Belarus Law on Patents for Inventions, Utility Models and Industrial Designs Amended

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The amendments to the Belarus Law on Patents for Inventions, Utility Models and Industrial Designs entered into force on July 7, 2018. The law was amended to keep up with other relevant legislative developments as well as technological advances that were made since the previous set of amendments was adopted in 2010. The law aims to simplify the patent registration process by clarifying key terms and modifying certain deadlines to the benefit of applicants.

One of the main novelties is the inclusion of public domain provisions. According to the amended law, a patent enters the public domain once it expires, is invalidated at the patent holder’s request, the legal entity that owns the patent ceases to exist, or if a patent holder dies without clear heirs or beneficiaries. When a patent enters the public domain, it may be used without the right holder’s consent and without remuneration, provided that the rules defining inventorship are respected.

The law clarifies what can or cannot be recognized as an invention. For instance, methods of medical treatment are not patentable, while computer algorithms can be regarded as inventions.

The concept of ‘dependent patent’ for inventions and utility models is introduced, referring to inventions and utility models containing another invention or utility model already protected by an ‘original patent’.

The maximum term of a utility model is now 10 years instead of eight. It is initially valid for five years and may be extended up to five years, not up to three years as before.

The list of actions not recognized as patent infringement has been broadened to include the following: using medications for preclinical research and clinical testing; studying and testing pesticides or agrochemicals for the purpose of registering them; using inventions, utility models and industrial designs in force majeure circumstances, which may include natural disasters, accidents, epidemics, episodic illnesses, etc.

The amendments clarify that invention assignment agreements must be in written form, otherwise they will be deemed invalid.
In terms of patent registration procedures, under the amended law:

- The IPO should notify the applicant of the refusal decision within five days from the date the decision was issued. This deadline was not specified before.

- If the applicant disagrees with the refusal decision, he may request another patent examination within four months of receiving the refusal decision. This deadline was also not specified before.

- The term for the applicant to reply to a patent-related office action has been extended from two months from the receiving date to three months from the issuance date.

- The deadline for the IPO to publish information related to granted patents in the Official Bulletin has been reduced from six to three months from the date of their registration. The Official Bulletin will now only be available in electronic form.

Prior user rights have been clearly defined. Namely, any person or legal entity that used a solution similar to the one protected by a patent (but created independently of its inventor) before the patent’s priority date or made all the necessary preparations for patent registration reserves the right for its further free use. The scope of the use should be defined in an agreement between the patent holder and the prior user or, in the absence of an agreement, determined by a court.

The period of insufficient use or non-use taken into account when a compulsory license is requested is now three years from the patent publication, for all patents, while it was previously five years for patents for inventions and three years for other types of IP rights.

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