

On approval of the Regulations on the Appeals Board

Unofficial translation

Order of the Minister of Justice of the Republic of Kazakhstan of August 28, 2018 No. 1320. Registered with the Ministry of Justice of the Republic of Kazakhstan on August 29, 2018 No . 17328.

Unofficial translation

Under sub-paragraph 2) of paragraph 2 of Article 3-1 of the Law of the Republic of Kazakhstan “On Protection of Selection Achievements”, sub-paragraph 2) of paragraph 2 of Article 4 of the Law of the Republic of Kazakhstan “Patent Law of the Republic of Kazakhstan”, sub-paragraph 2) of paragraph 2 of Article 3 of the Law of the Republic of Kazakhstan “On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods” and sub-paragraph 2) of Article 4 of the Law of the Republic of Kazakhstan "On Legal Protection of Topologies of Integrated Circuits", **I HEREBY ORDER:**

Footnote. The preamble - as reworded by order of the Acting Minister of Justice of the Republic of Kazakhstan No. 715 from 26.08.2022 (shall come into effect upon expiry of ten calendar days after the day of its first official publication).

1. To approve the attached Regulations on the Appeals Board.
2. The Department of Intellectual Property Rights in accordance with the procedure established by the legislation shall ensure:
 - 1) state registration of this order;
 - 2) within ten calendar days from the date of state registration of this order with the Ministry of Justice of the Republic of Kazakhstan, the direction hereof in Kazakh and Russian languages to the Republican State Enterprise on the Right of Economic Management "Republican Center of Legal Information of the Ministry of Justice of the Republic of Kazakhstan" for official publication and placement in the Reference Control Bank of the Regulatory Legal Acts of the Republic of Kazakhstan;
 - 3) placing this order on the Internet resource of the Ministry of Justice of the Republic of Kazakhstan.
3. Control over the execution of this order shall be entrusted to the supervising Vice-Minister of Justice of the Republic of Kazakhstan.
4. This order shall be put into effect upon expiry of ten calendar days after the day of its first official publication.

Minister

M. Beketayev

Approved
by the order no. 1320 of the
Minister of Justice

Regulations on the Appeals Board

Chapter 1. General Provisions

1. The Regulations on the Appeals Board (hereinafter - the Regulations) have been developed under the Law of the Republic of Kazakhstan “On Protection of Selection Achievements”, the Law of the Republic of Kazakhstan “Patent Law of the Republic of Kazakhstan”, the Law of the Republic of Kazakhstan “On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods”, and the Law of the Republic of Kazakhstan “On Legal Protection of Topologies of Integrated Circuits”.

Footnote. Paragraph 1 - as reworded by order of the Acting Minister of Justice of the Republic of Kazakhstan No. 715 from 26.08.2022 (shall become effective ten calendar days after the date of its first official publication).

2. The Appeals Board is a panel body under the Ministry of Justice of the Republic of Kazakhstan (hereinafter referred to as the Ministry) for pre-trial review of objections of applicants.

3. In its activities, the Appeals Board shall be governed by the Constitution of the Republic of Kazakhstan, international treaties and laws of the Republic of Kazakhstan, other regulatory legal acts, as well as by these Regulations.

4. The Regulations shall use the following notions:

1) the Madrid Agreement - The Madrid Agreement on International Registration of Marks dated April 14, 1891;

2) protocol to the Madrid Agreement- the protocol to the Madrid Agreement on International Registration of Marks dated June 28, 1989;

3) a patent attorney - a capable citizen of the Republic of Kazakhstan, permanently residing at its territory having high education and work experience of at least four years, who passed certification and registered in the register of patent attorneys;

4) the expert organization - Republican State Enterprise on the Right of Economic Management "National Institute of Intellectual Property" Of the Ministry of Justice of the Republic of Kazakhstan;

5) Parties - individuals and (or) legal entities participating in reviewing objections at the Appeals Board.

Chapter 2. Fundamental rights of the Appeals Board

5. The Appeals Board within its competence shall be entitled to:

1) request and receive from the parties the information necessary to perform the tasks assigned to it;

2) involve for consideration of disputes specialists of the appropriate profile from state bodies and employees of the expert organization, as well as organize, if necessary, working meetings;

3) involve representatives of non-governmental organizations concerning the issues within their competence in meetings of the Appeals Board;

4) hear the representatives of the parties at meetings of panels and ask them questions.

Chapter 3. Organization of activities of the Appeals Board

6. The composition of the Appeals Board shall be approved by the order of the Minister of Justice of the Republic of Kazakhstan (or his designated substitute).

The Appeals Board shall be composed of an odd number (not less than five) of members, including representatives of the competent authorities for entrepreneurship, in the field of agro-industrial complex development, in the field of protection of Selection Achievements, in the field of protection of inventions, utility models and industrial prototypes, in the field of science, state support of innovation activity, information and public development, health care and in the field of protection of trademarks, geographical indications and appellations of origin of goods, as well as public councils from these competent authorities.

Footnote. Paragraph 6 as amended by Order No. 404 of the Minister of Justice of the Republic of Kazakhstan dated 23.09.2020 (shall be put into effect ten calendar days after the date of its first official publication); No. 715 of 26.08.2022 (shall enter into force ten calendar days after the date of its first official publication).

7. The composition of the Appeals Board may not include:

1) patent attorneys;

2) spouses, close relatives or relatives-in-law or by marriage;

3) employees of the expert organization.

8. Replacement of any member of the Appeals Board shall be allowed in the event of:

1) withdrawal or challenge, declared by the participants of the meeting of the Appeals Board, on the basis of paragraph 7 of these Regulations;

2) absence due to temporary disability, being on vacation or on a business trip.

9. The chairperson of the Appeals Board shall be the Vice Minister of Justice of the Republic of Kazakhstan. During the absence of the chairperson, the deputy chairperson shall perform his functions.

10. The chairperson of the Appeals Board shall:

1) manage its activities;

2) determine the schedule of the meeting of the Appeals Board, as well as the venue and time of the meetings of the Appeals Board;

3) convene meetings of the Appeals Board and chair them.

11. The materials of the meeting of the Appeals Board, after consultation with the chairperson, shall be communicated to each member of the board of the Appeals Board no later than five working days before the date of the meeting.

12. The functions of the working body of the Appeals Board shall be assigned to the Department for the support of the activities of the Appeals Board, the Commission for recognition of a trademark as well-known, the certification and appeal commissions of the Department on Intellectual Property Rights of the Ministry.

13. The functions of the Appeals Board shall be:

1) receipt of objections submitted to the Ministry, preparing objection materials for consideration by the Appeals Board:

on decisions of the expert organisation on refusal to register a trademark, including refusal to grant legal protection to a trademark applied for under paragraphs 1 and 2 of Article 5 of the Protocol to the Madrid Agreement;

on decisions of the expert organisation on refusal to register and (or) grant the right to use the geographical indication and appellation of origin of goods;

against the registration of a trade mark, including under paragraph 6 of Article 5 of the Protocol to the Madrid Agreement;

against registration and (or) granting the right to use a geographical indication and appellation of origin of goods;

on decisions of an expert organisation to refuse to grant a patent for an industrial property object;

on decisions of the expert organisation refusing to examine the application for granting a patent for a breeding achievement;

on decisions of the expert organisation on refusal to grant a patent for a breeding achievement;

2) preparation and conduct of meetings of the Appeals Board, notification of the parties, drafting decisions of the Appeals Board;

3) revision of the decisions of the expert organization on which the objection has been filed;

4) based on the results of consideration of the appeals of the applicants, making one of the decisions stipulated by item 14 of these Regulations.

Footnote. Paragraph 13 as amended by order of the Acting Minister of Justice of the Republic of Kazakhstan No. 715 dated 26.08.2022 (shall be put into effect upon expiry of ten calendar days after the day of its first official publication).

14. The Appeals Board shall make one of the following decisions:

1) on satisfaction of the objection;

2) on partial satisfaction of the objection;

3) on refusal to review the objection;

4) on refusal to satisfy the objection.

The Appeals Board, on its own initiative, shall not change the subject or the grounds of the objection.

15. The working body of the Appeals Board shall:

1) coordinate the work of the members of the Appeals Board and of the specialists involved in its activities;

2) provide and control the collection and analysis of the materials of objection.

16. The Secretary of the Appeals Boards shall not be a member of the Appeals Board and shall prepare proposals for the schedule of meetings of the panels of the Appeals Board, the necessary documents, materials and the execution of the draft protocol and draft decisions after the meeting.

17. The Appeals Board shall hold meetings in accordance with the schedule of meetings approved by the Chairperson.

18. Excluded by Order No. 193 of the Minister of Justice of the Republic of Kazakhstan dated 15.04.2019 (shall be enforced ten calendar days after the date of its first official publication).

19. Decisions of the Appeals Board shall be made by majority vote by open vote and shall be considered adopted if they receive a majority of votes from the total number of members of the Board of the Appeals Board participating in the meeting. In case of equality of votes, the decision for which the chairperson has voted shall be considered adopted.

20. All members of the Appeals Board shall enjoy equal rights when considering objections. The decision of the Appeals Board shall be made by a majority vote of the total number of its members.

The chairperson shall announce the operative part of the decision taken by the persons participating in the review of the objection.

21. The decision taken shall be forwarded to the persons who participated in the consideration of the objection within ten business days from the date of its issuance. The decision of the Appeals Board shall be in writing and shall comprise of an introductory, descriptive, motivational and operative parts. The decision shall be signed by all members of the Appeals Board.

Footnote. Paragraph 21 - as reworded by order of the Acting Minister of Justice of the Republic of Kazakhstan No. 715 dated 26.08.2022 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

22. The Appeals Board may leave the objection without reviewing upon the request of the applicant of the objection. The decision to leave the objection without reviewing shall be documented by the minutes of the meeting of the Appeals Board.

23. The decision made may be appealed at the court.

24. The Appeals Board shall leave the objection without reviewing, if:

1) the person, who filed the objection, duly notified of the time and date of the meeting of the Appeals Board, not declared about the reviewing of the objection in his absence, has not appear at the meeting of the Appeals Board on the secondary call;

2) there is a motion of a person, submitted the objection on recalling his objection.

25. The decision to leave the objection without reviewing shall be recorded in the minutes of the meeting of the Appeals Board.

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