

Patent Agents Act

Passed 21 February 2001

(RT¹ I 2001, 27, 151),

entered into force 20 April

2001, amended by the

following Acts:

17.12.2003 entered into force 08.01.2004 - RT I 2003, 88,

594; 05.06.2002 entered into force 01.07.2002 - RT I 2002,

53, 336; 14.11.2001 entered into force 01.02.2002 - RT I

2001, 93, 565.

Chapter 1

General Provisions

§ 1. Scope of application of Act

This Act provides the legal bases for the activities of patent agents.

§ 2. Patent agent

(1) Patent agent is a person who provides legal services in the field of industrial property (hereinafter legal services).

(2) A person who has been awarded, on the bases and pursuant to the procedure

provided for in this Act, the qualification of a patent agent to operate in one or both areas of professional activity of patent agents may operate as a patent agent.

(3) Areas of professional activity of patent agents are:

- 1) inventions and layout-designs of integrated circuits;
- 2) trade marks, industrial designs and geographical indications.

(4) In the cases prescribed by law, legal services may be provided to a person only by a patent agent.

§ 3. Validity of authorisation

(1) If it is prescribed by law that a patent agent may submit the authorisation document after the performance of an act, the date of performing the act shall be deemed to be the date of granting authorisation, regardless of the date of signing the authorisation document.

(2) Authorisation terminates:

- 1) if a patent agent declines to represent a person in the cases specified in subsection 5 (4) of this Act;
- 2) if registration data on a patent agent are deleted from the state register of patent agents (hereinafter register);
- 3) if the professional activities of a patent agent are suspended;
- 4) in other cases prescribed by law.

(3) In the cases specified in subsection (2) of this section, a patent agent must inform the person who authorised the patent agent of the event immediately.

(4) If a patent agent dies or is placed under guardianship due to restricted active legal capacity, the successor or guardian of the patent agent, and the company of patent agents, must inform the Minister of Economic Affairs and Communications or an official

authorised by him or her thereof immediately.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336; 17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

Chapter 2

Professional Activities of Patent Agents and Supervision over Professional Activities of Patent Agents

§ 4. Competence of patent agents

In his or her area of professional activity, a patent agent is competent to:

- 1) provide legal services;
- 2) represent a person in state agencies, in court and in other cases;
- 3) collect evidence;
- 4) in the provision of legal services to persons, freely choose and use the means and methods prescribed by law;
- 5) certify translations and copies of documents concerning industrial property which are to be submitted to agencies.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

§ 5. Duties of patent agents

(1) A patent agent is required to:

- 1) use all means and methods prescribed by law in the interests of the person who authorised him or her while preserving his or her professional honour and dignity;
- 2) inform the person who authorised him or her of acts related to the provision of legal

services;

3) maintain a list of acts related to the provision of legal services.

(2) When a patent agent provides legal services to a person, the patent agent does not acquire the rights of the person.

(3) A patent agent shall not provide legal services to a person whose interests are in conflict with the interests of another person to whom the patent agent provides or has provided legal services in the same matter, and in other cases prescribed by law.

(4) A patent agent may decline to provide legal services to a person at the initiative of the patent agent if the person:

1) has requested the performance of an act which is in violation of the law or the requirements for professional ethics;

2) repeatedly fails to pay for the legal services on time;

3) renders, by his or her action, the provision of legal services to the person impossible;

4) abuses the name or profession of the patent agent.

§ 6. Guarantees to professional activities of patent agents

(1) In the provision of legal services, a patent agent shall be independent and shall act pursuant to law, the requirements for professional ethics, good morals and conscience.

(2) Information disclosed to a patent agent shall be confidential. Patent agents and the employees of a company of patent agents shall not be heard as witnesses with regard to information which became known to them in the provision of legal services nor shall explanations be requested from them with regard to such information.

(3) Media received in the course of provision of legal services shall not be confiscated from patent agents or the employees of a company of patent agents, or from a company of patent agents.

§ 7. Maintenance of professional secrets

(1) A patent agent is required to maintain the confidentiality of business secrets which have become known to him or her in the provision of legal services. Such obligation shall have an unspecified term and it shall also apply after the termination of the professional activities of the patent agent.

(2) The obligation specified in subsection (1) of this section shall extend to the employees of a company of patent agents and to public servants to whom a patent agent's professional secret has become known in connection with the performance of their official duties.

(3) A person or his or her legal successor may, by his or her written consent, exempt a patent agent from the obligation to maintain a professional secret.

(4) The obligation to maintain a professional secret shall not extend to the collection of costs for legal services provided by a patent agent.

(5) Disclosure of information to an official exercising state supervision over the professional activities of a patent agent shall not be deemed to be a violation of professional secrecy.

§ 8. Ways of pursuing professional activities of patent agent

(1) A patent agent may operate as a sole proprietor, through a company of patent agents or, if he or she has the qualification of a patent agent, on the basis of an employment contract entered into with another person.

(2) Data on a patent agent operating as a sole proprietor must be entered in the commercial register.

(3) A patent agent operating as a sole proprietor and a company of patent agents must inform the register of the details of the patent agent or the company of patent agents.

Information concerning patent agents operating through a company of patent agents shall be forwarded to the register by the company. A person who has the qualification of a patent agent and operates on the basis of an employment contract entered into with another person must submit his or her details and the details of his or her employer to the register.

§ 9. Company of patent agents

- (1) A company of patent agents shall not provide any services except legal services.
- (2) A company of patent agents may merge only with another company of patent agents.
- (3) The partnership agreement of a company of patent agents operating as a general partnership or limited partnership shall be entered into in writing and it shall be appended to the petition for entry of the company in the commercial register.
- (4) The business name of a company of patent agents or a patent agent operating as a sole proprietor shall contain the words “patent bureau” or “patent agent”.

§ 10. Proprietary liability

- (1) In the provision of legal services, a patent agent shall be liable for wrongfully caused proprietary damage.
- (2) If a patent agent provides legal services through a company of patent agents, the patent agent and the company shall be solidarily liable for the damage specified in subsection (1) of this section.

§ 11. Professional liability insurance of patent agents

- (1) In order to ensure compensation for damage specified in § 10 of this Act, a patent agent or a company of patent agents is required to enter into a contract insuring the liability

of the patent agent.

- (2) The minimum amount of insurance coverage shall not be less than one million kroons.
- (3) An insurer has the right of recourse against a patent agent operating as a sole proprietor and against a company of patent agents or a patent agent if an indemnity is paid to compensate for damage caused by an intentional act of the patent agent.

§ 12. Advertising of patent agents

- (1) Patent agents and companies of patent agents shall not advertise themselves or their activities.
- (2) For the purposes of this Act, information relating to the name, areas of professional activity, details and employees of a patent agent or a company of patent agents is not deemed to be advertising.
- (3) Information relating to the names, areas of professional activity and details of all patent agents and companies of patent agents shall be published by the Patent Office in the official gazette of the Patent Office and on the web site of the register.

§ 13. State supervision of professional activities of patent agents

- (1) State supervision over the professional activities of patent agents shall be exercised by the Minister of Economic Affairs and Communications or an official authorised by him or her.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

- (2) A patent agent whose professional activities are subject to supervision is, at the request of the Minister of Economic Affairs and Communications or an official authorised by him or her, required to:

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

1) appear at the Ministry of Economic Affairs and Communications; (17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

2) submit documents related to the professional activities of the patent agent or the activities of the company of patent agents to the Minister of Economic Affairs and Communications or an official authorised by him or her;

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3) give explanations regarding the professional activities of the patent agent.

(3) The Minister of Economic Affairs and Communications or an official authorised by him or her may:

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1) issue a warning to a patent agent and request that the patent agent eliminate deficiencies occurring in his or her professional activities within the term set by the Minister of Economic Affairs and Communications or the official authorised by him or her;

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2) suspend the professional activities of a patent agent in the cases provided for in § 19 of this Act;

3) make a decision to deprive a patent agent of the qualification of a patent agent in the cases provided for in § 20 of this Act.

Chapter 3

Award of Qualification of Patent Agent

§ 14. Conditions for award of qualification of patent agent

- (1) A person may be awarded the qualification of a patent agent if the person:
- 1) has active legal capacity;
 - 2) is a citizen of Estonia or of a Member State of the European Union and his or her permanent place of residence is in Estonia;
 - 3) has completed higher education;
 - 4) has oral and written proficiency in Estonian;
 - 5) has, prior to applying for the qualification of a patent agent, worked at a patent agent or in a company of patent agents in the area in which he or she is applying for the qualification at least for the last four years;
 - 6) is proficient in two foreign languages to the extent necessary to carry out the professional activities of a patent agent and at least one of the foreign languages shall be an official working language of the European Patent Office;
 - 7) has not been punished pursuant to criminal procedure for an intentionally committed criminal offence.
- (2) The period of time of working in the Patent Office in the relevant field, but not more than two years, shall be included in the period of time of working at a patent agent or in a company of patent agents.

§ 15. Patent agents professional qualifications committee

- (1) In order to award the qualification of a patent agent, the Minister of Economic Affairs and Communications shall form a patent agents professional qualifications committee (hereinafter committee) consisting of at least six members, approve the membership thereof and appoint the chairman of the committee.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(2) Two employees of the Patent Office and two patent agents shall be appointed as members of the committee.

(3) The committee has a quorum if the chairman of the committee or, in the absence of the chairman, the member of the committee appointed by the chairman of the committee to substitute for him or her and at least four members of the committee participate in the making of a decision.

(4) Decisions of the committee shall be made by a simple majority vote. If votes are equally divided, the chairman of the committee or the member of the committee substituting for the chairman shall have the deciding vote.

(5) The statutes of the committee shall be established by the Minister of Economic Affairs and Communications.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(6) The activities of the committee shall be financed from the state budget through the budget of the Ministry of Economic Affairs and Communications.

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§ 16. Application for qualification of patent agent

(1) An applicant for the qualification of a patent agent shall submit the following to the committee:

- 1) an application in writing;
- 2) documents certifying compliance with the requirements provided for in clauses 14 (1) 2), 3) and 5) of this Act;
- 3) a report on acts performed while working at a patent agent concerning acts relating to industrial property performed by the applicant (hereinafter report);
- 4) a document certifying the payment of a state fee.

(2) An application for the qualification of a patent agent shall contain at least the following information:

- 1) one of the areas of activity specified in subsection 2 (3) of this Act in which the qualification to operate is applied for;
 - 2) confirmation from the applicant for the qualification that he or she meets the requirements provided for in clauses 14 (1) 1), 4), 6) and 7) of this Act.
- (3) If an application for the qualification of a patent agent does not comply with the requirements provided for in this section, the committee shall make a decision to refuse to accept the application for the qualification of a patent agent for processing and send the decision to the applicant for the qualification within five working days after the date of making the decision.

§ 17. Professional examination for patent agents

- (1) The professional examination for patent agents (hereinafter examination) is the verification of the knowledge of the applicant for the qualification of a patent agent in the area of professional activity in which he or she is applying for the qualification.
- (2) Examinations shall be conducted as needed but not less frequently than once a year.
- (3) The committee shall determine the time and place of an examination.
- (4) The examination is a written examination. The examination consists of the verification of the theoretical knowledge of the examinee and case analyses in the field of industrial property.
- (5) Examination results shall be evaluated on a ten-point scale
- (6) The grade for an examination shall be the average of the grades given by the members of the committee, rounded to the whole number. A grade below five is deemed to be non-satisfactory.
- (7) If an examinee receives a non-satisfactory grade, the applicant for the qualification of a patent agent is deemed to have failed the examination.
- (8) If an applicant for the qualification of a patent agent fails an examination, he or

she may take the examination again after three months.

(9) An applicant for the qualification of a patent agent may take an examination for a third time or more after three years have passed from the last examination.

§ 18. Decision

(1) The committee shall make a decision to award an applicant the qualification of a patent agent if the applicant for the qualification of a patent agent:

- 1) meets the requirements provided for in clauses 14 (1) 2), 3) and 5) of this Act;
- 2) has certified his or her compliance with the requirements provided for in clauses 14 (1) 1), 4), 6) and 7) of this Act;
- 3) has passed an examination.

(2) The committee shall make a decision to refuse to award an applicant the qualification of a patent agent if the applicant for the qualification of a patent agent does not meet the requirements provided for in subsection 14 (1) of this Act or fails an examination.

(3) A decision to award a person the qualification of a patent agent shall enter into force upon the registration of the decision to award the qualification of a patent agent in the register.

(4) A decision to refuse to award a person the qualification of a patent agent shall enter into force after the date of making the decision.

(5) A copy of a decision to award an applicant the qualification of a patent agent shall be sent to the applicant for the qualification of a patent agent and to the register within three working days after the date of making the decision to award the qualification of a patent agent.

(6) A copy of a decision to refuse to award an applicant the qualification of a patent agent shall be sent to the applicant for the qualification of a patent agent and to the register

within three working days after the date of entry into force of the decision to refuse to award the qualification of a patent agent.

(7) A state fee paid for applying for the qualification of a patent agent is not refunded.

§ 19. Suspension and resumption of professional activities of patent agents

(1) The professional activities of a patent agent shall be suspended if:

- 1) the patent agent is unable to perform the duties of a patent agent for health or other reasons for more than six consecutive months;
- 2) the patent agent is bankrupt;
- 3) the company of patent agents through which the patent agent provides legal services is bankrupt;
- 4) the patent agent has filed a request for suspension with the register.

(2) In the cases specified in clauses (1) 2)-4) of this section, the patent agent must submit an application for the suspension of the professional activities of the patent agent and a document certifying grounds for the suspension to the Minister of Economic Affairs and Communications or an official authorised by him or her within five working days after the date on which the grounds for the suspension of the professional activities arise. The patent agent must notify persons to whom he or she provides legal services of an application for the suspension of the professional activities of the patent agent within five working days after the date on which the grounds for the suspension of the professional activities arise.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(3) A decision to suspend the professional activities of a patent agent shall be made by the Minister of Economic Affairs and Communications or an official authorised by him or her within five working days after the date of submission of the application for the suspension of the professional activities of the patent agent or within ten working days after the date on which the grounds for the suspension of the professional activities arise.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(4) A copy of a decision to suspend the professional activities of a patent agent shall be sent to the patent agent and to the register within three working days after the date of making the decision to suspend the professional activities of the patent agent.

(5) In order to resume the professional activities of a patent agent, the patent agent shall submit, to the Minister of Economic Affairs and Communications or an official authorised by him or her, an application and documents certifying that the grounds for the suspension of professional activities have ceased to exist.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(6) On the basis of the application, the Minister of Economic Affairs and Communications or an official authorised by him or her shall make a decision to permit or refuse resumption of the professional activities of a patent agent.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(7) If the qualification of a patent agent has been suspended for longer than five years, the qualification of the patent agent shall be restored after passing the examination specified in § 17 of this Act.

§ 20. Deprivation of qualification of patent agent

(1) A patent agent shall be deprived of his or her qualification as a patent agent if the patent agent:

- 1) has violated the law in the professional activities of a patent agent;
- 2) repeatedly fails to perform the duties provided for in subsection 5 (1) of this Act;
- 3) does not comply with the requirements provided for in subsection 14 (1) of this Act;
- 4) files an application to waive the qualification of a patent agent.

(2) The Minister of Economic Affairs and Communications or an official authorised by him or her shall make a decision to deprive a patent agent of the qualification of a patent agent within ten working days after the date of becoming aware of the grounds for the

deprivation of the qualification of the patent agent.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(3) A decision to deprive a patent agent of the qualification of a patent agent shall enter into force upon the registration of the decision to deprive the patent agent of the qualification of a patent agent in the register.

(4) A copy of a decision to deprive a patent agent of the qualification of a patent agent shall be sent to the patent agent and to the register within three working days after the date of making the decision to deprive the patent agent of the qualification of a patent agent.

Chapter 4

State Register of Patent Agents

§ 21. Establishment of register

- (1) The register shall be established by the Government of the Republic.
- (2) The statutes of the register shall be established by the Government of the Republic.

§ 22. Maintenance of register

- (1) The chief processor of the register is the Patent Office.
- (2) Registry entries are:
 - 1) entries of registration data,

2) entries to amend registration data, and

3) entries to delete registration.

(3) A registry entry is made on the basis of a decision of the Minister of Economic Affairs and Communications or an official authorised by him or her or the decision of a court within five working days after the date of receipt of the documents which are the basis of the registry entry at the register.

(17.12.2003 entered into force 08.01.2004 - RT I 2003, 88, 594)

(4) A registry entry becomes valid on the date on which it is made.

(5) Notices of registry entries are published in the official gazette of the Patent Office.

§ 23. Access to and release of data from register

(1) The register is public. Everyone has the right to examine registry entries and to obtain copies thereof.

(2) A state fee shall be paid for the release of written information from the register except for the release of information to an official with supervisory rights or a court.

§ 24. Registration data

Registration data are:

1) the registration number of a patent agent;

2) the name, personal identification code and details of the patent agent;

3) information concerning the education of the patent agent;

4) the area of professional activity of the patent agent;

5) foreign languages in which the patent agent is proficient to the extent

necessary to carry out his or her professional activities;

- 6) the date of making the decision to award the person the qualification of a patent agent;
- 7) registry card information from the commercial register, address of the place of business and other details of the patent agent or the company of patent agents through which the patent agent operates;
- 8) information concerning decisions to suspend the professional activities of the patent agent, to permit the resumption of the professional activities of the patent agent, to refuse the resumption of the professional activities of the patent agent and to deprive the patent agent of the qualification of a patent agent.

Chapter 5

Final Provisions

§ 25. Application of Act to patent agents entered in register prior to entry into force of this Act

Patent agents entered in the state register of patent agents of the Republic of Estonia shall be re-registered in the register established on the basis of this Act in the same areas of activity in which they had the right to operate prior to entry into force of this Act.

§ 26. State fees

State fees are charged for the performance of acts prescribed in this Act according to the rates provided for in the State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316).

§ 27. Amendment of State Fees Act

The State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316) is amended by adding §§ 147¹⁸ and 147¹⁹ worded as follows:

“§ 147¹⁸. Application for qualification of patent agent

A state fee of 1000 kroons per each area of industrial property indicated in an application for the qualification of a patent agent shall be paid upon the filing of such application.

§ 147¹⁹. Release of information from state register of patent agents

A state fee of 120 kroons per document shall be paid for the release of written information from the state register of patent agents.”

§ 28. Amendment of Trade Marks Act

The Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 91/93, 1500; 1999, 93, 834; 102, 907; 2001, 27, 151; 56, 332; 335) is amended as follows:

1) subsection 9 (2) is amended and worded as follows:

“(2) An applicant may file a registration application and perform procedures related to the registration and continued validity of the trade mark independently or via a patent agent. Natural and legal persons of foreign states shall perform procedures related to the registration of trade marks in the Republic of Estonia and continued validity thereof only via patent agents.”;

2) section 9¹ is repealed.

§ 29. Amendment of Patents Act

Subsection 20 (2) of the Patents Act (RT I 1994, 25, 406; 1998, 74, 1227; 107, 1768; 1999, 84, 764; 2001, 27, 151; 93, 565; 2002, 53, 336) is amended and worded as follows:

“(2) An applicant may file a patent application and perform procedures related to the application for and continued validity of the patent independently or through a patent agent.”

§ 30. Amendment of Utility Models Act

Subsection 18¹ (1) of the Utility Models Act (RT I 1994, 25, 407; 2000, 60, 388; 2001, 27, 151; 2002, 53, 336) is amended and worded as follows:

“(1) An applicant or a patent agent authorised by the applicant shall perform procedures related to the registration or continued validity of the registration of a utility model.”

§ 31. Amendment of Industrial Design Protection Act

Subsection 25 (1) of the Industrial Design Protection Act (RT I 1997, 87, 1466; 2002, 9, 45; 53, 336) is amended and worded as follows:

“(1) An applicant or a patent agent authorised by the applicant shall perform procedures related to the registration or continued validity of the registration of an industrial design.”

§ 32. Amendment of Layout-Designs of Integrated Circuits Protection Act

Clause 19 (1) 4) of the Layout-Designs of Integrated Circuits Protection Act (RT I 1998, 108/109, 1783; 2001, 27, 151; 93, 565; 2002, 53, 336) is amended and worded as follows:

“(4) an authorisation document if the application is filed via a patent agent or if the applicants have a joint representative.”

§ 33. Amendment of Geographical Indications Protection Act

Subsection 28 (1) of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336) is amended and worded as follows:

“(1) An applicant or a patent agent authorised by the applicant shall perform procedures related to the registration or continued validity of the registration of a geographical indication.”

§ 34. Entry into force of Act

This Act enters into force one month after the date of its publication in the *Riigi Teataja*.

¹ RT = *Riigi Teataja* = *State Gazette*