

PATENT LAW OF MONGOLIA

CHAPTER ONE General Provisions

Article 1. Purpose of the law

The purpose of this law shall be to regulate matters relating to protection of the rights of creators of inventions, industrial designs and innovations and of patent owners, and to regulate matters relating to the use of inventions, industrial designs and innovations.

Article 2. Legislation on patents

1. The legislation on patents is comprised of the Constitution of Mongolia, the Civil Law, this law and other relevant legislation which is consistent with those laws.
2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty shall prevail.

Article 3. Definitions in this law

1. "Invention" means an absolutely new solution that relates to a product or process, that has been created for the first time, and the essence of which depends upon the basis of a law of nature;
2. "Industrial design" means an absolutely new original solution that relates to the appearance of a manufactured article which can be produced in industry;
3. ["utility model" means an industrial device, product, their basic part, and a new, industrially applicable solution;]**
4. "Patent" means the document issued by the competent State authority which certifies the recognition of the given solution as an invention or industrial design, and grants the owner of the certificate the exclusive right to exploit the invention or industrial design for the fixed period of time;
5. ["a utility model certificate" means the document granted by the competent authorities after filing in the state record and recognizing the exclusive right of the author to own it for certain of time;]**
6. "License" means permission given to another person to exploit a patented invention or industrial design.
7. "Filing date" means the date on which a patent application for an industrial design or invention is received and registered by the [Intellectual Property Office]* or the date on which the application for an innovation is received or registered by a given entity.
8. "Priority date" means the date on which a patent application for the same invention or industrial design was filed and registered in any other member State of the Paris Convention for the Protection of Industrial Property, such date being prior to the date on which an application has been filed under this law.
9. ["patent owner" means an author or a licensee who has acquired an exclusive right or a patent of invention, design and a certificate of utility model according to rule and regulations stipulated in the law;
10. "International treaty of Mongolia" means the Convention of Paris (1883) on Industrial Property Protection and its revision, the Hague Agreement (1960) on International Deposit of Industrial Design, Patent Cooperation Treaty (1970), and the Agreement on Trade Related Aspects of Intellectual Property Rights (1994) of World Trade Organization;
11. "International application designating Mongolia according to PCT" means an application of patent, utility model having priority date according to PCT."]**

Article 4. Objects of patent and patentability

1. A patent shall be granted to the author of an invention or to a natural person or legal entity to whom the author has assigned his or her right to a patent if that author has created a product or process which is absolutely new or involves an inventive step and the product or process is industrially applicable.

2. An invention shall be regarded as involving an inventive step if that step is not obvious to a person skilled in the relevant field. The existence of an inventive step shall be determined by an examiner appointed by the [Intellectual Property Office.]*

3. An invention shall be considered industrially applicable if it can be made or used in industry.

4. A product or process shall be considered new if it is not preceded by a product or process of the same design.

5. The followings shall not be considered to be inventions:

- 1) discoveries, scientific theories and mathematical methods;
- 2) computer program and algorithms;
- 3) schemes, rules or methods for doing business, performing mental acts or playing games;
- 4) solutions that are contrary to public health or environmental protection;
- 5) [methods of treatment and diagnosis, or prophylaxis of human and animal diseases;]*
- 6) [biological processes for the production of animals, or plants other than micro-organisms. This shall not include non-biological, and microbiological processes;]**

6. A patent shall be granted to an author of an industrial design or to natural person or legal entity to whom that author has assigned his or her right to a patent if that author has created a new and original solution relating to an industrially applicable article and that solution has not, prior to the filing date of that author's application, has been disclosed anywhere in the world by publication in a tangible form or by publication in any manner in this country.

Article 5. [Intellectual Property Office]*

1. The Intellectual Property Office shall, in accordance with the framework of functions of Minister of Justice, be the Government executive agency responsible for dealing with matters concerning inventions, industrial design and innovations and will carry out the following functions:

- 1) receiving applications for inventions and industrial designs and making determinations on them;
- 2) granting patents and innovation certificates;
- 3) keeping a State register of inventions, industrial designs, innovations, trademarks, and licence contracts;
- 4) publishing information on inventions, industrial designs, innovations, and trademarks;
- 5) providing references for the purpose of settling disputes on patents;
- 6) determining the design of patent and innovation certificates;
- 7) in the cases of involving an infringement of the Patent Law by a legal entity or individual the Intellectual Property Office shall inform the relevant organization;
- 8) withdrawing a patent in accordance with this law;
- 9) protecting and representing the rights of an author or owner of patent rights;
- 10) initiating measures for the enforcement of the Patent Law within the authority conferred upon it;
- 11) receiving claims and appeals concerning patents and making determinations on them;
- 12) setting and conducting examinations for, and approving, any citizen or legal entity who intends to practice as a patent attorney;

- 13) on request by an author, establishing a value for an invention, industrial design or innovation;
- 14) making requirements to an organization or official to provide documents which are relevant to a matter;
- 15) [to set up a state inspectors team of intellectual property to carry out state inspection service of national legislation on intellectual property.]**
2. [The Intellectual Property Office shall be financed from income earned in performing its functions.]*
3. The Government shall approve the charter of the [Intellectual Property Office.]*
4. Central State and local administrative bodies shall perform work in the field of inventions, industrial designs and innovations as a part of their technology policies.

CHAPTER TWO

Filing of Patent Applications for Inventions and Industrial Designs and Applications for Innovations and Examination of Applications

Article 6. Filing of patent applications for inventions and industrial designs

1. A patent application for an invention or industrial design shall be filed with [the Intellectual Property Office]* by the author of the invention or industrial design or by the natural or legal entity to whom the author has assigned the right to the patent.
2. A separate application shall be filed for each invention. For a group of inventions which are linked so as to form a single general inventive concept, a single application may be filed.
3. The application for an invention shall contain a request, a description of the invention, an abstract and a brief explanatory note. If required, it shall also contain relevant drawings and certificates. The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall indicate at least one mode known to the applicant for carrying out the invention. The claim shall define the matter for which protection is sought and shall be clear and concise. One invention may contain one or more claims.
[The description and the drawings may be used to interpret the claims.
The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of protection.]**
4. The application for an industrial design shall contain a request, a drawing of the industrial design and a description. If required, it shall also contain relevant materials concerning the drawing and the description.
[The applicant for an industrial design must be filed at the Intellectual Property Office.]**
5. The applicant shall state the filing date of the application, the request for patent, names and addresses of the author of the invention or industrial design, the applicant and the agent. If the applicant is not the author of the invention or industrial design, he or she shall submit a statement justifying his or her right to obtain a patent for the invention or industrial design. [In the case of inventions and industrial designs relating to the supply of food for humans or hygiene a document issued by the organization responsible for epidemiology and hygiene should be attached certifying those inventions or designs will not harm the human body or health.]*
6. In the request, the applicant may claim priority date over earlier national, regional or international applications. A copy of application for priority date in one country of Paris Convention or World Trade Organization shall, at the request of Intellectual Property Office be attached.

7. [An applicant may be represented by a patent attorney. A patent attorney must be registered with the Intellectual Property Office of Mongolia. The Intellectual Property Office shall establish regulations on the activities of patent attorney. A patent attorney must be a citizen of Mongolia over the age of 25 years who has worked in the field of intellectual property for at least three years with higher education and no previous criminal convictions. The Ministers of Justice and Finance shall jointly determine the rate of salary for a patent attorney shall be paid to the Intellectual Property Office.]*
8. An application shall be written in Mongolian. If it is written in a language other than Mongolian, the applicant shall furnish a Mongolian translation of the application within two months from the date of receipt of the application by the [Intellectual Property Office]*. [If a translation has not been submitted within the prescribed time the application concerned shall be deemed to have been withdrawn.]*
9. [Up to 50 industrial designs may be the subject of the same application, provided they relate to the same class of the International Classification.
10. The applicant may withdraw the application at any time during its pendency.]***

[Article 6 ter.

1. An international application designating Mongolia shall be treated as an application for a patent or utility model certificate filed under this Law having as its filing date the international filing date accorded under the Patent Cooperation Treaty.
2. The Intellectual Property Office or World Intellectual Property Organization shall act as receiving Office in respect of an international application filed with them by a foreign citizen residing in Mongolia or a stateless person.
3. An international application filed with the receiving Office shall be filed in a prescribed language and the prescribed transmittal fee shall be paid to the receiving Office.
4. The Intellectual Property Office shall act as a designated Office in respect of an international application in which Mongolia is designated for the purposes of obtaining a national patent or utility model certificate under the law of Mongolia.
5. The Intellectual Property Office shall act as an elected Office in respect of an international application in which Mongolia is designated if the applicant elects Mongolia for the purposes of international preliminary examination.
6. The designated Office shall commence processing of an international application starting the date reflected in the Treaty.
7. The applicant in respect of an international application designating Mongolia shall, before the starting of preliminary examination under the Patent Cooperation Treaty, pay the prescribed fee.
8. The Intellectual Property Office shall process international application in accordance with the Treaty and the regulations.

Article 7. The application for a utility model certificate.

1. An inventor or his successor in title shall apply to the Intellectual Property Office for an utility model certificate. The application shall contain the request, the explanatory note, the abstract and the drawings. The abstract of utility model shall determine the difference of its solution and fix the frame of rights protection.
2. If the application does not comply with the requirements referred to in subsection 1 of this Article, or the applicant is not a lawful owner or heir of utility model certificate, the applicant shall not be filed]**.

Article 8. Date of filing of patent applications

1. The [Intellectual Property Office]* shall verify the presence of required documents in the application within 20 days of the date of receipt of the application. If the [Intellectual Property Office]* finds that the application has fulfilled the requirements, it shall record as the filing date the date of receipt of the application.
2. If the [Intellectual Property Office]* finds that the application has not fulfilled the requirements, it shall invite the applicant to file the required corrections and amendments.
3. If the applicant files the required corrections and amendments within 3 months from the date of receipt of the invitation referred to in paragraph 2 of this article the [Intellectual Property Office]* shall record as the filing date the date of receipt of the application. If no correction or amendment is made, the application shall be considered as having been rejected.

[Article 9. Filing date of application for utility model

The [Intellectual Property Office]* shall, after the formality check, accord as the filing date the date of receipt of the application.]**

Article 10. Examination of patent application

1. After recording of the filing date, the [Intellectual Property Office]* shall examine the invention or industrial design to determine if it complies with the requirements of Article 4 of this law.
2. The applicant shall, on request, supply to the [Intellectual Property Office]* information on any application for a patent or other form of entitlement to protection which has been filed by the applicant in any other country and which relates to the same or essentially the same invention as that to which the application filed with the [Intellectual Property Office]* relates..
3. During the examination procedure the applicant may request that the application be corrected or amended, provided that the correction or amendment shall not go beyond the disclosure made in the initial application. [If such a request is made the examination procedure may be postponed. The duration of any postponement shall be consistent with the time limits provided for in paragraph 5 of this article.]*
4. During the examination procedure, the applicant may divide the application into two or more applications, provided that each divided application shall not go beyond the disclosure made in the initial application.
[Up to the time when the application is in order for grant, the application for a patent may be converted into the application for utility model, or the application for utility model into the application for a patent and the filing date shall be the date application first received.]**
5. The [Intellectual Property Office]* shall, according to the examination report, reach a decision as to whether or not to grant a patent within 9 months from the filing date of the application. If required, the [Intellectual Property Office]* may extend this period for further 12 months.
6. If it is decided to grant the patent, the formulation of the invention or the drawing of the industrial design and the particulars concerned shall be published in the Patent Gazette.
7. If the invention or industrial design has not been recognized, a copy of the examination report shall be sent to the applicant within 30 days from the date of conclusion of the examination and the report shall be kept at the patent library.
8. [The industrial design which is not different with previously disclosed designs or their peculiarity shall not be considered new and original.])**

[Article 11. Examination of Utility Model application

1. The examiner shall make report within one month after the receipt of the application whether it can be filed.

2. The following shall not be granted utility model certificate:
 - 1) the solution was known to public prior to the filing of utility model application;
 - 2) the solution was introduced for use prior to the filing utility model application;
 - 3) utility model was previously published in Mongolia or abroad.]**

CHAPTER THREE

Grant of Patents and industrial design

Article 12. Grant of patents for inventions and industrial designs

1. If, after the expiry of three months form the date of the publication in the Patent Gazette of the formulation of an invention or the drawing of an industrial design together with the particulars concerned, the [Intellectual Property Office] has received no notice of opposition and no dispute has arisen, it shall grant the patent. [The request for a patent should be submitted within 10 years of the filing date.]*
2. If a notice of opposition is received or a dispute arises, the grant of the patent shall be deferred until the opposition or dispute shall be settled in accordance with established procedure.
3. Patents for inventions and industrial designs shall be registered in the State register and applications shall be kept in the patent library.

[Article 13. Grant of Utility Model certificate.

When the utility model is recognized by the expert's decision, the Intellectual Property Office shall, within one month after the decision was made by the examiner, grant the utility model certificate.]**

Article 14. Term of patents and innovation certificates

Patents for inventions and industrial designs shall be valid for terms of 20 and 10 years respectively; utility model certificate shall be valid for a term of 7 years; each such term shall run [from the date on which the patent or certificate is granted.]*

CHAPTER FOUR

Rights of Creators of Inventions, Industrial Designs, Innovations and Patent Owners

Article 15. Rights of creators of inventions or industrial designs

1. The creator of an invention or industrial design shall be entitled to:
 - 1) ownership of his or her invention or industrial design;
 - 2) assign his or her right on a patent to another person;
 - 3) name his or her invention or industrial design;
 - 4) take part in drafting of technical documentation, testing and implementation of his or her invention or industrial design during the production process;
 - 5) [receive an appropriate sum from profits which arise from the use of his or her invention or industrial design.]*
2. The right to a patent for an invention or industrial design which was created jointly shall belong to the authors jointly. A joint author shall not be able to assign his or her rights in a patent without the consent of other co-authors.
3. If two or more persons independently create the same invention or industrial design the right to a patent shall belong to the author who first submits an application to the [Intellectual Property Office]*. To determine which application is submitted first, reference shall be made to the filing date.

4. [deleted by amendment of 1 February 1997]

[Article 16. Rights of owner of Utility Model Certificate

1. The owner of utility model certificate shall have the following rights:
 - 1) to ownership, to exploitation of one's own utility model;
 - 2) to rental to public of one's own utility model.
2. The ownership of the utility model certificate shall be shared if it is co-owned by several parties.]**

Article 17. Rights of patent owners

1. Patent owners shall have the exclusive right to exploit their invention or industrial design.
2. Patented inventions or industrial designs shall be exploited only with the permission of the patent owner.
3. Patent owner shall have the right to assign their rights in a patent.

CHAPTER FIVE

Exploitation of Inventions, Industrial Designs and Innovations

Article 18. Exploitation of patented inventions and industrial designs

1. Making, selling, using, importing or storing an invention or industrial design for the purposes of making, selling or using that invention or design shall be recognized as exploitation of the protected invention or industrial design.
2. The performance of the following acts of using patented inventions or industrial designs shall not constitute an infringement of the exclusive rights of patent owners:
 - 1) the use of articles which have been put on the market in this country by a patent owner or by another person with the patent owner's consent;
 - 2) use for scientific research or experimental purposes in Mongolia;
 - 3) use of an invention or industrial design on a means of transport belonging to another country which temporarily or accidentally enters the airspace or territory of Mongolia.
3. Any person who, before the date of filing of the application, was using the invention or industrial design or was making effective and serious preparation for use of such device, may exploit it without the consent of the patent owner. The scale and scope of such exploitation of the invention or industrial design may not be extended.
- [4. The Intellectual Property Office shall establish the State Reserve Fund of Inventions to ensure the effective use of patented inventions and industrial designs. The intellectual Property Office shall hold the patent rights, basing on the contract to be made with the patent owner, in all inventions which form part of that fund.]*

Article 19. License contracts

1. Any interested person may exploit a patented invention or industrial design by concluding a licence contract with the patent owner.
2. The license agreement shall specify:
 - 1) the methods, scope and term of exploitation of the invention or industrial design;
 - 2) the rights and duties of the contracting parties
 - 3) the amount of payment for the exploitation of the invention or industrial design and payment terms.
3. A license contract shall be registered with the [Intellectual Property Office]*.
4. Deleted by amendment of 21 May, 1999-09-09.
5. Deleted by amendment of 21 May, 1999-09-09.

6. [The license contract shall not conflict with the interests of the third party and the parties to the contract shall not disclose the contract]**.
7. [The owner of a patent may submit a request to the Intellectual Property Office for permission for any interested party to use his or her invention pursuant to a licence contract.]*
8. A license contract directed to limit fair competition shall not be made.])**.

Article 20. Compulsory licences

In the following cases, on the request of any interested person, a compulsory licence in respect of a patented invention may be granted by the [Intellectual Property Office]*:

- 1) if the invention must be used for a purpose associated with the public interest and in particular with national security, food supply or health;
- 2) if the invention has not been used or has been insufficiently used for a for a period of four years from the filing date of the patent application or three years from the date of the grant of the patent whichever period expires last and the patent owner does not satisfy the [Intellectual Property Office]* that circumstances exist which justify the lack of use of the invention in Mongolia;
- 3) if the component authorities decided whether the exploitation of works by the owner of a patent or a licensee involves unfair competition.
 1. If the patent owner disagrees with a decision of the [Intellectual Property Office]* to grant a compulsory license he or she may appeal to the Court.
 2. In the case of compulsory license use, a party who uses the license shall pay the license fee to the owner of the patent.

[Article 21. Exploitation of Utility Model

1. The owner of utility model certificate shall, with regards to exploitation of the work by others, make a contract.
2. The condition, frame, term, size of payment and the regulation of payment shall be stipulated in the contract.])**

Article 22. Obligations of business entities or organizations and patent owners.

1. A business entity or organization exploiting an invention, industrial design or innovation shall report on the profit received from the exploitation in its balance sheet and keep production method confidential.
2. [In case of change of ownership of patent of invention, industrial design, utility model certificate, this shall be informed to the Intellectual Property Office in written form, and this change shall not conflict with the interests of the third party.])**

Article 23. Inventions and industrial designs related to the State secrecy

Relations arising in connection with inventions and industrial designs which are related to the State secrecy shall be regulated by the relevant law.

Article 24. Patent and license fees

1. Fees shall be paid in order to make application for a patent for invention, industrial design and utility model, to maintain patents and for the registration of licence contracts. The fees shall be payable to the Intellectual Property Office.
2. Fees shall be determined by the law.

Article 25. Time for payment of fees

1. A fee shall be paid at fixed intervals so as to maintain the patent in force.

2. The fee for the first three years shall be paid within six months from the date of the decision to grant the patent. Fees for subsequent periods shall be paid during the six month period immediately prior to the completion of that period.
3. If the patent owner is unable to pay the fee within the time limit prescribed in paragraph 2 of this article he or she may pay the fee within six months of the date of expiry of date of expiry of that period. In that case a surcharge of the same amount as the fee for that period shall also be paid.
4. [Any interested person seeking to enforce the effectiveness of a patent may, with the consent of the patent owner, pay the patent fee.]*

Article 26. Invalidation of patents

1. Any interested person may present a complaint to the Court to take action to invalidate a patent.
2. If a patent is granted in breach of Articles 4, 6, 8, 10, or 12 of this law the Court shall invalidate the patent. In that case, the [Intellectual Property Office]* shall record the corresponding changes in the State register and shall publish notices of the invalidation of the invention or industrial design in the Patent Gazette.
3. In the case of surrender of a patent, refusal to pay fee or non-payment of a fee within the time limit fixed in paragraph 3 of Article 25 of this law, the [Intellectual Property Office]* shall invalidate the patent. In such a case, the right to any patent in respect of an invention or industrial design which must be under State control shall be transferred to the corresponding State central administrative body.
4. [If a patent is withdrawn due to non-payment of the patent fee, that patent may be renewed with the consent of the patent owner within effective period of the patent.]*

CHAPTER SIX

Miscellaneous Provisions

[Article 27. Appeals and settlement of disputes

The Intellectual Property Office shall examine and consider any appeal filed in connection with the examination of an application for an invention or industrial design and shall give written notice of its decision within six months of receipt of the appeal. If a party wishes to dispute that decision it may appeal to the Court within 30 days from the date of receipt of the decision.]*

Article 28. Liability for breach of patent law arising out of infringement of rights of creators of inventions and industrial designs, innovations and patent owners .

1. [If a breach of the patent legislation does not result a criminal liability, a state inspector shall impose on a person in breach of the patent legislation a fine of up to 5,000 togrogs, and, in case of a business entity or organization, a fine of up to 50,000 togrogs, a judge shall impose on a person in breach of the patent legislation a fine of up to 50 000 togrogs, and, in the case of a business entity or organization, a fine of up to 250,000 togrogs, or shall impose a guilty person imprisonment for up to 7-14 days, and the illigal income shall be given to the State, the the infringing goodsbe destroyed and the production be ceased.]***
2. Any person who infringes the rights of creators of inventions or industrial designs, or of the owners of innovations or patents shall be liable to sanctions under the laws of Mongolia.
3. The procedure for the payment of compensation for losses caused by infringements of rights in a patent shall be determined in accordance with the Civil Code of Mongolia.

Article 29. Coming into force of the law

1. This law shall come into effect on 1 September, 1993.
2. This law shall not apply retrospectively.

[]* as amended on 1 February 1997

[]** as amended on 21 May 1999

Chairman of the State Ih Hural of Mongolia
N.Bagabandi

General Secretary of the Secretariat of the State Ih Hural of Mongolia
N.Rinchendorj

Ulaanbaatar

25 June 1993