

LAW OF UKRAINE

On the Protection of Rights to Inventions and Utility Models

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(With amendments introduced according to the following Laws
No. 2188-III of December 21, 2000; OJU, 2001, No. 8, art. 37
No. 2921-III of January 10, 2002; OJU, 2002, No. 16, art. 114
No. 34-IV of July 4, 2002; OJU, 2002, No. 35, art. 256
No. 762-IV of May 15, 2003; OJU, 2003, No. 30, art. 247
No. 850-IV of May 22, 2003; OJU, 2003, No. 35, art. 271)

Chapter I

GENERAL PROVISIONS

Article 1. Definitions

For the purpose of this Law:

“Office” means the central body of executive power on the legal protection of intellectual property;

“Appellate Chamber” means a collegial body of the Office for the examination of objections to the decisions of the Office on the acquisition of rights to intellectual property objects and other matters referred to its competence by this Law;

“Invention (utility model)” means a result of intellectual activity of a human being in any field of technology;

“Secret invention (secret utility model)” means an invention (utility model) that contains information referred to the state secret;

“Employee’s invention (employee’s utility model)” means an invention (utility model) that have been created by an employee:

in connection with performance of professional duties or an instruction of an employer, unless otherwise stated in the labor agreement (contract);

with the use of experience, production knowledge, production secrets and equipment of an employer;

“Professional duties” mean functional duties of an employee fixed in labor agreements (contracts) and duty regulations providing a fulfillment of works that may result in the creation of an invention (utility model);

“Instruction of an employer” means a task assigned to an employee in writing that directly relates to the specifics of an enterprise activity or to activity of an employer and may result in the creation of an invention (utility model);

“Employer” means a person who has hired an employee under a labor agreement (contract);

“Inventor” means a person who has created an invention (utility model) in the result of his intellectual and creative work;

“Patent (patent for an invention, declarative patent for an invention, declarative patent for a utility model, patent (declarative patent) for a secret invention, declarative patent for a secret utility model)” means a protection document that certifies the priority, authorship, and property right to invention (utility model);

“Patent for an invention” means a kind of a patent granted under the results of the qualified examination of an application for invention;

“Declarative patent for an invention” means a kind of a patent granted under the results of the formal examination of an application for invention;

“Declarative patent for an utility model” means a kind of a patent granted under the results of the formal examination of an application for utility model;

“Patent (declarative patent) for a secret invention” means a kind of a patent granted for the invention referred to the state secret;

“Declarative patent for a secret utility model” means a kind of a patent granted for the utility model referred to the state secret;

“Qualifying examination (examination by substance)” means the examination, which determines the conformity of an invention with the requirements of patentability (novelty, inventive step, and industrial applicability);

“Formal examination (examination by formal signs)” means the examination, in the course of which it is determined whether the object designated in an application belongs to the list of objects that may be recognized as inventions (utility models), and whether an application and its execution correspond to the established requirements;

“License” means a permission of the patent owner (licensor) that is granted to another person (licensee) for the use of an invention (utility model) under certain conditions;

“Person” means a natural or legal person;

“Application” means a package of documents required for granting a patent by the Office;

“Applicant” means a person who has filed an application or has acquired the rights of an applicant under another procedure established by the Law;

“Priority of application (priority)” means the precedence of the filing of an application;

“Priority date” means a date of filing of an application with the Office or with a relevant body of a state, which is a member of the Paris Convention for the Protection of Industrial Property, on which a priority has been claimed;

“International application” means an application filed under Patent Cooperation Treaty;

“Register” means the State register of patents and declarative patents of Ukraine for inventions, the State register of Ukraine for declarative patents of Ukraine for utility models, the State register of patents and declarative patents of Ukraine for secret inventions, the State register of declarative patents of Ukraine for secret utility models;

“Examination institute” means the state institution (enterprise, organization) authorized by the Office to consider and examine applications;

“State system of the legal protection of intellectual property” means the Office and a number of expertise, scientific, educational, informational and other state institutions of relevant specialization, included in the sphere of management of the Office;

Article 2. Legislation of Ukraine on the Protection of Rights to Inventions (Utility Models)

The Legislation of Ukraine on the protection of rights to inventions (utility models) is based on the Constitution of Ukraine and is composed of this Law, the Laws of Ukraine "On the Property", "On the State Secret", and other normative and legislative acts.

Article 3. Authorities of the Office in the Sphere of the Protection of Rights to Inventions (Utility Models)

1. The Office provides the implementation of the State policy in the sphere of the protection of rights to inventions and utility models. To that end, it:

organizes the receipt and examination of applications as well as makes decisions on them;

grants patents for inventions and utility models and provides the state registration of patents;

provides publication of official data on inventions and utility models;

implements international cooperation in the sphere of the legal protection of intellectual property and represents interests of Ukraine on the matters of the protection of rights to inventions and utility models in the international organizations according to the current legislation;

adopts normative and legislative acts within its authorities under the determined procedure;

organizes the information and publishing activity in the sphere of the legal protection of intellectual property;

organizes research works on the improvement of the legislation and on the organization of activity in the sphere of the legal protection of intellectual property;

organizes the work on the retraining of the personnel of the state system of the legal protection of intellectual property;

authorizes institutions included into the state system of the legal protection of intellectual property, in accordance with their specialization, to fulfill individual tasks defined by this Law, Statute of the Office and other normative and legislative acts in the sphere of the legal protection of intellectual property;

performs other functions according to its Statute, approved under the determined procedure.

2. The activity of the Office is financed by funds of the State Budget of Ukraine.

Article 4. International Agreements

If international agreement of Ukraine has set rules other than those provided by the legislation of Ukraine on inventions (utility models), the rules of international agreement are applied, provided that the Verhovna Rada (Parliament) of Ukraine has approved the obligation of an international agreement.

Article 5. Rights of Foreign Persons and Stateless Persons

1. Foreign persons and stateless persons shall have equal rights with persons of Ukraine provided by this Law in accordance with international agreements of Ukraine, provided that the Verhovna Rada (Parliament) of Ukraine has approved the obligation of these international agreements.

2. Foreign persons and stateless persons residing or having a permanent location outside Ukraine exercise their rights in relations with the Office via representatives on intellectual property matters (patent attorneys) registered under the Law.

Chapter II

LEGAL PROTECTION OF INVENTIONS

(UTILITY MODELS)

Article 6. Conditions of Granting the Legal Protection

1. The legal protection shall be granted to an invention (utility model) that does not contradict the public order, humanity and morality and complies with the requirements of patentability.

2. The object of an invention (utility model), to which the legal protection is granted under this Law, may be:

a product (device, substance, microorganism strain, plant or animal cells culture etc.);

a process (method) as well as the novel use of a known product or process.

3. According to this Law, the legal protection shall not extend to such technology objects:

plant varieties and animal breeds;

processes of the reproduction of plants and animals that are biological in its basis and do not belong to non-biological and microbiological processes;

topographies of integrated circuits;

results of art constructing.

4. The priority, authorship and property right to an invention are certified by a patent (declarative patent).

The priority, authorship and property right to a utility model are certified by a declarative patent.

The term of the patent for an invention shall be 20 years as from the date of filing of the application with the Office.

The term of the declarative patent for a utility model shall be 6 years as from the date of filing of the application with the Office.

The term of the patent for an invention, the object of which is a drug, means for the protection of animals, means for the protection of plants and for the use of which a permission of the relevant authorized body is required, may be extended at the request of the owner of this patent for a period that is equal to the period between the date of filing of the application and the date of the receipt of such a permission, but for no more than 5 years. The filing of a request is subject to the payment of the respective fee.

In this case the Office shall define the procedure for filing a request and extending the validity period of a patent.

The term of a declarative patent for a utility model shall be 10 years from the date of filing of the application with the Office.

The term of a patent (declarative patent) for a secret invention and of a declarative patent for a secret utility model is equal to the period of the classification of an invention (utility model), but may not be longer than the period for the protection of an invention (utility model) defined under this Law.

The validity of a patent shall be terminated before the appointed time under conditions prescribed in Article 32 of this Law.

5. The scope of the granted legal protection is defined by the patent (utility model) claims. The interpretation of the patent claims shall be accomplished within the description of a patent (utility model) and relevant drawings.

6. The validity of a patent (declarative patent) that has been granted for a method of obtaining a product shall also extend to the product directly obtained by such method.

Article 7. Patentability Requirements to an Invention, Utility Model

1. An invention meets the patentability requirements provided that it is new, involves an inventive step and is industrially applicable.

2. A utility model meets the patentability requirements provided that it is new and industrially applicable.

3. An invention (utility model) shall be considered to be new provided that it does not form part of the state of the art. Objects that are a part of the state of the art shall be considered only separately when determining the novelty of an invention.

4. The state of the art comprises everything made available to the public throughout the world before the date of filing of the application with the Office or, if the priority has been claimed, before the date of its priority.

5. The state of the art also includes a content of any application for granting a patent in Ukraine (including an international application, in which Ukraine is designated) in the wording, in which this application has been primarily filed, provided that the date of its filing (if the priority has been claimed, the date of the priority) is prior to the date referred to in Paragraph 4 of this Article, and that the application has been already published on or after this date.

6. The recognition of an invention (utility model) as a patentable one does not depend on the disclosure of information on the invention (utility model) by an inventor or by a person which has received such an information directly from an inventor or indirectly within 12 months before the date of filing of the application with the Office or, if the priority has been claimed, before the priority date. In this case, the person, who is interested in using this provision, is obliged to prove the circumstances of the disclosure of information.

7. An invention shall be considered as involving an inventive step provided that it is not obvious to a person skilled in the art, i.e. an invention does not proceed obviously from the state of the art. The content of applications mentioned in Paragraph 5 of this Article shall not be taken into consideration while estimating the invention level.

8. An invention (utility model) shall be considered to be industrially applicable provided that it may be used in industry or other field of activity.

Chapter III

THE RIGHT FOR OBTAINING A PATENT

Article 8. The Right of an Inventor

1. An inventor shall have a right to obtain a patent unless otherwise stated in this Law.
2. Inventors, that have jointly created an invention (utility model), shall have equal rights for obtaining a patent unless otherwise stated in the agreement between them.
3. In case of reconsideration of conditions of the agreement concerning the staff of inventors, the Office, on a joint request of the persons, which are indicated in the application as inventors, as well as persons, who are inventors, but are not indicated as such in the application, shall introduce amendments into relevant documents under the procedure established by the Office.
4. Natural persons shall not be considered to be inventors if these persons have not made personal and creative contribution in the creation of an invention (utility model) and have rendered the inventor (inventors) only technical, organization assistance or pecuniary aid while creating the invention (utility model) and (or) executing an application.

5. An inventor shall have the right of authorship that is an inalienable moral right and shall be protected without time limit.

An inventor shall have the right to call the created invention (utility model) by his own name.

Article 9. The Right of an Employer

1. An employer of an inventor shall have the right to obtain a patent for an employee's invention (utility model).

2. An inventor shall submit to the employer a written report on the created employee's invention (utility model) with the description that discloses the subject-matter of the invention quite clearly and completely.

3. An employer shall file the application for obtaining a patent with the Office or transfer the right to obtain a patent to another person, or make a decision on reservation of an employee's invention (utility model) as confidential information within four months from the date of receipt of the report from the inventor. Within this period, the employer shall conclude with the inventor a written agreement defining the amount and conditions of payment of a remuneration to the inventor (the inventor's successor in title) according to the economical value of the invention (utility model) and (or) another benefit that may be derived by the employer.

4. If an employer fails to comply with the requirements of Paragraph 3 of this Article within the fixed period, the right to obtain a patent for an employee's invention (utility model) shall be transferred to an inventor or inventor's successor in title. In this case, preference for acquisition a license shall be given to the employer.

5. The period for reservation of an employee's invention (utility model) as confidential information by an employer or an employer's successor in title under the condition of its non-use shall not exceed four years. Otherwise the right for obtaining a patent for an employee's invention (utility model) shall be transferred to an inventor or an inventor's successor in title.

6. Disputes on the conditions and amount of the payment of remuneration to an inventor of an employee's invention (utility model) shall be resolved in a court.

Article 10. The Right of a Successor in title

The successor in title of an employer or of an inventor shall have the right to obtain a patent.

Article 11. The Right of the First Applicant

If an invention (utility model) has been created by two or more inventors independently from each other, the right to obtain a patent (declarative patent) for this invention or a declarative patent for an utility model shall belong to the inventor whose application has been earlier filed with the Office or, if the priority has been claimed, to the applicant whose application has the earlier date of priority, provided that the mentioned application is not considered withdrawn, was not withdrawn, or the Office did not make a decision to refuse the granting of a patent

Chapter IV

PROCEDURE FOR OBTAINING A PATENT

Article 12. Application

1. A person, who wishes to obtain a patent (declarative patent) and has the right to do this, shall file an application with the Office.
2. An application may be filed, on the instruction of the applicant, via a representative on intellectual property matters or another proxy.
3. Referring the information contained in an application to the state secret is accomplished according to the Law of Ukraine "On the State Secret" and normative acts adopted at its basis.

If an invention (utility model) has been created with the use of the information registered in the Corpus of Data that constitute the state secret of Ukraine, or this invention (utility model) may be referred to the state secret under the Law of Ukraine "On the State Secret", an application shall be filed with the Office via a secret regime body of the applicant or via an authorized body of the local state administration at the place of location (for legal persons) or domiciliary (for natural persons). The application shall be accompanied by the proposition of the applicant to refer an invention (utility model) to the state secret with the reference to the relevant provisions of the Law of Ukraine "On the State Secret".

4. The application for an invention shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (requirement of unity of invention).

The application for utility model shall relate to one utility model (requirement of unity of utility model).

5. The application shall be presented in Ukrainian and shall contain:

a request for granting a patent for an invention or a declarative patent for an invention (utility model);

a description of the invention (utility model);

invention (utility model) claims;

drawings (if there is a reference to them in a description);

an abstract.

6. The applicant(s) and his (their) address, as well as an inventor(s), shall be indicated in a request for granting of a patent (declarative patent),.

An inventor shall have the right to demand not to be mentioned as an inventor of this invention (utility model) in any publication of the Office, in particular in a data on the application and a patent.

7. The description of an invention (utility model) shall be represented in the defined order and shall disclose the subject-matter of an invention (utility model) in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

8. Invention (utility model) claims shall disclose the subject-matter of an invention (utility model), shall be based on the description and shall be clearly and concisely represented in the defined order.

9. The abstract is prepared only for information purposes. It may not be taken into consideration for other purpose, in particular for interpreting invention (utility model) claims and determining the state of the art.

10. The Office shall define other requirements to the application documents in accordance to this Law.

11. The filing of an application shall be subject to the payment of the respective fee. The document on the payment of fee shall be received by the Office together with the application or within two months after the date of filing of the application. This period may be extended but for no more than 6 months provided that the relevant request has been filed before the expiry of the period and the respective fee for filing the request has been paid

Article 13. The Date of Filing of an Application

1. The date of filing of an application is the date when the Office has received documents that contain at least:

a request for granting a patent (declarative patent), written in Ukrainian and drawn up in any form;

information on the applicant and the address of the applicant, written in Ukrainian;

material that makes an impression of the description of an invention (utility model), written in Ukrainian or in other language. In the last case, with the purpose to reserve the date of filing of the application the translation of this material into Ukrainian shall be received by the Office within two months after the date of filing of the application.

2. The date of filing of the application is determined according to Paragraphs 10, 11 and 12 of Article 16 of this Law.

Article 14. International Application

1. The procedure for obtaining a patent at the basis of an international application is similar to the procedure for obtaining a patent at the basis of a national application, with the exclusions that are provided by the Patent Cooperation Treaty.

2. The examination of an international application shall be accomplished provided that the examination institute obtains the translation of this application into Ukrainian and the document on the payment of the respective fee for filing of the application before the expiry of 31 months from its priority date. The said period shall be extended for no more than 2 months provided that the relevant request has been filed before the expiry of the period and the respective fee for filing of a request has been paid.

Upon the receipt of the said documents within the established period, the notification on the accepting the international application for examination shall be sent to the applicant.

3. A validity of the international application in Ukraine shall be considered as suspended provided that the requirements of Paragraph 2 of this Article are not fulfilled. If the applicant has fulfilled at least one of these requirements, the applicant shall be notified about such a suspension.

4. By the request of the applicant, the validity of the international application may be renewed provided that the requirements of Paragraph 2 of this Article were not fulfilled for important reasons. The filing of a request is subject to the payment of the respective fee.

The said request may be filed within 2 months from the date of termination of the circumstances that have caused noncompliance with the requirement with regard to the 31-month period established in Paragraph 2 of this Article, or within 12 months from the date of its expiry, in dependence on the fact which of this period comes earlier. On the date of filing of the request, the applicant shall take all the actions with respect to the application provided by this Law that should be have taken to this date.

5. If the requirements of Paragraph 4 of this Article were not fulfilled on the date of filing the request for renewing the validity of the international application in Ukraine with the examination institute, the applicant shall be notified on the possibility to refuse the request.

If the applicant shall not remove the noncompliance of the request with the requirements of Paragraph 4 of this Article within 2 months from the date of the receipt of this notification, the applicant shall be notified on the refusal of the request.

6. The Office shall publish the defined by itself data concerning the international application, international application accepted for examination in its official bulletin.

Article 15. Priority

1. The applicant shall have the right to claim the priority of an earlier application on the same invention (utility mode) within 12 months from the date of filing of the earlier application with the Office or the relevant body of the State, which is a member of the Paris Convention for the Protection of Industrial Property, provided that the priority has not been claimed on the earlier application.

2. The applicant, who wishes to use the priority right, shall file a priority declaration, with the reference to the date of filing of the earlier application and the application number, as well as its copy, within 3 months from the date of filing of the application with the Office, provided that this application has been filed in a foreign State which is a member of the Paris Convention for the Protection of Industrial Property. The mentioned documents may be changed within the said period. If these documents have been submitted untimely, the right to the application priority shall be considered to be lost, and the applicant shall be notified accordingly.

If the periods mentioned in Paragraphs 1 and 2 of this Article have been defaulted through unforeseen and independent on the applicant reasons, these periods may be extended for 2 months from the date of expiry of the mentioned period provided that the respective fee has been paid. The procedure for extending the said periods shall be defined by the Office.

The Office may demand the translation of the earlier application into Ukrainian if necessary. The applicant shall submit the translation to the Office within 2 months from the date of the receipt of the demand of the Office. If the translation is not submitted within the specified period, the application priority shall be considered to be lost, and the applicant shall be notified accordingly.

The period for submitting the translation of an earlier application may be extended for 6 months from the date of the receipt of the Office demand by the applicant. The extension of the period is subject to the payment of the respective fee.

3. With respect to the application as a whole or a certain item of invention (utility model) claims, the priority of several earlier applications may be claimed. In this case, the periods, the initial date of which is the priority date, shall be calculated from the earliest priority date.
4. The priority shall be extended only to the indications of an invention (utility model) defined in the earlier application, the priority of which has been claimed.
5. If certain indications of an invention (utility model) are not available in invention (utility model) claims of the earlier application, it shall be sufficient for granting the priority right to present precisely all the indications in the description of the earlier application.
6. If processing of the earlier application is not completed in the Office, the earlier application shall be considered withdrawn in the part, for which a priority has been claimed, upon the receipt of a priority declaration according to Paragraph 2 of this Article.
7. The priority of a divisional application derived from the earlier application on the proposition of the Office or on the initiative of the applicant before making the decision on granting or refusing a patent (declarative patent) shall be defined by the date of filing of the earlier application with the Office from which it was derived, or if a priority has been claimed for the earlier application, by the date of this priority, provided that the subject-matter of a divisional application does not go beyond the content of the earlier application on the date of its filing.
8. The priority of an invention (utility model) may be claimed by the date of receipt by the examination institute of the additional materials executed as an individual application according to Paragraph 7 of Article 16 of this Law, provided that this application has been filed within 3 months from the date of receipt by the applicant of a notification that the said materials shall not be taken into consideration in the course of the examination of the application, to which these materials have been enclosed.

Article 16. Examination of Application

1. Examination of the application has the status of scientific and technical examination and consists of the preliminary examination, formal examination and, by the application for a patent for an invention (secret invention), qualifying examination. The examination shall be made by the examination institute according to this Law and regulations issued by the Office in compliance with this Law.
2. The examination institute carries out information activity required for examination of applications and is the center for the international exchange of information communications according to the Convention on International Information Communication that was adopted on December 3, 1958, by the United Nation General Conference for Education, Science, and Culture.

3. The final results of the examination of the application that is not considered withdrawn or was not withdrawn shall be presented in the grounded conclusion of examination, which shall be valid after its approving by the Office. Based on such a conclusion, the Office shall make a decision on the granting a patent or on refusing the patent. The applicant shall be notified on the Office decision.

The applicant shall have the right to require the copies of the materials, which were opposed to the application, within a month after receiving the Office decision. These copies shall be sent to the applicant within a month.

4. The applicant shall have the right, on his own initiative or on the examination institute invitation, to participate personally or via his representative in discussion of the matters arising in the course of examination under the procedure specified by the Office.

5. The applicant shall have the right to correct errors in the application, change his name and his address, address for service and name and address of his representative.

The applicant may make changes in the application that are connected with the change of the person of the applicant by the consent of all other applicants mentioned in the application. The person, who wishes to be the applicant, may also make these changes by the consent of all other applicants.

The said corrections and changes are taken into consideration, provided that the examination institute has received them not later than the document on the payment of the state fee for granting a patent had been received.

The said corrections and changes shall be taken into consideration while publishing the information on the application for granting a patent for an invention if the examination institute has received them within 6 months before the date of publication.

The filing of the request for correction of a mistake or making of any of the mentioned changes is subject to the payment of the respective fee, provided that a mistake is not obvious or technical, and the change is caused by reasons depended on the applicant.

6. The examination institute may demand from the applicant to submit additional materials if the examination is impossible without these materials or if the examination institute reasonable doubts the veracity of the information or elements presented in the application documents.

The applicant shall have the right to request the copies of the materials, which were opposed to the application, within a month after receiving the examination institute notification or conclusion with the demand to submit the additional materials.

The applicant shall submit the additional materials within 2 months from the date of receiving the notification or conclusion of the examination institute or the copies of the materials, which were opposed the application. The period for submitting the additional materials may be extended, but for no more than 6 months, provided that the relevant request has been submitted and the fee has been paid before expiry of the said period.

This period defaulted due to important reasons shall be renewed provided that the relevant request is submitted and the fee is paid within 6 months after the expiry of the period. If the applicant failed to submit the additional materials within the fixed period, the application shall be considered withdrawn, and the applicant shall be notified accordingly.

7. If the applicant has submitted the additional materials, it shall be determined in the course of examination, whether these materials do not go beyond the subject-matter of an invention (utility model), disclosed in the application.

The additional materials shall go beyond the subject-matter of an invention (utility model) disclosed in the application if they contain features that should be included to invention (utility model) claims.

The additional materials in a part, that goes beyond the subject-matter of invention (utility model) disclosed in the application, shall not be taken into consideration in the course of the examination and may be presented by the applicant as an individual application after receiving the relevant notification of the examination institute.

8. In the course of the preliminary examination, the application without the proposition of the applicant for referring an invention (utility model) to the state secret shall be examined for detecting information that may be referred to the state secret according to the Corpus of Data that constitute the state secret of Ukraine.

If such information is available in the application, and if the application contains the proposition of an applicant to refer an invention (utility model) to the state secret, the application documents shall be transferred to the relevant State Expert on Secret Matters (hereinafter - "the State Expert") for making the decision on referring an invention (utility model) to the state secret.

The State Expert shall submit his decision, together with the application documents, to the examination institute within a month from the date of receiving the application documents.

The period, within which the decision on referring an invention (utility model) to the state secret shall be valid, shall be determined by the State Expert in dependence on a degree of the information secrecy.

If the State Expert has made the decision to refer an invention (utility model) to the state secret, the State Expert shall determine the persons, who have the right to access it, and the following processing of the application shall be accomplished in the secret regime.

The examination institute shall immediately notify the applicant on the State Expert decision. If the application did not contain the proposition of an applicant to refer an invention (utility model) to the state secret, and the State Expert has referred an invention (utility model) to the state secret, the applicant, in case of disagreement, may submit to the examination institute a grounded request to declassify the application documents or appeal to the court against the State Expert decision.

9. In the course of the formal examination:

the date of filing of the application shall be determined according to Article 13 of this Law;

it shall be determined whether the claimed object belongs to the technology objects specified in Paragraph 2 of Article 6 of this Law as well as to the technology objects specified in Paragraph 3 of Article 6 of this Law;

the application shall be examined for conformity with the formal requirements of Article 12 of this Law and the regulations issued by the Office in compliance with this Law;

the document on the payment of the respective fee for filing of the application shall be examined for conformity with established requirements.

10. If the application materials meet the requirements of Article 13 of this Law and the document on the payment of the respective fee for filing of the application is presented, the applicant shall be notified on the determined date of filing of the application.

11. If the application materials do not meet the requirements of Article 13 of this Law, the applicant shall be immediately notified. If the applicant removes the nonconformity within 2 months from the date of receiving the notification, the date on which the examination institute has received the corrected application materials shall be considered to be the date of filing of the application. Otherwise, the application shall be considered not filed, and the applicant shall be notified accordingly.

12. If in the materials of the application, which meets the requirements of Article 13 of this Law, there is a reference to a drawing, but the drawing is not available in the application, the applicant shall be notified accordingly with the proposition to submit the drawing or to remove the relevant reference from the application. If an applicant submits the drawing within 2 months from the date of receiving the notification, the date of filing of an application shall be the date when the examination institute receives the drawing. If the applicant does not react to the proposition, the application shall be considered not filed, and the applicant shall be notified accordingly.

13. If the requirements of Paragraph 11 of Article 12 of this Law are not met, the application shall be considered withdrawn, and the applicant shall be notified accordingly.

14. If the claimed object belongs to the technology objects specified in Paragraph 2 of Article 6 of this Law and if the application materials meet the formal requirements of Article 12 of this Law and the regulations issued by the Office in compliance with this Law, and the document on the payment of the respective fee for filing of an application meets the specified requirements, the applicant shall receive:

with respect to a patent for an invention - a notification that the formal examination was completed and that it is possible to carry out the qualifying examination;

with respect to a declarative patent for an invention (utility model) - the decision of the Office for granting a declarative patent for an invention (utility model).

15. If there are reasons to consider that the claimed object does not belong to the technology objects mentioned in Paragraph 2 of Article 6 of this Law, or if the application materials do not meet the formal requirements of Article 12 of this Law and the regulations issued by the Office in compliance with this Law, or the document on the payment of the respective fee for filing of the application does not meet the specified requirements, the examination institute shall send to the applicant the grounded preliminary conclusion with the proposition to present a grounded answer and to remedy, if necessary, the irregularities specified in the conclusion.

The applicant shall give the answer within the period fixed in Paragraph 6 of this Article, and this answer shall be taken into consideration when the conclusion of the examination on the application is being prepared.

If the requirement of unity of invention that is specified in Paragraph 4 of Article 12 of this Law is not fulfilled, the applicant shall indicate in the answer an invention (utility model), with respect to which the examination of the application should be carried out, and make clarifications in the application if necessary. With respect to other inventions (utility models) individual applications shall be filed.

If the requirement of unity of invention is not fulfilled on the proposition of the examination institute, the examination of the application shall be accomplished with respect to an invention (utility model) that is indicated as the first in its invention claims.

16. After the expiry of 18 months from the date of filing of the application for granting a patent for an invention or, if the priority has been claimed, from its priority date, the Office shall publish in its official bulletin the defined data on the application, provided that the application was not withdrawn, is not considered withdrawn or the decision on the refusal of a patent was not made.

On the request of the applicant, the Office shall publish the data on the application before the expiry of the said period. The filing of the request is subject to the payment of the respective fee.

After publication of the information on the application, any person shall have the right to access to this data under the established procedure. The access to the application materials is subject to the payment of respective fee.

In the case of detecting obvious errors in the published data, the applicant shall have the right to file a request for correcting the errors.

Data on the application for granting a declarative patent for an invention (utility model) shall not be published.

Data on applications, for which the State Expert has taken the decision to refer them to the state secret, shall not be published.

17. In the course of the qualifying examination a claimed invention shall be examined on the conformity with the patentability requirements defined by Article 7 of this Law.

The examination institute shall carry out the qualifying examination after the receipt of the relevant request of any person and the document on the payment of respective fee for the examination.

The applicant may file the said request and the document on the payment within 3 years from the date of filing of the application. Another person may file the said request and document after publication of the data on the application for an invention but not later than 3 years from the date of filing of the application. This person shall not make decisions with respect to the application, and shall only receive the conclusion of the examination on the application approved by the Office.

The period for filing of the said request and document shall be extended but for no more than 6 months provided that the relevant request has been filed and the fee for filing of the request has been paid before the expiry of this period. This period defaulted due to important reasons shall be renewed provided that the relevant request is filed and the fee is paid within 12 months after the expiry of this period. If the applicant fails to file the said request and document within the specified period, the application shall be considered withdrawn, and the applicant shall be notified accordingly.

18. If there are reasons to consider that the claimed invention does not meet the patentability requirements, the examination institute shall send to the applicant the grounded preliminary conclusion with the proposition to give a motivated answer and, if necessary, to remedy the irregularities specified in the conclusion.

The applicant shall give the answer within the period determined in Paragraph 6 of this Article for additional materials, and this answer shall be taken into consideration when the conclusion of the examination on the application is being prepared. The matters on the fulfillment of the requirement of unity of invention shall be considered according to Paragraph 15 of this Article.

Article 17. Withdrawal of an Application

The applicant shall have the right to withdraw an application at any time before the date of receiving the decision on granting a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model or before the date of paying the state fee for granting a patent (declarative patent) for an invention or a declarative patent for a utility model.

Article 18. Transformation of Applications

The applicant shall have the right to transform:

an application for granting a patent for an invention into an application for granting a declarative patent for an invention, and on the contrary, at any time before receiving the decision on granting or refusing a patent (declarative patent);

an application for granting a patent (declarative patent) for an invention into an application for granting a declarative patent for a utility model, and on the contrary, at any time before receiving the decision on granting or refusing a patent (declarative patent).

In the said cases, the determined date of filing of the application or, if the priority has been claimed, the priority date shall be retained.

The request for transformation of the application is subject to the payment of the respective fee.

Article 19. Confidentiality of an Application

From the date of filing of the application with the Office to the publication of the data on the application or information for granting a patent, the application materials shall be considered to be confidential information. The access of the third party to the application materials shall be prohibited, excluding the cases when the applicant or an authorized agency shall permit such an access.

Any person failed to fulfill the requirements on the confidentiality of the application materials shall be subject to the responsibility determined by the laws of Ukraine.

(Article 20 was excluded according to the Law No. 850-IV of May 22, 2003)

Article 21. Temporary Legal Protection

1. The data on the application for a patent for an invention, which were published according to Article 16 of this Law, shall provide the temporary legal protection for the applicant in the volume of a patent claims in consideration of which the said data were published.

2. After publication of the data on the application, the applicant shall have the right to obtain a compensation for damages from a person, which really knew, or received a notification written in Ukrainian with the indication of the application number about the publication of the data on the application for an invention used by this person without the applicant permission. The applicant shall obtain the said compensation only after obtaining a patent.

3. The validity of the temporary legal protection shall be terminated from the date of publishing the data on granting a patent for an invention or publishing a notification about the termination of the processing of the application.

4. The validity of the temporary legal protection at the basis of an international application shall begin from the date of publishing the data on the international application by the Office under the conditions determined in Paragraph 2 of this Article.

Article 22. Registration of a Patent

1. The state registration of a patent shall be provided at the basis of the decision on granting a patent. For this purpose, the relevant data shall be entered into the Register. The form of the Register and the procedure for its maintaining shall be determined under the defined procedure.

2. The state registration of a patent (declarative patent) for an invention or a declarative patent for a utility model shall be provided if the documents on the payment of the state fee for its granting and of the fee for publishing the data on granting a patent are available. The applicant shall pay the said fees after the receiving the decision on granting a patent.

If the documents on the payment of the state fee for granting a patent and of the fee for publishing the data on granting a patent are not received by the examination institute within 3 months from the date of the receipt of the decision on granting a patent by the applicant, the state registration of a patent shall not be provided, and an application shall be considered withdrawn.

The period for filing of these documents shall be extended but for no more than 6 months provided that the relevant request has been filed and the fee for filing of the request has been paid before the date of its expiry. This period defaulted due to important reasons shall be renewed provided that the relevant request is filed and the fee for its filing is paid within 6 months from the expiry of this period.

3. After entering the data into the Register, any person shall have the right to access to this information under the procedure specified by the Office and to obtain an abstract of the data from the Register concerning a certain patent upon his request, provided that the fee for filing of the said request has been paid.

The access to the data on a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model entered into the Register shall be accomplished under the requirements of the Law of Ukraine "On the State Secret".

4. The errors in the data entered in the Register shall be corrected on the initiative of the patent owner or the Office.

Changes to the Register may be introduced on the initiative of the certificate owner according to the specified list of permitted changes. Introduction of changes to the

Register with respect to a patent (declarative patent) for an invention or a declarative patent for a utility model is subject to the payment of the respective fee.

Article 23. Publications on Granting a Patent

1. Concurrently with the state registration of a patent (declarative patent) for an invention or a declarative patent for a utility model, the Office shall publish in the official bulletin the data on granting a patent (declarative patent) under the specified procedure.
2. Not later than 3 months from the date of publishing the data on granting a patent, the Office shall publish the description of a patent (declarative patent) that contains invention claims, the description of an invention (utility model), and the drawing to which there is a reference in the description of an invention (utility model).
3. After publishing the data on granting a patent (declarative patent) for an invention or a declarative patent for a utility model, any person shall have the right to access to the application materials under the specified procedure. An access to the application materials is subject to the payment of the respective fee.
4. The data on granting a patent (declarative patent) for a secret invention or a declarative patent for a utility model shall not be published.

Article 24. Appellation against the Decision on an Application

1. The applicant may appeal to the court or the Appellate Chamber against the Office decision on an application within 2 months from the date of receiving the Office decision or copies of documents required according to the Paragraph 3 of Article 16 of this Law.
2. If the Office decision on an application was appealed to the court after the state registration of a patent, the court shall consider simultaneously the issue on the validity of the relevant patent.
3. The right to appeal the Office decision in the Appellate Chamber shall be lost after the payment of the state fee for granting a patent (declarative patent) for an invention or a declarative patent for a utility model.
4. The appeal against the Office decision in the Appellate Chamber shall be accomplished by submitting the objection on the Office decision under the procedure determined by this Law and the regulations of the Appellate Chamber approved by the Office. Submission of the objection is subject to the payment of the respective fee. If the fee is not paid within the period fixed in Paragraph 1 of this Article, the objection shall be considered not submitted, and the applicant shall be notified accordingly.
5. After receiving by the Appellate Chamber the objection and the document on the payment of the fee for submitting the objection, the processing of the application shall be terminated until the decision of the Appellate Chamber is approved.

6. The objection against the Office decision on the application shall be considered according to the Appellate Chamber regulations within 2 months from the date of receiving the objection and the document on the payment of the fee for submitting the objection, within the framework of the reasons presented in the objection by the applicant and during the consideration of the objection. The period for consideration of the objection shall be extended on the initiative of the applicant, but for no more than 2 months, provided that the relevant request has been filed and the fee for its filing has been paid.

7. On the results of the consideration of the objection, the Appellate Chamber shall make a grounded decision that shall be approved by the order of the Office and sent to the applicant.

If the objection was fully or partially satisfied, the fee for submitting the objection shall be returned to the applicant.

8. Before approving the Appellate Chamber decision, within a month from the date of making the decision, the Head of the Office may present a grounded written protest against this decision, and this protest shall be considered within a month. The decision of the Appellate Chamber made on the protest is final and may be cancelled only by the court.

9. The applicant may appeal to the court against the Appellate Chamber decision approved by the Office within 2 months from the date of receiving the decision.

Article 25. Granting a Patent

1. The Office shall grant a patent within a month from the date of its state registration.

A patent shall be granted to a person, which has the right to obtain a patent. If several persons have the right to obtain a patent, they shall obtain a single patent.

The declarative patent for an invention (utility model) shall be granted at the responsibility of the patent owner for the conformity of an invention (utility mode) to the patentability requirements.

2. The form of a patent and the content of a patent data shall be specified by the Office.

3. The Office on the request of the patent owner shall remove obvious errors in a granted patent with the following notification in the official bulletin.

4. If a patent was lost or damaged, the patent owner shall be granted a patent duplicate under the procedure determined by the Office. Granting a duplicate of a patent is subject to the payment of the respective fee.

Article 26. Transformation of a declarative patent

With the purpose to transform a declarative patent for an invention into a patent for an invention, the owner of a declarative patent for an invention or his successor in title may submit with respect to the application on which a declarative patent has been granted, the request for accomplishing the qualifying examination of the application. The request shall be submitted to the examination institute not later than 3 years from the date of filing the application on which a declarative patent has been granted. The submission of the request is subject to the payment of the respective fee.

After making the decision on granting a patent for an invention according to the results of the qualifying examination, the validity of a declarative patent shall be terminated from the date of publishing the data on granting a patent for an invention. The term of a patent for an invention that has been granted instead of a declarative patent for an invention shall be 20 years from the date of filing of the application for granting a declarative patent for an invention.

If the qualifying examination that is accomplished with the purpose to transform a declarative patent for an invention into a patent for an invention is not completed before the expiry of the term of a declarative patent, and any person after this date begins to use an invention or make considerable and serious preparations for its use, in the case when a patent for an invention is granted on the application, on which a declarative patent has been granted, the said person may use an invention in the future in the volume of the made preparations without compensation to the owner of a patent for an invention.

If according to the results of the qualifying examination of the application, the decision has been made on the refusal a patent for an invention, a declarative patent for an invention shall be considered invalid from the date of publishing the data on granting this patent, and the Office shall publish the relevant data in the official bulletin.

Article 27. Declassification of a secret invention (utility model)

1. The owner of a patent for a secret invention (utility model) shall have the right to submit to the State Expert the proposition to declassify an invention (utility model) or to change the established secrecy degree of an invention (utility model). In this case, the State Expert shall examine the proposition and give a written answer within a month from the date of receiving the proposition.

2. The change of the secrecy degree of an invention (utility model) or its declassification shall be accomplished according to the State Expert decision on the proposition of the patent owner in connection with the expiry of the term of the decision on referring the information on an invention (utility model) to the state secret or at the basis of the court decision.

3. Within a year from the date of receiving the State Expert decision on declassification of an invention (utility model) the owner of a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model shall have the right to file a request with the Office for granting a patent (declarative patent) for an invention for the remaining period before the expiry of the term of a patent (declarative patent) for a

secret invention or a declarative patent for a secret utility model. In this case, the Office shall introduce the relevant changes to the Register, publish the data on granting and grant a patent (declarative patent) according to Articles 22, 23 and 25 of this Law, provided that the respective fees have been paid.

Chapter V

RIGHTS AND OBLIGATIONS DERIVING FROM A PATENT

Article 28. Rights Deriving From a Patent

1. The rights deriving from a patent shall be effective from the date of publishing the data on granting a patent.

The rights deriving from a patent (declarative patent) for a secret invention or from a declarative patent for a secret utility model shall be effective from the date of entering data on them into the relevant Register.

2. A patent shall give the exclusive right to the owner of a patent to use an invention (utility model) at his own discretion if such a use does not infringe rights of other owners of patents.

The use of a secret invention (utility model) by the patent owner shall be accomplished in compliance with requirements of the Law of Ukraine "On the State Secret" and shall be agreed with the State Expert.

The relationships, while using an invention (utility model), a patent for which belongs to several persons, shall be defined by an agreement between them. If such agreement is not available, each patent owner may use an invention (utility model) at his own discretion, but none of them shall have the right to grant a permission (a license) for the use of an invention (utility model) and transfer the property right on an invention to another person without consent of other patent owners.

The following shall be considered to be the use of an invention (utility model):

manufacturing a product with the use of a patented invention (utility model), the use of this product, an offer of a product for the market, including an offer via the Internet, selling, import (coming-in) and other its introduction into the commercial circuit as well as storing a product for defined purposes;

the use of a process protected by a patent or an offer of a process for the use in Ukraine, provided that the person offering a process shall know that the use of a process without the permission of the patent owner is prohibited or, considering the circumstances, it is obvious.

A product shall be considered to be manufactured with the use of a patented invention (utility model) provided that each indication included to independent item of invention (utility model) claims or equivalent indication is used while manufacturing a product.

The patented process shall be considered to be the used one provided that each indication included to independent item of invention (utility model) claims or equivalent indication is used.

Any product, the manufacturing process of which is protected by a patent, shall be considered to be manufactured with the use of this process provided that there are no evidences of the contrary and at least one of the following requirements is fulfilled:

a product manufactured with the use of the patented process is new;

there are reasons to consider that a product has been manufactured with the use of this process and the patent owner cannot determine a process that has been using in the course of manufacture of a product by the way of acceptable efforts.

In such a case, the obligation to prove that a process for manufacturing the product, which is identical to the product manufactured with the use of the patented process, differs from the said patented process, shall be placed on the person with respect to which there are grounded reasons to consider that this person infringes the patent owner's rights.

3. The exclusive rights of the owner of a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model shall be restricted by the Law of Ukraine "On the State Secret" and the relevant decisions of the State Expert.

The owner of a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model shall have the right to obtain from the state body defined by the Cabinet of Ministers of Ukraine money compensation to refund the expenses for the payment of fees provided by this Law.

The court shall resolve any disputes on amounts and the procedure of obtaining money compensation.

4. The patent owner may use a precautionary marking with the indication of the patent number on a product or the package of a product that has been manufactured with the use of the patented invention.

5. The patent shall give to his owner the exclusive right to forbid other persons to use an invention (utility model) without his permission, excluding the cases when according to this Law such a use is not considered to be the infringement of rights granted by a patent.

6. The patent owner may transfer, by an agreement, the property right to an invention (utility model) to any person, which shall become his successor in title. Secret inventions (utility models) could be transferred only on the approval of the State Expert.

7. The patent owner shall have the right to grant the permission (a license) for the use of an invention (utility model) to any person at the basis of a license agreement and with respect to a secret invention (utility model) such permission may be granted only on the approval of the State Expert.

8. The agreement for transferring the property right to an invention (utility model) or the licensing agreement shall be considered valid provided that they have been executed in writing and signed by the parties.

Each party of the agreement has the right to officially inform other persons about transferring the property right to an invention (utility model) or granting the license for using an invention (utility model). Such a notification shall be provided by publishing the data in the official bulletin in the volume and under the procedure determined by the Office with simultaneous entering this data into the Register.

Publication of the mentioned data as well as of the changes to the data proposed by the contracting party is subject to the payment of the respective fee.

9. The patent owner, excluding the owner of a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model, shall have the right to file with the Office for official publication a declaration on the consent to permit any person to use the patented invention (utility model). In this case, the annual fee for maintaining the validity of a patent shall be reduced by 50 percents from the next year after the year publishing the said declaration.

The person, who wishes to use the mentioned permission, shall conclude with the patent owner an agreement on payments. The court shall resolve any disputes that may occur during the fulfillment of this agreement.

If not a single person has notified the patent owner on his intention to use an invention (utility model), the patent owner may file with the Office a written request for withdrawing the said declaration. In this case, the annual fee for maintaining the validity of a patent shall be paid in full amount from the next year after the year of publishing the said request.

10. The rights deriving from a patent do not infringe any other personal property or moral rights of an inventor, which are regulated according to other laws of Ukraine.

Article 29. Obligations Deriving From a Patent

The patent owner shall pay the respective fees for maintaining the validity of a patent and use honestly the exclusive right deriving from a patent.

Article 30. Expropriation of the Right to an Invention (Utility Model)

1. If an invention (utility model), excluding a secret invention (utility model) is not used or is inadequately used in Ukraine within 3 years from the date of publishing the data on granting a patent or from the date when the use of an invention (utility model) has been terminated, any person who wishes and is ready to use an invention (utility model) may appeal to the court for granting the right to use an invention (utility model) provided that the owner of rights has rejected the conclusion of the license agreement.

If the patent owner does not prove that the fact of nonuse of an invention (utility model) is caused by important reasons, the court shall make a decision on granting the permission to an interested person to use an invention (utility model) and define the volume of its use, the term of the permission, the amount and procedure of remunerating the patent owner. In this case, the right of the patent owner to grant permissions to use an invention (utility model) shall not be restricted.

2. The patent owner shall be obliged to grant the permission (license) to use an invention (utility model) to the owner of the patent that has been granted later provided that an invention (utility model) of the latter is intended for other purpose or has significant technical and economical advantages and may not be used without infringement of the rights of the owner the patent that has been granted earlier. The permission shall be granted in the volume that is necessary for the use of an invention (utility model) by the owner of the patent that has been granted later. In this case, the owner of the patent that has been granted earlier shall have the right to obtain on acceptable conditions a license to use an invention (utility model) that is protected by the patent that has been granted later.

3. With the purpose to protect the health of population, ecological safety and other public interests, the Cabinet of Ministers of Ukraine may permit the use of the patented invention (utility model) by a defined person without the consent of the patent (declarative patent) owner provided that this owner has groundlessly rejected granting a license for the use of an invention (utility model).

In this case:

1. the permission for such a use shall be granted with consideration of specific circumstances;
2. the volume and the duration of such a use shall be determined by purpose of the granted permission and, in the case of semiconductor technology this shall be purely noncommercial use by bodies of the state power or implementing an anticompetition practice by the decision of a relevant body of the state power;
3. the permission for such a use shall not deprive the patent owner of the right to grant permissions for the use of an invention (utility model);
4. the right to such a use shall not be transferred excluding the case when it is transferred together with the part of the enterprise or business practice in which this use is carried out;

5. the use shall be permitted mainly for providing the internal market needs;
6. the notification concerning the grant of the permission for the use of an invention (utility model) shall be sent to the patent owner at the first opportune moment;
7. the permission for the use shall be revoked in case of discontinuance of circumstances under which this permission has been granted;
8. an adequate compensation in accordance with an economic value of an invention (utility model) shall be paid to the patent owner.

The resolution of the Cabinet of Ministers of Ukraine concerning the grant of the permission for the use of an invention (utility model), the validity period and conditions of the grant, revocation of the permission for the use, amount and procedure of paying a remuneration to the patent owner may be appealed in court procedure.

4. The owner of the patent (declarative patent) for a secret invention or a declarative patent for a secret utility model may grant a license for the use of his invention (utility model) only to a person that has a permission of the State Expert to access to this invention (utility model).

If the said person cannot come to the agreement with the patent owner on the grant of the license, the Cabinet of Ministers of Ukraine shall have the right to permit the use of a secret invention (utility model) according to Paragraph 3 of this Article.

5. The court shall resolve any disputes on the conditions of the grant of licenses, on the amounts and the procedure of obtaining money compensation.

Article 31. Actions that are not Considered to be the Infringement of Rights

1. Any person, which has honestly used a technology (technical) solution identical to the claimed invention (utility model) or has made considerable and serious preparations for such a use in the interests of its activity with the commercial purpose before the date of filing the application for granting a patent on the invention (utility model) with the Office or, if the priority has been claimed, before the priority date, shall have the right to extend this use free of charge or to use an inventions (utility model) as it was foreseen by the mentioned preparation (the right of previous use).

The right of previous use shall be restricted by the volume of the use of a solution identical to the claimed invention, which it was on the date of filing of the application with the Office.

The right of previous use of the design may be transferred to another person only together with the enterprise or business practice, or with the part of the enterprise or business practice, in which the solution identical to the claimed invention (utility model) had been used or a considerable and serious preparation to such a use had been made.

2. The use of the patented invention (utility model) shall not be considered to be the infringement of rights deriving from a patent provided that it is used:

in a construction or during the exploitation of a vehicle of a foreign state that temporarily or occasionally is situated at any sea, air, or at the territory of Ukraine, provided that an invention (utility model) is used exclusively for the said vehicle operation;

without any commercial purpose;

for scientific or experimental purposes;

in emergency conditions (natural disaster, accident, epidemic etc.) with the notification of the patent owner as soon as possible and with the paying a relevant compensation to him.

3. The introduction of a product that has been manufactured with the use of the patented invention (utility model) into the commercial circuit by any person, which has obtained a product without violation of the patent owner rights, shall not be considered to be the infringement of rights deriving from a patent.

The product manufactured with the use of the patented invention (utility model) shall be considered to be obtained without the violation of the patent owner rights provided that this product has been manufactured by the patent owner and (or) after manufacturing has been introduced into the commercial circuit by the patent owner or other person according to the special permission (license) of the patent owner.

4. The use of an invention with the commercial purpose by any person, which has obtained a product manufactured with the use of the patented invention, but could not know that this product has been manufactured or introduced into the commercial circuit with the violation of the rights granted by the patent, shall not be considered to be the infringement of rights deriving from a patent. Meanwhile, after receiving the relevant notification from the owner of rights, the said person shall terminate the use of a product or pay the relevant compensation to the owner of rights. The amount of the said compensation shall be determined according to laws or by an agreement between the parties. The court shall resolve any disputes on the amounts and the procedure of paying compensation.

Chapter VI

TERMINATION OF VALIDITY AND INVALIDATION OF A PATENT

Article 32. Termination of a Patent Validity

1. The patent owner may at any time renounce a patent fully or partially at the basis of a declaration submitted to the Office. The renunciation shall be effective from the date of publishing the relevant data in the official bulletin of the Office.

The full or partial renunciation from a patent shall not be allowed without notification of the person who has the right to use the patented invention according to a licensing agreement registered in the Office as well as in the case of seizing property through debts provided that the said property includes the rights protected by a patent.

2. The patent validity shall be terminated in the case of default of the payment of the fee for maintaining the patent validity within defined period.

The annual fee for maintaining the patent validity shall be paid for each year of its validity, beginning from the date of filing of the application. The document on the first payment of the mentioned fee shall be presented to the Office within 4 months from the date of publishing the data on granting a patent. The document for each following year shall be presented or sent to the Office before the end of the current year, provided that the payment has been made within the last 4 months of the year.

The patent validity shall be terminated from the first day of the year for which the fee has not been paid.

The annual fee for maintaining the patent validity shall be paid within 12 months after the end of the specified period. In this case, the amount of the annual charge shall be increased by 50 percents.

The patent validity shall be renewed after the payment of the fee.

If the fee has not been paid within the said 12 months, the Office shall publish the data on terminating the patent validity in its official bulletin.

The fee for maintaining the validity of a patent (declarative patent) for a secret invention or a declarative patent for a secret utility model shall not be paid.

Article 33. Invalidation of a Patent

1. A patent may be fully or partially invalidated by the court in the following cases:

the patented invention (utility model) described in invention (utility model) claims does not meet the patentability requirements defined in Article 7 of this Law.

invention (utility model) claims contain indications that were not presented in the filed application.

the requirements of Paragraph 2 of Article 37 of this Law are not fulfilled.

a patent has been granted in the result of filing of the application with the violation of rights of other persons.

2. With the purpose to invalidate a declarative patent, any person may file with the Office a request for examination of the patentability of the invention (utility model). Filing of the said request is subject to the payment of the respective fee.
3. If a patent is considered to be fully or partially invalid, the Office shall publish the relevant data in its official bulletin.
4. A patent or a part of a patent shall be considered to be invalid from the date of publishing the data on granting a patent.

Chapter VII

PROTECTION OF RIGHTS

Article 34. Infringement of Rights of the Patent Owner

1. Any offence against rights of the patent owner that are defined in Article 28 of this Law shall be considered to be the infringement of the patent owner rights, which is prosecuted according to the current legislation of Ukraine.
2. On the request of the patent owner, the said infringement shall be terminated, and the infringer shall indemnify the actual damage to the certificate owner.

The person who has been granted a license shall also have the right to demand the restoration of the affected rights of the patent owner by the patent owner consent.

Article 35. Methods of Protecting Rights

1. The protection of the rights to an invention (utility model) shall be provided in court or other procedures established by laws.
2. The jurisdiction of courts shall cover all legal relations that may occur in connection with the use of this Law.

The courts, according to their competence, shall resolve disputes on:

authorship for an invention (utility model);

determination of the fact of the use of a patent;

determination of the owner of a patent;

infringement of patent owner rights;

conclusion and execution of license agreements;

the right of the previous use;

compensation.

Chapter VIII

CONCLUSIVE PROVISIONS

Article 36. Fees

The amount of the state fee and the procedure of paying the state fee for granting patents shall be determined under the legislation.

The amount, payment terms and the procedure of paying the state fee shall be specified by the Cabinet of Ministers of Ukraine.

The costs obtained from the payments of the state fee for granting patents shall be included to the State Budget of Ukraine.

The fees provided by this Law shall be paid to current accounts of the institutions authorized by the Office and included to the state system of the legal protection of intellectual property and, with consideration of their specialization, carry out certain tasks defined by this Law.

The earnings from fees provided by this Law are purpose-oriented and, according to the orders of the Office, shall be used exclusively for providing the development and functioning of the state system of the legal protection of intellectual property, in particular for implementing tasks defined by this Law and other normative and legislative acts in the sphere of intellectual property.

Article 37. Patenting an Invention (Utility Model) in Foreign States

1. Any person shall have the right to patent an invention (utility model) in foreign states provided that the application for the invention (utility model) has been filed with the Office and this person has not received a notification on referring an invention (utility model) to the state secret within 3 months from the date of filing of the said application.

At the request of the applicant, the applicant shall be notified on the possibility to patent an invention (utility model) in foreign states before the expiry of the said period. Filing of the request is subject to the payment of the respective fee.

2. If patenting of an invention (utility model) is accomplished according to the procedure established by the Patent Cooperation Treaty, an international application shall be filed with the Office.

Article 38. State Stimulation of the Creation and the Use of Inventions (Utility Models)

The state shall stimulate the creation and the use of inventions (utility models) and, for this purpose, shall establish for inventors and persons using them favorable conditions of taxation and crediting as well as other advantages according to the current legislation of Ukraine.

The inventors of high-effective used inventions (utility models) may be awarded with the honorary title of "Honored Inventor of Ukraine".

Chapter IX

TRANSITIONAL PROVISIONS

1. The applications for granting patents on inventions in Ukraine for the term of 5 years without examination by substance (hereinafter – patents with the term of 5 years), which have been filed according to the Decree of the Verhovna Rada (Parliament) of Ukraine of December 23, 1993 "On Consummation of the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models"", and for which the processing procedures have not been completed to the effective date of this Law, shall be considered to be applications for granting a declarative patents for inventions and shall be examined by the Office without examination for determining the local novelty.

2. On applications for granting patents with the term of 5 years, on which the decision on granting patents has been made before the effective date of this Law, but the state registration and publication of the data on granting patents have not been accomplished, the Office shall grant declarative patents for inventions and publish the relevant data, provided that the respective state fee has been paid.

The owners of the patents for inventions with the term of 5 years may file the requests for accomplishing the state examination and transforming the patents under the procedure established by Article 26 of this Law.

3. Valid patents for utility models are considered to be identical to declarative patents on utility models in a part of their legal regime and term.

Chapter X

1. This Law shall be effective from the date of its publication.
2. Before bringing the legislation into compliance with this Law, other laws and normative and legislative acts shall be used in a part that does not contradict with this Law.
3. The Cabinet of Ministers of Ukraine shall submit to the Verhovna Rada (Parliament) of Ukraine the propositions for bringing the legislation into compliance with this Law within 3 months from the date when this Law has become effective.
4. After the date when this Law shall be effective, the documents listed below shall be invalid:

the Decree of the Verhovna Rada (Parliament) of Ukraine of January 19, 1995 "On the Approval of the Regulations on the Procedure for Execution and Use of Rights to Inventions, Utility Models, and Industrial Designs that Constitute the State Secret";

items 10 and 11 of Paragraph 3 and Paragraph 4 of the Decree of the Verhovna Rada (Parliament) of Ukraine of December 23, 1993 "On Consummation of the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models"".

President of Ukraine

L. KRAVCHUK

Kyiv, December 15, 1993

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