

## Current Issues of Industrial Property Protection in the Republic of Kazakhstan

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**Abstract:** In the Republic of Kazakhstan property and related personal non-property relations raising from creating, protection and use of innovation, utility model, industrial designs (hereinafter – item of industrial property) are guided by Civil Code of the Republic of Kazakhstan Chapter 52 (Special Part) and Patent Law of the Republic of Kazakhstan. In the meantime the experience in application of the legislation of the Republic of Kazakhstan on inventions, utility models and industrial designs shows that courts investigated rare cases (only 2 for 3 years) on litigating rights to objects of industrial property. Thus legal patent protection of objects of industrial property in the Republic of Kazakhstan is of specific and complicated nature and provides demands of the society for production means and commodities

[Saparbekova Zh.S., Abdullaeva B.S., Nakisheva M.K., Nurmaganbet E.T. **Current Issues of Industrial Property Protection in the Republic of Kazakhstan.** *Life Sci J* 2013;10(12s):503-510] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 84

**Keywords:** Kazakhstan, . property relations, industry.

### 1. Introduction

In the Republic of Kazakhstan property and related personal non-property relations raising from creating, protection and use of innovation, utility model, industrial designs (hereinafter – item of industrial property) are guided by Civil Code of the Republic of Kazakhstan Chapter 52 (Special Part) and Patent Law of the Republic of Kazakhstan.

Industrial property was given statutory regulation in June of Y1992 by adopting the Patent Law of the Republic of Kazakhstan which was one of the first among CIS. This law created a basis to establish patent system of the Republic of Kazakhstan, a basis for putting industrial properties into civil circulation. In order to improve legislation in this field and to achieve compliance of it with Agreement on Trade Related Aspects of Intellectual Property Rights the currently effective Patent Law of the Republic of Kazakhstan was adopted on July 16, 1999.

Historically industrial patent legislation started developing before adoption of General and Special Parts of the Civil Code of the Republic of Kazakhstan (hereinafter – Civil Code of RK) which were put in force in Y1994 and Y1999.

Patent Law of the Republic of Kazakhstan did not describe industrial properties but indicated their patentability [1]. At the same time according to Civil Code of the Republic of Kazakhstan Article 991 Technical Solution[2] is regarded as an invention. Kazakhstan scientists also regard invention as creative technical solution [3] of a certain problem facing the society in science and technology. Expression of “technical solution” does not mean only an issue of technology but solution of a problem using technical

tools by specific method by means of specific devices using specific substances [4, c. 4723].

Russian scientists defined the term of invention as solution of utility problem[5] requiring creative works. Invention means a new and significantly different technical solution of a problem in any field of human activities [6] as any achievement the main point of which is to find competitive ways of solution of problems rising in the field of practical activities [7].

The currently effective Patent Law of the Republic of Kazakhstan states that technical solutions in any field related to a product (mechanism, substance, microbial strain, plant or animal cell culture), ways (procedure for operation on tangible objects using facilities) as well as using of well-known products or ways for new purpose or a new product for specific purpose [1] are protected as an invention.

So invention is a new technical solution of certain problem implemented in any field of activities (agriculture, industry, education, health care, etc.) using technology and production methods. In this case using of formal logical, economical, management, mathematic and other instruments and methods of non-technical kind for solution of the tasks creates different property units besides invention. Because the fact of application of engineering approaches of problem solution determines a distinction between industrial property units and other units of intellectual property.

In order to regard output of creative works as industrial property unit it must meet criteria of patentability. Criteria of patentability provided for by the Patent Law are conditions of industrial property

protection. Unlike technical or design solutions usually called invention or output of industrial design legally invention or industrial design means only solution meeting all legal criteria of patentability and being qualified in accordance with the legislation.

In accordance with Patent Law Article 6 invention is granted legal protection if it is new, has inventive step and is industrially applicable.

Invention is regarded new if it does not form part of the state of the art. Prior art includes any information made available to the public about invention before a date relevant for the priority of the application. At determining novelty of invention the prior art includes applications for inventions and utility models (except for withdrawn ones) submitted in the Republic of Kazakhstan in case of their prior claim and inventions and utility models patented in the Republic of Kazakhstan.

In this case the prior art does not include sources of information related to an invention disclosed by an author, applicant or other person who directly or indirectly received that information from them so that information about the essence of an invention became disclosed to the public [8].

An invention has inventive step if by the state of the art it is non-obvious to a person skilled in the art. A specialist regards an invention not anticipated by prior art if there are no solutions having the same characters as it has or there are some solutions but previous disclosure of invention characters effect on the mentioned technical result is not confirmed. An invention cannot be regarded as non-compliant to an inventive step due to its apparent simplicity and description of mechanism of achievement of the technical result in an application and if such disclosure is not anticipated by prior art but only an application. Previous disclosure of invention characters effect on the technical result can be confirmed by single and several sources of information. It is not required to confirm previous disclosure of invention characters effect on technical result if with regard to these characters such result is not determined by an applicant or when it is found out that the mentioned technical result cannot be achieved.

An invention is industrially applicable if it can be used in the industry, agriculture and other aspects of economics. At determining feasibility of invention using it should be checked whether an application indicates a purpose of invention claimed.

Also it should be checked whether an application describes means and methods which can be used for implementation of invention in manner described in any items of patent claim. With no such information in an application it is allowed that such means and methods are described in the source which became public before the date of invention priority.

Besides it should be checked whether the purpose claimed by an applicant is realistic in case of implementation of invention according to any item of invention claim.

With regard to an invention recognized industrially inapplicable there is no need for check for novelty and inventive step.

Invalid Patent Law dated Y1992 regarded mechanisms, methods, substances, microbial strain, plant or animal cell cultures as well as application of mechanisms, methods, substances, microbial strain for new purpose as object of invention. In its turn the effective Law does not use term of object of invention but gives definition of invention wherein all objects are indicated.

Unlike previous edition new edition of Patent Law divides an invention-technical solution into three groups. The first group comprises a product which mechanisms, substances, microbial strains, plant and animal cell cultures are related to. The second group comprises methods, namely the process of operation on tangible object using facilities. The third group comprises known products and methods for new purpose or new product for certain purpose.

At the same time in accordance with Rules on filling in, execution and review of application for invention, entry of data in the state register of inventions of the Republic of Kazakhstan as well as issue of title of protection approved by Order # 89 of the Ministry of Justice of the Republic of Kazakhstan dated February 24, 2012 (hereinafter – Rules) a product as invention objects is in particular mechanisms, substances, biotechnological product including microbial strain, plant and animal cell cultures. Namely an open-ended list of objects in the field of biotechnological products because expression of “including” is used. This situation tells about conflicts of the effective legislation standards. Of course, in accordance with standards of the Law of the Republic of Kazakhstan “On regulations” standards of the Patent Law[9] must be used. At the same time it cannot be ruled out that there be some questions at implementing standards of the Patent Law in case of application for other kinds of biotechnological products except for microbial strains and plant and animal cell cultures. There is no definition of the mentioned objects in the Patent Law. According to Rules on biotechnological products products recovered for their natural surroundings or produced by other ways are related to objects of invention. The following are given as biotechnological products:

1)animate objects in particular plants, animals, except for selective breeding results, layout of integrated circuits, microorganisms, plant and animal cells, and other elements recovered from plant and animal

organisms or produced by other ways, microbial strains, plant and animal cell cultures.

2) inanimate objects in particular hormones, cytokines, ferments, antigens, antibodies, nucleic acid sequences, plasmids, vectors, etc., recovered from plants, animals or microorganisms or produced by other ways.

So in Rules potential forms of biotechnological products are maximum listed and specified which in its turn has a positive effect on patent system of the country in whole. Because to limit objects of invention by microbial strains and plant and animal cell cultures excludes other biotechnological products from legal protection. Wherefore it had better to extend the list of protected biotechnological products in the Patent Law.

The Patent Law lists discovery as objects which cannot be patented as invention. As in the past during the soviet time it was prohibited to grant patent for discovery so nowadays legislator strongly excludes discovery from patent rights protection. According to consensus of scientists the patent rights protection must not be granted to discovery because discovery does not exhibit characters technical solution does. In its nature invention is output of intellectual creative works of human which results in manufacture of new and industrially applicable object of civil circulation. In its turn discovery is detection, disclosure of the phenomenon existing in the nature, i.e. to make public object or phenomenon existing before but not detected so far.

From future industrial property protection improvement point of view special attention must be given to utility model patent system. In accordance with the patent legislation utility model concerns design of production facilities and commodities as well as their components (equipment). In essence objects of utility model can be only equipment and called "petty patent".

Term of petty patent means that petty patent is similar to invention and is one of invention objects. It means that the same device can be granted patent both for invention and for utility model.

The main differences between utility model and invention are the following:

- 1) Utility model is not granted inventive step
- 2) The term of protection for utility model is shorter than for invention
- 3) Utility models are much cheaper to obtain and to maintain patent
- 4) Process of patent obtaining is simpler.

Criteria of patentability of utility model is its novelty and industrially applicability. As to invention Paris Convention priority applies to utility models as well under similar conditions. Unlike invention utility

models may not meet inventive step criterion according to the legislation.

Circumstances having no effect on novelty of utility models and solutions not protected as utility models are similar to invention.

Object of industrial property which has characters different from other ones is industrial design which visual design of object is related to.

At present industrial design must be new and original [10] in order to be granted patent protection.

Industrial design is regarded new if combination of individual characters applied to an appearance of product and given in the list of individual characters of industrial design is not known to have existed before the priority of industrial design [10].

The industrial design is not regarded as new one if the sources of information have data about the visual design characters of which are identical to all characters given in pictures supported the claim and listed individual characters of industrial design. Industrial design is regarded as original one if according to prior art there is no visual design character of which is identical to one of individual characters of claimed design.

Industrial design is regarded as original when visual designs having the similar characters are detected but the individual characters of claimed design provides esthetic and ergonomic peculiarities which detected ones have no.

Before Y2012 industrial applicability was one of the patentability criteria.

In the Russian Federation visual design of industrial production and handicraft industry establishing its visual appearance [11, 12] is protected as industrial design. Interpretation of this requirement states that the solution is exactly related to industrial production and handicraft industry.

In its turn national patent legislation does not include industrial applicable requirement for industrial design. In the meantime if there is no demand for the created solution in some sectors of economy there is no sense to create this solution.

Industrial design is a way of want-satisfying quality improvement of products and provides their competitiveness at the market. At present not full compliance of products with achievements of science and technology, reliability, long service life and efficiency creates conditions for competitiveness of products. In order to get products being in demand all the time it is required to provide equation of supply and demands. To this end product must be beautiful, of expressive shape, colour, elegant finish, simple and comfortable to use, properly packaged and must meet dictates of fashion. This problem is to be resolved by styling design and protection of industrial design.

Industrial design is not characterized by technical solution as invention or utility model but visual design of product containing not functional properties but visual appearance of hardware (cars, tractors, planes, machines, TV-sets, toys, furniture, etc). In practice industrial design is confused with art works (painting, sculpture, graphic art, etc.). However, industrial design is significantly distinct from art works, because it must perfectly combine functional and aesthetic features of products.

Thus visual appearance of any product cannot be regarded as industrial design if it is not in compliance with technical essence of the product. So visual design can be regarded industrial design if it has artistic expression and information aspect, compositional integrity, efficient form (meeting structural and technological requirements) and is simple and comfortable.

The following is not regarded as industrial designs if :

- 1) it is characterized by only technical functions of a product
- 2) objects of architecture(except for small architectural forms), industrial, hydrotechnical constructions, or other stations
- 3) objects of instable form from liquid, gas, granules or similar substances
- 4) products being in conflict with public interests, humanity and morality principles

The fact of making industrial design related information available to the public by an applicant (author) or any person obtained this information from the applicant including demonstration of the industrial design at the official or officially recognized international exhibits held within the area of the country which is a member of Paris Convention provided that an application be claimed no later than 6 months from the date of disclosure or demonstration at the exhibit is regarded as having no effect on patentability. In this case an applicant is responsible for proving of this fact.

Legal protection is not granted to objects of industrial property recognized as the state classified ones. Procedure for claiming the state classified objects of industrial property is to be determined by the Government of the Republic of Kazakhstan.

Some number of objects covering information of the state secrets is classified facilities of industrial property. At present procedure for payment of remuneration to an author of classified objects of industrial property is not regulated by the legislation. Though before February 9, 2005 in order to protect the state interests, to guide relations associated with creation and use of secret inventions of the Republic of Kazakhstan remunerations were paid to patent

owner for secret inventions at the rate of 10 – 15 times calculation index depending invention value [13].

Norms of the effective in legislation in the field of regulation of classified objects of industrial property provides for specifics of protection document issue for objects of industrial property regarded as secret (classified) [13, 14] procedure for determination of their secrecy degree. In the meantime there is no detailed legal regulation of procedure for review of objections to the results of expert opinion on denial of protection document issue for classified objects of industrial property as well as basis for applicant or patent owner claiming if decision on disclosure of secret.

Holders of a right for invention, utility model, industrial designs are authors, patent owners or other persons obtaining some patent rights according to the legislation or the agreement.

Author of invention, utility models, industrial designs shall be private person who created them. If several private persons were involved in creation of objects of industrial property all of them are recognized as authors (co-authors). Procedure for exercise of a right belonging to co-authors must be agreed by them.

Private person who did not individual creative contribution to creation of object of industrial property and rendered only technical, organizational or financial supports to an author or only facilitated registration of a right for it and use of it is not regarded as an author.

Copyright is an imprescriptible personal right and protected without limit in time. An author has a right to give his name or special one to object of industrial property in case it won't infringe rights of the third parties for trademarks protected in the Republic of Kazakhstan.

Authors of the most important and much used inventions can be awarded degree of Honored Inventor of the Republic of Kazakhstan. Rules on awarding of degree of Honoured Inventor of the Republic of Kazakhstan is determined by the Government of the Republic of Kazakhstan.

Patent owner is a person who a patent for invention, utility models, and industrial designs is issued to. In accordance with the Patent Law of the Republic of Kazakhstan a patent is issued to an author (authors), employer, successor (successors) including a person (persons) obtaining such a right as a cession to mentioned persons jointly if they agrees to[1].

Right for obtaining of patent for invention, utility models and industrial designs created by employees-author during performance of his duties or specific tasks given by employer belongs to employer if otherwise is not stipulated by the agreement between employer and employee.

Inventions, utility models, and industrial designs created by employee are jointly named “official objects of industrial property”. These objects have specific features and make their contribution to development of market of intellectual creative work, in particular, embodied results of new technical solutions. In general official objects of industrial property is a result of creative work of employees working for legal entities when performing their duties as well as tasks of production, scientific and research, art and design or other nature an employer gave to an employee.

Official objects of industrial property in the Republic of Kazakhstan are regulated by out-of-date sub-legislative act requiring improvement and having been in force for 18 years. Thus Provisions on official inventions, utility models and industrial designs created in the Republic of Kazakhstan was approved by Resolution # 896 of the Cabinet of Ministers of the Republic of Kazakhstan dated August 11, 1994 and was amended on August 9, 1996 by Resolution # 987 of the Government of The Republic of Kazakhstan (hereinafter – Provisions) Provisions don’t include amendments made to the Patent Law of the Republic of Kazakhstan to requirements referring to standards of invalid Patent Law of the Republic of Kazakhstan dated July 24, 1992. The mentioned standards stipulate issue of preliminary patent for invention, regulation of relations between employer and employee by the employment contract, National Patent Office under the Cabinet of Ministers of the Republic of Kazakhstan[10]. In this connection we find it required to bring Provisions in compliance with the effective Patent Law of the Republic of Kazakhstan.

Patent Law of the Republic of Kazakhstan Article 10 Item 3 states that a right for obtaining of patent for invention created by author not related to performance of job duties or tasks given by employer but using information from employer as well as material, technical and other resources of employer belongs to author.

At the same time item 2 of this article states approves a right of employer for official invention patent. The mentioned rights can be limited by an agreement to be concluded between employer and employee.

This issue may cause prejudice of employer’s right. Thus employee can create new technical solution independent of permission or prohibition on the part of employer stipulated by the employment agreement using materials resources of employer as well as during work hours or using technical knowledge or means making specifics of the company.

In order to solve this problem it is required to revise standards of the effective legislation in terms of regulation of official objects of industrial property including foreign experience [15, 16, 17, 18, 19, 20, 21]. Based on analysis of the state, peculiarities of development of official objects of industrial property institution in our country made it find expedient to extend the list of objects recognized as official objects of industrial property or to specify objects not recognized as official ones.

So it is required to specify definition of “official objects of industrial property” as “invention, utilities models or industrial designs created by employee when performing his job duties or tasks given by employer as well as using materials resources of employer, working place or during work hours” in the legislation. Besides it is suggested not to recognize inventions, utility models and industrial designs created by employee not associated with performance of job duties or tasks given employer as well as using of financial, technical other materials resources of employer as official object of industrial property.

In practice holders of a right for objects of industrial property face difficulties with filling in of application for a patent. The procedure itself for claiming of application is a difficult process requiring special background not only in the field of legal regulation of relations with regard to industrial property and in the field of execution of documents (description, reference, forms, etc) an application contains. Wherefore many those who want to obtain an patent for objects of industrial property must approach experts highly skilled in the field of patent.

According to the Civil Legislation of the Republic of Kazakhstan any person who an applicant authorizes to represent his interests at expert’s institution [22] can render assistance in claiming an application for a patent. Relations between an applicant b his representative must be documented by the power of attorney.

At present some representatives in filling in applications for objects of industrial property is skilled only in this field and perform their duties at highly skilled level. Persons of such speciality is called patent agent and registered in special state registry. Thus according to the Patent Law patent agents are treated as citizens of the Republic of Kazakhstan who is granted a right for representation of private persons and legal entities at authorized body or expert’s institution in accordance with the legislation of the Republic of Kazakhstan. Interpretation of this statement does not fully describe the status of a patent agent and generalizes all representatives. In order to be recognized as a patent agent first it is required to go through certification and to be registered at the

authorized body. And this is an important feature of a patent agent as distinct from typical representatives in business. In order to clarify definition of patent agents it finds expedient to state limited interpretation of it as person certified and registered as patent agent in the field of intellectual property at the authorized body.

In some cases to approach a patent agent is mandatory in accordance with legislation standards. Patent Law Article 36 Item 4 stipulates that private persons resident outside of the Republic of Kazakhstan or foreign legal entities can exercise their applicant's, patent owner's right as well as interested party at the authorized body or its institutions though patent agents.

In its turn private persons resident in the Republic of Kazakhstan but being currently outside of the country can exercise their rights of applicant or patent owner as well as right of interested party without a patent agent if they indicate the address for service within the Republic of Kazakhstan.

Right for invention, utility models and industrial designs is protected by the law and supported by innovation patent or patent for invention, patent for utility model and industrial designs.

Patent certifies priority of invention, utility models and industrial designs and inventorship and exclusive right for them. Term of patent is originated from Latin expression «*Litterae patentes*» and means "transparent charter" in literal sense. In High Middle Ages a patent was granted by the monarch and certified sole right for production and sale of certain goods. A patent was stamped so that it could be rolled out without breaking a stamp. Later exclusive right for production of some kind of goods was cancelled and introduced for invention i.e. exclusive right for use of technical innovation [23, c. 173]. The first laws which had approaches similar to present approaches to a patent as a document certifying an exclusive right for use of invention were English Statute on Monopolies adopted in 1562, revolutionary France Convention dated January 7, 1791, federal patent Law of USA dated 1790 [24, c. 33-34].

Need for legal protection of invention, utility models and industrial design became urgent during progress in science and technology in XIX-XX centuries. As result of relations between science and technology new subsector of right – right of industrial property was generated.

Definition of industrial property was introduced by Paris Convention on protection of industrial property in 1883, in accordance with Article 1 Item 2 of which the protection of industrial property has as its object patents for inventions, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin. Item 3 of this article states "Industrial property

shall be understood in the broadest sense and shall apply not only to industry and commerce power, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, mineral waters, beer, flowers, and flour" [25].

In the Republic of Kazakhstan term of industrial property is used only for inventions, utility models and industrial design and stipulated only by the Patent Law.

In accordance with international and national systems of patenting depending on subject authorized to claim an application for a patent and to obtain a patent there are first-to-claim system and authoring system of patenting.

Patent applying system is a process whereby a patent is issued to the first applicant regardless he is an author, legal successor of author or a person misappropriating invention of another person. Authoring system of patenting is a process whereby a patent is issued to an author or his successor with indication of name of author except for cases of direct declaration of author's or applicant's not to indicate his name.

Depending on circumstances arising when making decision to issue a patent there are registration system, examination system, intermediate system of patenting. In case of registration system an applicant for issue of a patent is reviewed in order to check for all required documents and compliance of claimed object with terms of patentability but without check for novelty of object. In case of examination system an application for issue of patent is subject to not only formal examination but substantive examination by thoroughly investigation of international novelty of object. Intermediate system has 4 features of both mentioned systems and aimed at non-full examination giving opportunity for challenging of findings based on objections of the third parties.

In the Republic of Kazakhstan Intermediate or-called registration-and-examination system of patenting is valid. In process of registration system formal examination of invention checking for documents and compliance with approved requirements to them is conducted. In addition to it this system includes determination of the date of priority and adherence to principle of unity of invention as well as examination of local novelty and industrial applicability of claimed solution. In this case check for such criteria of invention patentability as international novelty and inventive step are not conducted and protection document (innovation patent) is issued for 3 years with potential prolongation of duration upon request of patent owner but no longer than two years at risk and responsibility of an applicant.

Examination part of patenting system is characterized by full examination of application package (substantive examination) for obtaining a patent which includes examination of invention or industrial design by all criteria of patentability – international novelty, inventive step or originality (industrial design) and industrial applicability (invention). Substantive examination of an applicant includes search of information regarding claimed object for detection of prior art or visual design.

An applicant for protection document is submitted to the expert's organization by author, employer or their successor (hereinafter – an applicant) as well as through a representative including through patent agent. An application can be claimed in electronic version confirmed with electronic digital signature.

The Patent Law stipulates two tiered protection of individual non-property and exclusive rights of right owner. This is an appealing to Appellate Board of the authorized body or the court. These ways of right protection are called general or special proceedings [26, c. 443]. The general one is legal process whereat all disputes arising from violations in the field of patent rights are investigated. Special one is appealing to administrative procedure for protection of violated rights which is the Appellate Board.

The Appellate Board is a department of the authorized body for pre-trial investigation of disputes. The following objections can be filed to the Appellate Board:

- 1) objections to decision of the authorized body (findings of expert's institution) on denial of innovation patent for invention, patent for invention, utility models, industrial designs. These objections are filed by an applicant or his successor directly or through a representative.
- 2) Objections to issue of innovation patent for invention, patent for invention, utility models, industrial designs. It can be filed by any concerned persons directly or through his representative.

Person who files an objection, patent owner has a right to appeal to the court against the decision of the Appellate Board within 6 months from the date of decision making.

An appeal will be reviewed at the meeting of Appellate Board Panel comprising 5 members as minimum. Before reviewing dispute personal composition of the Appellate Board Panel must be kept confidential.

For presentation of findings representatives of scientific organizations and relevant experts can be invited to the meeting of the Appeal Board Panel.

When regulating disputes in essence the Appellate Board Panel will make decision which is accepted by a majority the Appellate Board Panel members' votes. At equality of votes the vote of the Chairman of the meeting of the Appellate Board Panel is final. Based on results of appeal review it is decided as follows:

- 1) To meet appeal
- 2) To partially meet appeal
- 3) To delay review of appeal
- 4) To deny appeal

Within ten working days from the date of decision making the Appellate Board Panel will prepare and distribute the decision of the Appellate Board Panel to parties. The decision of the Appellate Board Panel is prepared in writing form and must contain Introduction, Description, Justification and Findings. The decision of the Appellate Board Panel must be signed by all members of the Appellate Board Panel.

The following way of protection of patent rights is the court protection. The following disputes are subject to the court hearing:

- 1) On copyright for object of industrial property
- 2) On legality of protection document issue
- 3) On determination of patent owner
- 4) On issue of compulsory license
- 5) On violation of exclusive right for use of protection document for object of industrial property and other property rights of patent owner
- 6) On conclusion and fulfillment of license agreements for use of protected object of industrial property
- 7) On right of prior use and right of future use
- 8) On payment of remuneration to author by employer
- 9) On payment of compensation
- 10) Other disputes related to the protection of rights arising from the protection document

Based on the court judgement expert's organization will publish information on charges related to protection document.

Granting of copyright, granting of co-authorship, disclosure of essence of object of industrial property before publication of information about it without getting consent of author or applicant, illegal use of protected object of industrial property, violation of procedure for obtaining of patent for object of industrial property in foreign countries causes administrative and criminal responsibility.

Preliminary patent of the Republic of Kazakhstan issued earlier provided the exclusive right to its holder though it was issued without examination for criteria of patentability stated by the Patent Law of the Republic of Kazakhstan. But when disputing over a

preliminary patent at the court all criteria of patentability are checked for and in case of no even one criterion the preliminary patent is recognized invalid. Similar rule is valid with regard to innovation patent for criterion of international novelty.

In the meantime the experience in application of the legislation of the Republic of Kazakhstan on inventions, utility models and industrial designs shows that courts investigated rare cases (only 2 for 3 years) on litigating rights to objects of industrial property.

Thus legal patent protection of objects of industrial property in the Republic of Kazakhstan is of specific and complicated nature and provides demands of the society for production means and commodities.

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12/7/2013