents and the implementation of the requirements set for them. Preliminary examination of patent applications is carried out in two months.

The applicant has the right to bring in the application documents corrections and clarifications without changing the essence of a selection achievement before a decision upon that application. When making these changes within two months of the date of receipt of the application, fee will not be charged.

Changes concerning the applicant's instructions when assignment of the right to obtain title or change of the name of the applicant, as well as correcting errors in documents of a technical nature, claims can be made up to date information about the registered selection achievement in the State Register of plant varieties, subject to appropriate payment.

Expert organization may request missing documents or revised material that an applicant is required to submit, within two months from the date of issuance of the request.

2. Additional materials submitted to the application for variety or breed and containing features that were not listed in the primary materials of the application and changing the substance of the variety or breed, are not taken into account when considering the application.

3. Upon receipt of positive result of preliminary examination of the competent authority, a decision the authorized body makes decision on the further consideration of the application and the applicant will notify within ten days. Copies of the application and the form of the selection achievement directed to the State Commission.

4. If the preliminary examination established that the application does not meet the requirements, then make the decision to refuse its further consideration and the applicant shall be notified within one month.

5. The applicant may apply to the competent authority objection to a decision to refuse further consideration of the application within two months from the date of receipt of the decision. The objection shall be considered by the Board of Appeal within two months from the date of its receipt.

The decision of the Board of Appeal can be appealed in court by the applicant within six months from the date of receipt of the decision.

6. The information on applications, which as a result of the preliminary examination was made favorable decision, published in the bulletin after 18 months from the date of receipt of the application. Expert organization at the request of the applicant may publish the application materials before the deadline.

7. Author of variety or breed has the right to refuse publication of his name in the application.

Footnote. Article 8 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 9. Provisional legal protection of selection achievement**

1. Temporary legal protection is given to selection achievement claimed to the protection since the date of the publication of an application prior to the date of grant of patent.

2. Upon receipt of a patent the patent holder is entitled to receive compensation from the person who committed without the permission of the applicant during the period of the provisional legal protection of the selection achievement actions specified in paragraph 1 of Article 14 of this Law.

3. During the period of the provisional legal protection of selection achievements the applicant allowed to sale or other transfer of seeds, breeding material only for scientific purposes and in cases where the sale or other transfer related to the assignment of the right to the selection achievement or the production of seeds, breeding material commissioned by the applicant to create their stock.

In case of violation of the specified requirements by the applicant or by other person with his consent, provisional legal protection shall be deemed unaccrued.

## **Article 10. Examination of a selection achievement application for patentability**

1. Any interested person within six months from the date of publication of the data concerning the application may send to the state commission claim for the claimed selection achievement.

On receipt of a valid claim the State Commission shall notify the applicant outlining the merits of the claim. In case of disagreement with the claim, the claimant shall have the right, within three months from the date of receipt of the notification sent to the state commission reasoned objection.

The authorized body on the basis of the conclusion of the state commission takes a decision and informs the person concerned.

If a variety or breed did not meet the criteria of novelty, make a decision to refuse to grant a patent.

2. Test the variety or breed on distinctness, uniformity and stability performed by state commissions on accepted procedures in a timely manner.

State Commission shall notify the expert organization on specific dates of the tests for patentability within one month from the date of application materials send to the expert



organization.

The applicant shall submit to the examination required number of seeds or breeding material.

3. The State Commission shall have the right to use the results of tests carried out by other organizations of the Republic of Kazakhstan and other states that are parties to relevant treaties and data submitted by the applicant.

4. When variety, breed meet conditions of patentability, the State Commission shall make description of varieties, breed.

Based on the conclusions of the State Commission authorized body within ten working days, shall make decision on the grant of a patent for selection achievement, as the claimant is sent a written notice within ten working days.

Within three months from the date of notification of the applicant by the authorized body on the decision to grant the patent, applicant submits an expert organization document confirming payment for the appropriate preparation to the grant of a patent and publication, as well as the payment of the State fee. In case of non submission of the above-mentioned documents, term of payment can be restored within three months, subject to the submission of a document about payment of a missed period recovery. Otherwise, the application is deemed revoked, the processing of the application is stopped, as the applicant shall be notified within 10 working days from the date of expiry of the period of recovery.

5. If the examination found that the variety or breed did not meet the requirements of patentability, the authorized body on the basis of the conclusion of the state commission takes a decision to refuse to grant a patent, the applicant shall be notified in writing within one month.

The applicant may apply to the competent authority objection for decision to refuse to grant a patent within three months from the date of its receipt. The objection shall be considered by the Appeal Board within three months from the date of its receipt.

The decision of the Board of Appeal can be appealed in court by the applicant within six months from the date of receipt of the decision.

6. The applicant may familiarize himself with all materials competing by examination. Authorized body sends him copies of the requested materials within one month from the date of receipt of the request.

Footnote. Article 10 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 12.01.2012 No. 537-IV (the act is entered into force in 10 calendar days after its first official publication); of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

#### **Chapter 4. Author and patent Article 11. The author of a selection achievement**

1. The author of the selection achievement shall be an individual, whose creative work was created, discovered or nurtured.

2. If the selection achievement created by a collective creative work of several persons, all of them shall be considered its authors (co-authors). The procedure for using the rights belonging to the co-authors shall be determined by agreement between them.

3. The persons served to the author (or authors) technical, organizational, material ( finance) assistance and contribute to the preparation and registration of rights on variety or breed do not recognized as the authors.

Footnote. Article 11 as amended by the laws of the Republic of Kazakhstan of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 12. Rights of the author of a selection achievement**

1. The author's moral rights are inalienable and are protected indefinitely..
2. The author of the selection achievement entered in the State register of selection achievements, not being the patent owner, the authorized body issue an official certificate confirming his authorship.
3. The author has the right to give his own name to his selection achievement.
4. The author has the right to receive remuneration from the patent holder for the use of created, identified or nurtured by him selection achievement during the term of the patent. Amount and terms of payment of remuneration determined by agreement between the patent holder and the author.

If there is no agreement the size and order of payment of remuneration to the author shall be determined by legislative acts of the Republic of Kazakhstan.

The size of the remuneration of the author shall not be less than five per cent of the amounts of the annual income received by the patent owner for the use of a selection achievement, including the proceeds from the sale of licenses.

The remuneration paid to the author within six months after the expiry of each year in which the selection achievement was used, unless the agreement of the author with the patent holder provides otherwise.

If a selection achievement is created, discovered or nurtured by several authors, remuneration shall be paid in equal shares, unless otherwise provided by agreement between them

Footnote. Article 12 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication); of 31.10.2015 No. 382-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 13. The patent owner of a selection achievement**

The patent is issued to:

- 1) the author (s);
- 2) his heir (heirs);
- 3) individuals and (or) legal entities (with their consent) that are listed by author (s) or his (their) legal successor in the application for a selection achievement or in an application filed with the competent authority before a decision to grant a patent for a selection achievement;
- 4) the employer, if the selection achievement is created, discovered or nurtured by an employee when performing official tasks or duties.

If there are several persons in whose name the patent is sought.

Footnote. Article 13 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 14. Rights and duties of the patent owner**

1. The patent owner has the exclusive right to use the selection achievement, if such use does not violate the rights of other patent owners. Permission of the patent owner is required for the following actions with respect to the selection achievement:

- 1) production or reproduction (breeding);
- 2) bringing to sowing conditions of seeds for reproduction;
- 3) offering for sale;
- 4) the sale or other forms of marketing;
- 5) the export from the territory of the Republic of Kazakhstan;
- 6) import in the territory of the Republic of Kazakhstan;
- 7) storage for the above purposes.

2. The right of the patent owner shall also apply to the plant material, animal commodities that have been produced from the seeds of the breeding animals introduced into circulation without the permission of the patent holder.

3. The provisions of paragraph 1 of this Article shall apply in respect of seed varieties and breeding material selection achievements, which are:

- 1) essentially inherit the characteristics of selection achievements, if the selection achievements do not inherit the features of another selection achievement;
- 2) are not clearly distinguishable from the selection achievement;
- 3) (excluded )
- 4) the reproduction requires the repeated use of the selection achievement.

4. Selection achievements essentially inheriting the features of another (source) selection achievement, is recognized an selection achievement that in the apparent difference from the original:

1) take the most essential features of the original selection achievement or achievement which itself take the essential features of the initial selection achievement, while retaining the essential characteristics that result from the genotype or combination of genotypes of the original selection achievement;

2) corresponds to the genotype or combination of genotypes of the initial selection achievement, except for deviations caused by the use of techniques such as individual selection from the initial variety or breed, selection of an induced or somaclonal mutant, backcrossing and genetic engineering.

4. (excluded )

5. The patent owner shall:

- 1) enter into circulation variety or breed accepted for use in manufacture;
- 2) maintain a variety or breed during the term of the patent for the safety features referred to in the official description established by the State Commission for the protection of the variety or breed;
- 3) annually to pay for the maintenance of the patent.

Footnote. Article 14 as amended by the Law of the Republic of Kazakhstan of 9 July, 2004 No. 586.

## **Article 15. Responsibility for violation of the rights of the patent owner**

1. Individual or legal entity using the plant variety or breed of animal in violation of this Act shall be guilty of violating the rights of the patent owner.

2. Individual or legal entity is considered to be infringing the rights of the patent owner if:

- 1) discloses without permission of the patent owner a trade secret information about the variety, the breed for which the application is submitted;

2) sets to manufactured and sold protected plant varieties, animal breeds nomination, which is different from the registered;

3) sets to manufactured and sold protected plant varieties, animal breeds nomination, similar to the degree of mixing with the name of a selection achievement;

4) assigns to produced and (or) sold protected seeds and breeds of animals nomination of the selection achievement, which in fact are not such;

5) submit documents containing false information about the selection achievement.

3. A person who has violated the rights of the patent owner shall be obliged to pay compensation for the patent owner to use a selection achievement, as well as to recover other damages arising as a result of the breach of this Act in accordance with the law.

4. The holder of exclusive or nonexclusive license may bring claims to the infringer of the patent on the written permission of the patent owner or his attorney.

5. The claim for damages is determined from the date of loss and for the period of patent infringement.

## **Article 16. Succession of rights**

The right to apply for and obtain a patent for a selection achievement, the exclusive right to use the selection achievement, as well as to remuneration and income from its use transferred by inheritance or succession.

Footnote. Article 16 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 17. Actions, not be recognized as infringement of exclusive rights of the patent owner**

No infringement of the rights of the patent owner in respect of the use of a selection achievement:

1) committed for personal and non-commercial purposes;

2) acts done for experimental purposes;

3) on the use of selection achievements as a starting material for breeding other varieties and breeds, except in cases provided for in paragraphs 1 and 2 of Article 14 of this Law.

## **Article 17-1. The right of prior use**

1. A person who, before the priority date of the selection achievement faithfully used on the territory of the Republic of Kazakhstan created regardless of the author a plant variety or breed of animal identical to selection achievement or made necessary preparations, retains the right to free use without expanding the scope of such use (the right of prior use).

The right of prior use may be transferred to another person together with the production, which involved the use of the identical plant variety or breed of animal or were made the necessary preparations.

2. A person, who use a selection achievement after the priority date, but before the date of publication of the particulars on the grant of the patent, shall on request of the patent owner to cease further use. However, such a person is not obliged to reimburse the patent losses incurred as a result of such use.

Footnote. Chapter was completed by article 17-1-of RK Law of November 22, 2005 No. 90 ( order of enforcement see Article 2 of the Law).

## **Chapter 5. Using a selection achievement**

### **Article 18. The license agreement**

1. Any person, not being the patent owner shall have the right to use a selection achievement only with the permission of the patent owner on the basis of a license agreement.

2. The license agreement may provide the licensee:

1) the right to use a selection achievement beyond which the licensor retains the possibility of its use and the right to issue licenses to other persons (simple, non-exclusive license);

2) the right to use a selection achievement beyond which the licensor retains the possibility of its use, but without the right to grant licenses to other persons (exclusive license);

3) the right to use a selection achievement without saving by the Licensor the possibility of its use and without the right to grant licenses to other persons (full license). If the license agreement does not specify a type of license, it is assumed to be a simple, non-exclusive.

3. A agreement regarding the provision by the licensee to another person (sublicensee) a non-exclusive license to use a selection achievement (sub license agreement) may be concluded only in cases stipulated by the license agreement.

Responsibility to the licensor for the actions of sub-licensee shall bear the licensee, unless the license agreement provides otherwise.

4. The license and sub-license agreements are concluded in writing and shall be registered in the authorized body. Failure to comply with the written form or the requirement of registration shall entail the invalidity of the agreement.

Registration of license agreements shall be carried out according to the results of examination materials carried out by an expert organization.

For registration order of sub-license agreements shall apply the provisions of the license agreements registration, unless otherwise provided by the legislation of the Republic of Kazakhstan.

To register a license agreement, application in a prescribed form provided to an expert organizations.

The application shall be accompanied by:

1) the original agreement in quadruplicate with cover. Each copy of the agreement sewn, sealed with a paper seal, where the record of the number of laced and numbered sheets is made, stamped seal, and the signatures of both parties and any authorized persons of both parties.

Feed materials for registration should be carried out not later than six months from the date of signing the agreement.

Instead of the originals of the agreement may be submitted notarized copy of the agreement;

2) power of attorney if the application through a patent attorney or other representative

;

3) a document confirming payment of the state fee. National applicants, in addition to the above-mentioned documents submitted the decision of the management bodies of the licensor ( sub-licensor) (general meeting of founders or shareholders) on the conclusion of the agreement and authorization to sign the agreement by the head of organization submitting the application on behalf of a legal entity.

The application and other necessary documents are presented in the Kazakh and Russian languages. Foreign names and the names of legal entities must be indicated in the Kazakh and Russian transliteration. If the documents are in another language, the application shall be accompanied by notarized translation into Kazakh and Russian languages.

The application must relate to one license agreement.

Individuals living outside of the Republic of Kazakhstan, or foreign legal entities to applying materials of the agreement to the authorized body on its own behalf, exercise the rights relating to the registration of the agreement by registered patent attorneys of the Republic of Kazakhstan.

Citizens of the Republic of Kazakhstan, temporarily residing abroad, exercise the rights relating to the registration of the agreement, without a patent attorney if specify an address for correspondence in the territory of the Republic of Kazakhstan.

5. Expert organization after the submission by the applicant list of documents for registration within fifteen working days of receipt of the application carries out a preliminary examination of the documents received in order to verify availability of the necessary documents and compliance with the requirements established for them, in the case of lack of materials attached to the application of the agreement document proof of payment of the examination, the applicant will be invoiced for payment. In this case, the specified time is calculated from the date of receipt of payment to the expert organization.

On acceptance for consideration of the license agreement within twenty days is carried out substantive examination, during which the study of the license agreement is conducted in accordance with the current legislation of the Republic of Kazakhstan.

6. Reasons impeding the registration of the license agreement that can be eliminated:

- 1) is not made payment for the maintenance of the patent;
- 2) the presence in the agreement provisions contrary to the civil legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

7. In case of violation of the requirements for registration of documents or the grounds mentioned in paragraph 6 of this Article impeding the registration of the agreement, but that can be eliminated, expert organization sends a request to the applicant with a proposal within three months from the date of its dispatch to submit the corrected or missing documents or make the necessary changes and additions. In this case, referred to in paragraph 5 of this article date of the examination shall be calculated from the date of submission of the missing or corrected documents.

8. The expert organization, make a determination to refuse the registration of the license agreement on the following grounds:

- 1) termination of a patent for a selection achievement for which the agreement is concluded;
- 2) failure to provide a timely response to the request of the expert organization within three months;
- 3) the lack of response to the request of the expert organization of all necessary information and documents;
- 4) lack of authority of the licensee's license agreement on the conclusion of sublicense agreement and the lack of a license agreement, registered with the authorized body.

Within two working days after the conclusion of expert organization sends this opinion to the authorized body with the reasons for refusal.

9. In case of positive result of the examination the expert organization within five working days sends to the competent authority conclusion about the absence of grounds, preventing the registration of license agreement.

The decision on registration or refusal of registration of the license agreement is accepted by the authorized body within five working days from receipt of the conclusion of the expert organization.

10. Following a decision on the registration of a license agreement authorized body:

1) prepares an annex to the document on the protection of industrial property, in respect of which the agreement is concluded;

2) mark on the front page of the agreement registration stamp showing the date of registration and its registration number;

3) submit information about the agreement in the register of registered agreements;

4) excluded by the Law of the RK of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication);

5) directs three copies of the agreement with the conclusion to the expert organization for publishing information about the registration of the agreement.

Two copies of the agreement are kept in the authorized body and expert organizations respectively and are monitoring instances.

Expert organization for registered agreements publish annex to the title of protection of industrial property, in respect of which the agreement is concluded, sends two copies of the registered agreement and annex to the title of protection at the address for correspondence, indicated in the application, publishes in the Bulletin of information on registered agreements

, in particular the number and date of registration, name or complete data of the parties to the agreement, the subject of the agreement, the duration of the agreement, the operation of the agreement.

Statement on changes or additions to the registered license agreement, sub-license agreement applied to the authorized body, and shall apply the provisions on the registration of license agreements.

Any person may obtain an extract from the register of registered license agreements, sublicensing agreements relating to data on registered agreements open to publication.

Familiarization of third parties with the text of the agreement, as well as obtaining extracts from it are allowed only with the written consent of the parties to the agreement.

In the case the authorized body makes the decision to refuse registration of a license agreement on the basis of the conclusion of the expert organization, documents of the considered agreement with the decision to refuse the registration shall be returned to the address indicated in the application.

11. The license agreement and sublicense agreement shall enter into force on the date of their registration in the authorized body.

12. In case of emergency in the country, the Government of the Republic of Kazakhstan shall have the right to authorize the use of a selection achievement without the consent of the patent owner, but his immediate notification and payment of an equitable compensation. Disputes about the amount of compensation shall be settled by the court.

Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan of 12.01.2012 No . 537-IV(the act is entered into force in 10 calendar days after its first official publication ); as amended by the laws of the Republic of Kazakhstan of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

## **Article 19. Open license**

The patent owner may apply to the competent authority an application for granting the right to any person to obtain a license for use the selection achievement (open license).

A person wishing to obtain the said license shall conclude an agreement with the patent owner on payments, with its obligatory registration in the authorized body. Disputes on terms of the agreement considered by the court.

Statement of the patent owner granting the right to an open license remains valid for three years from the date of publication in the Bulletin of information on the open license. Within the specified time limit, payment for maintenance of the patent shall be reduced by fifty percent from the year following the year of publication of information about the open license.

Footnote. Article 19 as amended by the Law of the Republic of Kazakhstan 9 July, 2004 No. 586.

## **Article 20. Compulsory License**

1. When patent owner not use the selection achievement and refuse to enter into a license agreement on reasonable commercial terms, any person may apply to the court to grant him a compulsory license if a selection achievement has not been used continuously after the publication of data on granting a patent for a selection achievement within three years from the date of publication of data on granting a patent. If the patent owner fails to prove that non-use of the selection achievement is due to valid reasons, the court shall grant the above license with definition of terms, amount and procedure of payment. The amount of payment must not be lower than the market price of the license, defined in accordance with established practice.

Any compulsory license shall be granted primarily for the supply of the domestic market of the Republic of Kazakhstan.

The right to use the selection achievement may be transferred to a person who has been granted a compulsory license to another person only together with the enterprise in which the selection achievement is used.

A compulsory license shall be revoked by the court in the event of termination of the circumstances that may have contributed to its issuance.

2. The patent owner who cannot use the selection achievement, without violating the rights of another owner of a patent for a selection achievement, refused to conclude a license agreement on reasonable commercial terms, has the right to apply to the court for granting him a compulsory license to use the selection achievement on the territory of the Republic of Kazakhstan.

In providing the above license the court shall determine the limits of the use of the selection achievement, the patent for which belongs to another person, the timing, size and order of payment. The amount of payment must not be lower than the market price of the license, defined in accordance with established practice.

The right to use the selection achievement, obtained pursuant to this paragraph may be transferred only with the assignment of a patent for the selection achievement, for which this right is granted.

## **Article 20-1. The assignment of a patent or the right to obtain a patent for a selection achievement**



1. An assignment of a patent or the right to obtain a patent for a selection achievement shall be issued only by the assignment agreement.

The assignment agreement may be concluded at any time during the term of the exclusive right in a selection achievement for which the agreement is concluded.

The assignment agreement shall be in writing and shall be subject to mandatory registration in authorized body.

Registration of the assignment agreement based on the results of its materials' examination carried out by the expert organization.

2. For registration of the assignment agreement the expert organizations provided with application in the prescribed form.

Application shall be accompanied by:

1) the originals of the assignment agreement in four copies, subject of which are uniform industrial property, with a cover sheet. Each copy of the agreement sewn, sealed with a paper seal, where the record of the laced and numbered sheets made, stamped signature and seal of the authorized persons of both parties or applicant.

Instead of original assignment agreement may be submitted notarized copy of the agreement or a notarized extract of the agreement reflecting the transfer of the right;

2) power of attorney if the application provided through a patent attorney or other representative;

3) a document confirming payment of the state fee.

National applicants, in addition to the above-mentioned documents provide the solution of the management bodies of the owner of the title of protection or exclusive rights, the general meeting of shareholders or founders on the issue of signing the agreement and the authority to sign an agreement by director.

The application and other necessary documents are presented in the Kazakh and Russian languages. Foreign names and the names of legal entities must be indicated in the Kazakh and Russian transliteration. If the documents are in another language, the application shall be accompanied by notarized translation into Kazakh and Russian languages.

The application must relate to one assignment agreement.

3. Upon registration of a patent assignment agreement and the right to obtain a patent for selection achievements, shall apply the provisions provided for by paragraphs 5-10 of Article 18 of this Law.

Assignment agreement shall enter into force on the date of its registration in the authorized body.

Footnote. Chapter 5 was completed with article 20-1 according to the Law of the RK of 12.01.2012 No. 537-IV (the act is entered into force in ten calendar days after its first official publication).

## **Chapter 6. Termination of the Patent**

### **Article 21. Invalidation of patent**

1. The patent for the entire period of validity may be challenged and invalidated by the objection against its granting, if it is determined that:

1) it was issued on the basis of unconfirmed data on the uniformity and stability of the selection achievement represented by the applicant;

2) on the date of the grant of a patent, a selection achievement did not meet the criteria of novelty and distinctness;

3) the person referred to in the patent as the patent owner had no legal grounds for obtaining a patent.

2. Objection to the grant of a patent on grounds provided for by subparagraphs 1) and 2) of paragraph 1 of this Article shall be submitted to the authorized body. The objection shall be considered by the Board of Appeal within six months from the date of its receipt, if there were no need for additional tests. The person, who filed an objection, is obliged to acquaint the patent owner with an objection.

The decision of the Board of Appeal can be appealed in court by the person submitting the objection or patent owner within six months from the date of receipt of the decision. Provision on the Board of Appeal shall be approved by the competent authority.

Article 21 with amendments made by RK laws dated July 09, 2004

Footnote. Article 21 as amended by the laws of the Republic of Kazakhstan of 09.07.2004 No. 586; of 12.01.2012 No. 537-IV (the act is entered into force in ten calendar days after its first official publication).

### **Article 21-1. Restoration of the selection achievement patent validity. Post-grant user right**

1. Validity of a patent for a selection achievement, terminated in connection with non-payment within the prescribed period of maintaining the patent in force from the date of expiration of the prescribed time limit, can be restored at the request of the patent owner.

Such petition shall be filed within three years from the date of expiration of the time limit for the payment of maintenance the patent in force, when submitting a document about payment recovery of a patent but before the patent term set in accordance with this law.

Expert organization publishes information about restoring the validity of the patent in the Bulletin, as well as posts them on the Web site. Date of publication is the date of the restoration of the patent.

2. Any person, who started using the patented selection achievement on the territory of the Republic of Kazakhstan in the period between the date of the patent cancellation and date of publication in the bulletin of data on restoration of the patent validity or who made necessary preparations to it during the specified period, reserves the right to further gratuitous use of the patented selection achievement without expansion of such use (post-grant user right).

The post-grant user right can be transferred to another individual or legal entity with the production unit where this achievement was used or were made necessary preparations to it.

Footnote. Chapter 6 was completed with article 21-1 according to the Law of the RK of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication).

### **Article 22. Cancellation and early termination of the patent**

1. A patent for a selection achievement shall be canceled by the authorized body in the following cases:

- 1) annulment in accordance with Article 21 of this Law;
- 2) non-compliance of varieties, breeds of uniformity and stability indicators;

3) failure to provide by the patent owner at the request of the expert body within 12 months of the necessary information, seeds, breeding material and documents to verify the safety of the variety or breed, or the lack of conditions for inspection of variety, breed at side for this purpose;

4) cancellation of the name of the selection achievement after grant of the patent, if the patent owner has not offered another, more appropriate name.

2. The validity of a patent shall be terminated prematurely:

1) based on an application filed by the patent owner to the authorized body from the date of publication in the Bulletin of information on the early termination of the patent;

2) in case of non-payment within the prescribed period of maintaining the patent in force from the date of expiry of the term of payment.

Footnote. Article 22 as amended by the Law of the Republic of Kazakhstan of 9 July, 2004 No. 586.

## **Chapter 6-1. The Board of Appeal and patent attorneys**

Footnote. The Act was completed with article 6-1 according to the Law of the RK of 12.01.2012 No. 537-IV (the act is entered into force in 10 calendar days after its first official publication).

### **Article 22-1. The Board of Appeal**

1. The Board of Appeal is a division of the authorized body on pre-trial disputes over the objections submitted in accordance with paragraph 5 of Article 8, paragraph 5 of Article 10, paragraph 2 of Article 21 of this Law.

1-1. Pre-trial review of disputes on objections specified in paragraph 2 of this article is mandatory.

2. The Board of Appeal can be submitted the following objections:

1) the decisions of the authorized body to refuse further consideration of the application for a patent for the selection achievement;

2) to refuse to grant a patent for a selection achievement;

3) against the grant of a patent for a selection achievement.

The objection referred to in subparagraphs 1) and 2) of this section, submitted by the applicant or his successor, either directly or through a representative.

The objection referred to in subparagraph 3) of this section, submitted by any interested person, either directly or through a representative.

Objection is submitted to the authorized body in the Kazakh and Russian languages ?? directly or sent by mail. Materials attached to the objection submitted in the Kazakh and Russian languages.

If an objection is filed by fax or e-mail, it must be confirmed by an original hard copy no later than one month from the date of receipt of such objections.

The objection is filed within the time limits established by this Law.

He missed the deadline for objections by the applicant specified in subparagraphs 1) and 2) of this paragraph may be restored. An application for restoration may be filed by the applicant not later than twelve months from the date of expiry of the missed deadline. Such an application is submitted simultaneously with the appeal to the Board of Appeal.

3. In the event of an objection by a patent attorney or other representative of the power of attorney is submitted in the Kazakh and Russian languages, if the authorization is supplied to other (foreign) language, the power of attorney must be translated into Kazakh and Russian languages, the translation of the power of attorney attested by a notary. The materials of objections accompanied by the original or a notarized power of attorney, he submitted together with a copy of the Secretary of the Board of Appeal to confirm notarization.

4. Filed an objection must be considered at the meeting of the Board of Appeals within the time limit prescribed in this law. Term of consideration of objections may be extended on application by the person who filed an objection, as well as the patent holder, but not more than six months from the date of expiration of the prescribed period for consideration of objections.

5. The person who filed an objection, the patent owner has the right to challenge in court the decision of the Board of Appeal within six months from the date of issuance of such decision.

Footnote. Article 22-1 as amended by the laws of the Republic of Kazakhstan of 07.04.2015 No. 300-V (the act is entered into force in ten calendar days after its first official publication); of 31.10.2015 No. 378-V (the act is entered into force since 01.01.2016).

## **Article 22-2. Grounds for refusal to consider objections in the Boards of Appeal**

In making an objection to the consideration shall be refused if:

- 1) the objection is not subject to review by the Board of Appeal;
- 2) the objection is not signed or signed by a person who does not have the authority to sign it;
- 3) the objection filed out of time and the possibility of extending the deadline and restore lost;
- 4) the applicant the prescribed time limit not eliminate the deficiencies relating to the requirements for the design, content and procedure for filing objections.

In the presence of these circumstances the person who submitted the objection shall be notified that the received objection cannot be accepted for review and considered not to be submitted,

The person who filed an objection or his representative may file an objection to withdraw the announcement of the decision panel of the appeal board.

## **Article 22-3. Consideration of objections to the panel meeting of the Board of Appeal**

1. Consideration of the objections made at the panel meeting of the Board of Appeal consisting of no less than five of its members. Until the beginning of the dispute personal privacy of the panel of the Board of Appeal should be ensured.

To represent the opinion of the Panel's meetings on the Board of Appeal may be attended by representatives of scientific organizations and specialists in the field.

2. The Board of Appeal shall be entitled to postpone the meeting in the following cases:

- 1) the impossibility of examining the objections at the meeting due to absence of any of the persons entitled to participate in the opposition;
- 2) the need for the parties to submit the missing, additional documents (evidence) for a decision on the merits;
- 3) at the request of the parties.

3. Persons participating in the objection, have the right to:

- 1) get acquainted with the materials of the case, make extracts from them, order and receive copies of them;
- 2) submit evidence;
- 3) participate in the examination of evidence;
- 4) to ask questions to the participants of the appeals process;
- 5) to submit petitions;
- 6) to give oral and written explanations to the members of the panel of the Board of

Appeal;

7) to submit arguments and ideas on all issues arising in the course of consideration of objections issues;

8) oppose motions, arguments and considerations of other persons involved in the case.

4. In resolving a dispute on the merits the Panel of the Board of Appeal shall decide. The decision shall be taken by a simple majority of votes of the members of the Board of

Appeal. In case of equality of votes, the vote of the Chairman of the meeting of the Panel of the Board of Appeal shall be decisive.

As a result of the objections are made the following decisions:

- 1) to satisfy the objections;
- 2) to partially satisfy the objections;
- 3) to postpone consideration of the objection;
- 4) to dismiss the objection.

5. Within ten working days from the date of decision of the panel of the Board of Appeal, the decision of the Board of Appeal shall prepare and send to the parties. The decision of the Board of Appeal is set out in writing and shall consist of an introduction, descriptive, motivational and conclusive parts.

The decision of the Board of Appeal shall be signed by all members of the panel of the Board of Appeal.

#### **Article 22-4. Patent attorneys**

1. Individuals who are capable citizens of the Republic of Kazakhstan, having their permanent residence in its territory, and with the higher education and work experience in the field of intellectual property to be not less than four years, who have been attested and registered with the authorized body in the field of intellectual property may qualify for a patent attorney.

In order to certify the candidates for patent attorneys the authorized body shall strike an attestation commission consisting of the staff of the authorized body and the expert agency. In this case, the number of members of the attestation commission shall be at not less than five people.

The authorized body shall carry out the attestation of candidates for patent attorneys at least once a year upon receipt of applications from the candidates for patent attorneys.

Upon results of the attestation the attestation commission shall take a decision to attest the candidate or refuse the attestation of the candidate. The form of the decision taken by the attestation commission shall be approved by the authorized body.

The decision of the attestation commission may be appealed in court within three months from the date of taking such decision.

Candidate, who successfully passes the attestation exam for patent attorneys, shall be granted a certificate of patent attorney, the form of which shall be established by the authorized body.

Carrying out a professional attestation of patent attorneys and the granting the certificate shall, under tax legislation of the Republic of Kazakhstan, be subject to state fees.

2. The following persons shall not be admitted to the attestation of candidates for patent attorneys:

1) who, under the laws of the Republic of Kazakhstan, are prohibited to be engaged in business activities;

2) who are employees of the authorized body and its lower organizations, as well as their close relatives, spouse (wife);

3) whose criminal conviction of criminal offence has not been removed or expunged from official records in accordance with the law;

4) who, under this Law, has been excluded from the register of patent attorneys.

3. The activities of the patent attorneys shall be suspended by the protocol decision of the attestation commission:

1) where the patent attorney files the request with the attestation commission;

2) for a period when the persons have been classified as those who, under the laws of the Republic of Kazakhstan, are prohibited to be engaged in business activities, and are the employees of the authorized body and its lower organizations;

3) in order to clarify the circumstances provided for in subparagraphs 2) and 6) of paragraph 1 and in paragraph 5 of article 22-6 of this Law.

In the case referred to in subparagraph 3) of this paragraph, the activities of the patent attorney shall be suspended until the attestation commission takes a corresponding decision within three months.

The activities of the patent attorney shall be restored by the protocol decision of the attestation commission where the grounds, which served as suspension of the activities, have been remedied.

4. The information that the patent attorney receives from the grantor of the power of attorney in respect with his instruction shall be acknowledged confidential where the requirements provided for by legislative acts of the Republic of Kazakhstan to the confidential information or other secret protected by law have been met.

## **Article 22-5. Rights and obligations of patent attorney**

1. The patent attorney shall, on behalf of the applicant (individual or legal entity), employer with whom he has the employee agreement, or on behalf of the person, with whom he or his employer concluded a commercial contract, has the right to conduct the following activities

:

1) consulting on the legal protection of intellectual property rights, acquisition and transfer of the intellectual property rights;

2) performing the works on the execution and drawing up, on behalf of or by instruct of the customer, grantor and employer;

3) the cooperation with the authorized body and (or) expert agency on the issues of the legal protection of the rights for a selection achievements, including the conducting of correspondence, preparation and transmission of the notice of objection for the examination decision, participation in the meetings of the Council of experts under the expert agency.

4) the assistance in drawing up, considering, and sending for the examination the license (sublicense) contracts and (or) assignment agreement.

2. The powers of patent attorney shall be certified in a power of attorney.

3. Where the patent attorney provides the copy of the power of attorney authorizing the patent attorney to conduct affairs related to the submission of the application for the selection achievements, and (or) the related to the receipt of the title of protection, as well as filing the notice of objection to the Board of Appeal within three months from the date of filing of the said application or objection, patent attorney must submit the original of the power of attorney, respectively, in expert organization and authorized body

After confirmation of the authenticity of the original power of attorney shall be returned.

Where the power of attorney is presented in a language other than (foreign) the Kazakh or Russian, the patent attorney shall obligatory provide its translation into Kazakh and Russian languages, and the translation shall be notarially certified.

4. The patent attorney shall be obliged to deny the instruction where in relation to that case he has represented or consulted the persons whose interests contradict with the interests of the person filing the request for the conduct of affair or otherwise participating in the consideration, and where proceedings involves an official, who is a close relative of the patent attorney, his spouse (wife) and (or) his (her) close relative.

#### **Article 22-6. Revocation and cancellation of certificate of the patent attorney**

1. The patent attorney shall be excluded from the register of patent attorneys by the decision of the attestation commission:

1) where he files with the attestation commission the personal application;

2) upon termination of the citizenship of the Republic of Kazakhstan or on leaving for permanent residence outside the Republic of Kazakhstan;

3) where he interrupts the professional activities of the patent attorney for a period of over five years;

4) upon entry into force of a guilty verdict which was passed upon the patent attorney for convicting the crime;

5) in case of death of the patent attorney or where he is declared as a missing or dead person;

6) where the patent attorney is recognized as incapable or restrictedly capable.

2. The certificate of the patent attorney shall be annulled by the decision of the attestation commission where the patent attorney is excluded from the register of patent attorneys on the grounds set forth in subparagraphs 4), 5) and 6) of paragraph 1 of this article. Information on the annulment of the certificate shall be introduced in the register of patent attorneys.

3. In the cases referred to in subparagraphs 1, 2)) and 3) paragraph 1 of this article, the patent agent certificate is revoked by a decision of the attestation commission based on the application of the patent attorney or third parties, having the reasons on it.

The patent attorney, who has been excluded from the register on the grounds set forth in subparagraphs 1) and 2) of paragraph 1 of this article, may be re-registered as a patent attorney without passing the qualification exam, provided that the grounds which served the his exclusion from the register have been eliminated and the application was filed with the attestation commission within three years from the date of publication of the decision to exclude from the register. The attestation commission shall, upon

submitted documents, establish the fact of elimination of the grounds set forth in subparagraphs 1) and 2) of paragraph 1 of this article.

4. The patent attorney, who has been excluded from the register of patent attorneys, shall forfeit the right to carry out the activities of the patent attorney from the date of introducing such information in the register, and the certificate of this as a patent attorney shall be withdrawn or annulled.

5. If the patent attorney fulfills his obligations, provided for provided for by this Law, in bad faith, the authorized body shall strike an appeals commission consisting of an odd number of the staff of the authorized body.

The appeals commission is a collegial body and considers the complaints of individuals and (or) legal entities against the patent attorneys representing their rights and legitimate interests for actions committed in violation of applicable laws.

Any individual, who filed the complaint against the patent attorney, and the patent attorney in respect of whom such complaint was filed, shall have the right to participate in the meeting of the appeals commission.

Upon results of consideration of the complaint the appeals commission shall recommend that the authorized body sent a lawsuit on the annulment of the certificate of the patent attorney or shall take one of the following decisions:

- 1) to postpone the consideration of the complaint for the lack of evidence or until the clarification of circumstances which could contribute to the taking of the objective decision;
- 2) to dismiss the complaint.

The appeals commission shall take a decision by a simple majority votes documented by the protocol. The decision of the appeals commission may be appealed in court.

The Statute of the appeals commission shall be determined by the authorized body.

## **Chapter 7. Final Provisions**

### **Article 23. Resolution of disputes relating to the application of this Act**

Disputes related to violation of the law on patents issued on the varieties and breeds are considered in court, in particular:

- 1) about the authorship to the variety or breed;
- 2) about establishment of the patent owner;
- 3) on infringement of the exclusive right to use and other property rights of the patent owner;
- 4) the conclusion and execution of license agreements for the use of the selection achievement;
- 5) the payment of compensation under this Act;
- 6) payment of remuneration to the author in accordance with the agreement;
- 7) on the grant of a patent;
- 8) issuance of a compulsory license;
- 9) other disputes related to the protection of the rights arising from the patent.

2. Statements made in the resolution of the authorized body, indicated in paragraph 2 of article 22-1 of the present Law, submitted in the Court after consideration of the relevant objections in the Board of Appeal.



Footnote. Article 23 as amended by the laws of the Republic of Kazakhstan of 31.10.2015 No. 378-V (the act is entered into force since 01.01.2016).

#### **Article 24. The use of selection achievements in production**

1. In the State Register of Selection Achievements included the selection achievements approved for use by the authorized body in the field of development of agriculture:

1) by breeds – according to the results of state testing for economic utility, conducted by the State Commission for Testing and Approbation of breeds;

2) by varieties – according to the results of state testing for economic utility, conducted by the State Commission for Variety Testing of crops, or according to the applicant.

2. Ongoing seeds and breeding material must be accompanied by the relevant documents certifying their varietal, breed, origin and quality.

The document issued on seed varieties and breeding material accepted for use in the respective region.

Footnote. Article 24 as amended by the laws of the Republic of Kazakhstan of 10.01.2011 No. 383-IV (the act is entered into force in ten calendar days after its first official publication).

#### **Article 25. Payment of legally significant actions**

For the commission by the competent authority actions for the issuance of a patent, registration of agreements shall be charged state duty in accordance with the tax laws of the Republic of Kazakhstan.

The State Commission for Variety Testing crops charges a fee for the test crop varieties for patentability in accordance with the legislation of the Republic of Kazakhstan.

Footnote. Article 25 as amended by the Law of the Republic of Kazakhstan of 10.07.2012 No . 34-V (the act is entered into force since the day of its official publication).

#### **Article 26. Publications**

1. The Bulletin publishes information relating to the registration of the selection achievement:

1) of patent applications that have passed preliminary examination with a positive result, indicating the date of priority of the selection achievement, name (s) of the applicant, the name of the selection achievement, surname and initials of the author, unless the latter refused to be mentioned as such;

2) the decisions taken on the application for grant of a patent;

3) changes in the name of the selection achievements;

4) to declare the patent invalid, and their cancellation;

5) other information relating to the protection of breeding achievements.

2. Following the publication of information about the application, any person may have access to its materials.

Footnote. Article 26 as amended by the Law of RK dated July 9, 2004 No. 586.

#### **Article 27. Patenting of selection achievements in foreign countries**

The applicant is entitled to submit the first application for protection of a selection achievement with the competent authority of another State with which the Republic of Kazakhstan related by bilateral or multilateral international treaties on the protection of selection achievements.

The applicant may apply to the competent authorities of other countries, without waiting for the issuance of his title of protection by the competent authority of the State in which the first application was filed.

The costs associated with the protection of rights in selection achievements outside the Republic of Kazakhstan, shall bear the applicant.

Footnote. Article 27-as amended by the Law of the Republic of Kazakhstan of July 9, 2004 No. 586.

## **Article 28. Rights of foreigners, stateless persons and foreign legal entities**

1. Foreigners and foreign legal entities shall enjoy the rights provided by this Law and other legislative and normative legal acts of the Republic of Kazakhstan in the field of selection achievements, along with the individuals and legal entities of the Republic of Kazakhstan on the basis of international treaties of the Republic of Kazakhstan and on the principles of reciprocity.

2. Stateless persons residing in the Republic of Kazakhstan enjoy the rights provided by this Act and other acts relating to legal protection of selection achievements on a par with individuals and legal entities of the Republic of Kazakhstan, unless otherwise provided in this Act and other regulations.

## **Article 29. International Treaties**

If an international treaty ratified by the Republic of Kazakhstan stipulates other rules than those contained in this Act, shall apply the rules of the international treaty.

*The President  
of the Republic of Kazakhstan*