

Order №02 of March 18, 2011 of the Chairman of the Legal Entity of Public Law – National Intellectual Property Center of Georgia Sakpatenti on Approval of the “Statute of the Chamber of Appeals Operating at Sakpatenti”

In accordance with Article 8¹ and Paragraph 2 of Article 9 of the “Patent Law of Georgia”, **the following shall be carried out:**

1. The attached “Statute of the Chamber of Appeals Operating at Sakpatenti” shall be approved.
2. The Order shall enter into force upon the entry into force of its publication.

Chairman

I. Ghvaladze

Statute of the Chamber of Appeals Operating at Sakpatenti

Article 1. General provisions

1. This Statute defines the functions, authority, structure and other aspects of procedure of the Chamber of Appeals operating at the National Intellectual Property Center of Georgia “Sakpatenti” (hereinafter accordingly: “Chamber of Appeals” and “Sakpatenti”).
2. The Chamber of Appeals is established on the basis of Article 9 of the “Patent Law of Georgia” as a dispute resolution authority operating at Sakpatenti and hearing disputes related to Sakpatenti decisions on intellectual property subjectmatters as well as the criteria for their protection, granting patents and registration of other subject-matters of industrial property.

3. The Chamber of Appeals bases its activity upon the Constitution of Georgia, international treaties and agreements applicable in Georgia, the General Administrative Code of Georgia, the current legislation of Georgia in the intellectual property field, other legislative and subordinate normative acts and this Statute.

Article 2. Composition of the Chamber of Appeals

1. The Chamber of Appeals is chaired by the Chairman of Sakpatenti.

2. The Chairman of the Chamber of Appeals issues an order appointing secretaries of the Chamber of Appeals from the staff of the Legal Department. A secretary of the Chamber of Appeals shall ensure sending the correspondence related with the proceedings, including decisions of the Chamber of Appeals, to the parties.

3. The Panel of the Chamber of Appeals (hereinafter: “Panel”) is established by order of the Chairman of the Chamber of Appeals from the staff of Sakpatenti and is composed of three members.

4. The Chairman of the Chamber of Appeals appoints Panel Chairman from the members of the Panel.

5. One of the Panel members shall be a staff member of the Sakpatenti department in charge of the intellectual property subject-matter of the given appeal, and another member – a staff member of the Legal Department.

6. If the issue related with the hearing of the appeal requires special knowledge, which has crucial importance for settling of the case, on the accord of the Panel or on the basis of substantiated motion of the parties, the Panel is entitled to invite at any stage of hearing the case an expert who is not employed by Sakpatenti.

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Article 3. Grounds for recusal

1. It shall be prohibited to participate in the hearing of the case for a Panel member who:

- a) is an interested party in a particular case or shares common rights or obligations with an interested party;
- b) took part in examining of the application and/or taking the decision;
- c) is a relative of an interested party and/or his/her representative.

2. The grounds for recusal defined by Paragraph 1 of this Article shall also apply to the secretary of the Chamber of Appeals and the invited expert referred to in Paragraph 6 of Article 2 of this Statute.

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Article 4. Self-recusal and third party statement on recusal

1. Where grounds for recusal exist, Panel member/secretary shall inform the Chairman of the Chamber of Appeals in writing on self-recusal and state the grounds for self-recusal.

2. In case of self-recusal of a Panel member, the Chairman of the Chamber of Appeals shall consider the issue of self-recusal of the Panel member and issue an order on approving a new composition of the Panel, whereas in case of self-recusal of a secretary, the hearing of the case shall continue with the participation of another secretary.

3. Where an interested party taking part in the appeal proceedings believes that there are grounds for recusal of a Panel member as provided in Article 3 of this Statute, the party shall submit a statement on recusal within 2 working days from the

date of commencement of administrative proceedings or the date on which the party became aware of the grounds for recusal.

4. The Chairman of the Chamber of Appeals shall decide on the recusal of a Panel member/secretary within 5 working days.

5. Where the recusal of a Panel secretary is granted, the hearing of the case shall continue with the participation of another secretary.

6. Where the recusal of a Panel member is granted, the Chairman of the Chamber of Appeals shall issue an order on approval of a new composition of the Panel in accordance with the rule defined in this Statute, and the Panel hearing shall be postponed for no more than two weeks.

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Article 5. Fees

1. Upon filing an appeal with the Chamber of Appeals, the fee stipulated by the Resolution No 182 of July 3, 2010 of the Government of Georgia “On Approval of Fees for the Service Related with Patenting, Registration and Deposition of Intellectual Property Subject-Matters” shall be paid.

2. Once an appeal has been adopted by the Chamber of Appeals for further proceedings, the fee paid for hearing of appeal shall not be refunded, except for the case when after adoption for further proceedings, the appeal is recognized as inadmissible.

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Article 6. Grounds for appealing and referring to the Chamber of Appeals

1. Grounds for appealing to the Chamber of Appeals shall be the following:
 - a) Grounds stipulated in Paragraphs 1, 2 and 3 of Article 40³ of the “Patent Law of Georgia”;
 - b) Grounds stipulated in Paragraph 7 of Article 15¹, Paragraphs 1, 2 and 4 of Article 16 of the “Trademark Law of Georgia”;
 - c) Grounds stipulated in Paragraphs 1, 2 and 3 of Article 20 of the “Law of Georgia on Design”;
 - d) Other cases provided by the legislation.
2. An interested party may file a request with the Chamber of Appeals on recognition of a trademark as well-known in accordance with Paragraph 4 of Article 3 of the “Trademark Law of Georgia”.
3. An appeal may be filed with the Chamber of Appeals within 3 months from the publication/receipt of the decision in question.

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Article 6¹. Filing an Appeal

1. An appeal may be submitted to the Chamber of Appeals in material form or through the electronic system.
2. An appeal shall be submitted with the use of the appeal form approved by the Chairman of the Chamber of Appeals.
3. In case of electronic filing, an appeal shall be submitted using the electronic system of Sakpatenti (hereinafter – “electronic system”) through www.online.sakpatenti.gov.ge.

4. In case of electronic filing of an appeal, the correspondence/order/decision shall be sent to the parties by means of the electronic system of Sakpatenti. The order/decision/notification shall be considered as delivered upon the reflection of the notification concerning the receipt of the order/decision/notification in the electronic system.

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Article 7. Admission of an appeal for hearing and time limits for hearing

1. A Panel shall hear an appeal and render a decision within 3 months from the date of filing the appeal.

2. A special identification number shall be assigned to an appeal on the day of its filing.

3. The date of submission of an appeal to Sakpatenti shall be regarded as its filing date.

4. Within 5 working days from the date of filing an appeal the Chairman of the Chamber of Appeals shall designate a Panel.

5. Where an appeal is found to comply with requirements of Paragraphs 2 and 3 of Article 6¹ and Article 8 of this Statute, the Panel shall render a decision on admission of the appeal for hearing.

6. The date of oral hearing of an appeal shall be notified to the parties at least 7 calendar days before the oral hearing. If necessary, an oral hearing may take place using electronic means of communication.

7. In case of filing an appeal against the decision of Sakpatenti on granting protection to an international trademark in Georgia, the three-month time limit defined for hearing the appeal shall be suspended, on the basis of taking the decision

on admission of the appeal for hearing, from the date of sending the rendered preliminary decision to the International Bureau of the World Intellectual Property Organization (WIPO) until the expiration of the time limit defined by the same decision, or before submission of a position by an interested party, whichever takes place earlier.

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Article 8. Content and admissibility of an appeal

1. An appeal shall be exclusively related to a single application for an intellectual property subject-matter. 2. Repealed (28.01.21. №1)

3. An appeal shall contain:

a) The full title of the Chamber of Appeals;
b) The name/title of the appellant and contact information; b¹) The name/title of the representative, (if the appeal is filed by a representative) and contact information;

c) The title, number and date of the appealed act;
d) The statement as to which part of the act is subject to appeal;
e) The statement as to the essence of the inaccuracy of the act and the specific

request of the appellant;

f) The legal grounds and circumstances that form the basis for the appeal;
g) The list of documents appended to the appeal and the number of pages.

4. In case where an appealed act has been delivered to the appellant, a copy of such an act shall be appended to the appeal.

5. An appeal and the supporting materials shall be submitted to the Chamber of Appeals in as many copies as there are parties to the appeal proceedings.

6. An appeal shall be signed by the appellant.

7. Where an appeal is filed by a representative and/or legal successor, a document certifying the representation/succession shall be appended to the appeal.

7¹. A document certifying the representation/succession of the party shall contain:

a) The principal's name/title, legal address, personal number/identification number, as well as the personal number of the representative (except a patent attorney);

b) The scope of authority of the representative (patent attorney);

c) The date and place of drawing up the power of attorney;

d) The principal's signature;

e) The term of validity of the power of attorney. If the term is not indicated,

the power of attorney shall be valid until the termination of the authority by the trustee.

7². The power of attorney shall be prepared in accordance with the legislation of the country where it is drawn up.

8. The proof of payment of the fee applicable for appeal proceedings shall be appended to the appeal.

8¹. In case of filing an appeal against the registration of a trademark, if the appeal is filed on the basis of Subparagraphs (a)-(g) of Article 5 of the "Trademark Law of Georgia", it shall contain the data concerning all registered trademarks, designs, geographical indications and/or appellations of origin having earlier

priority, or the applications for these subject-matters having earlier priority, on the basis of which the appeal is filed.

8². In case of filing a petition on the request specified in Article 20(4¹) of the Law of Georgia “On Design”, a view of the design in a modified form shall be presented.

9. An appeal shall be inadmissible where:

- a) An appeal is not filed on the grounds stipulated by Article 6 of this Statute;
- b) The term for filing an appeal has expired;
- c) There is a decision of the Chamber of Appeals between the same parties, on the same subject and on the same grounds;
- d) An appeal has been filed by a person who has been recognized as legally incapable by the court;
- e) There is a court decision or ongoing court proceedings between the same parties, on the same subject and on the same grounds.

10. Where an appeal fails to conform to the requirements of Paragraph 2 of Article 6¹ and Paragraphs 1, 3-8¹ of this Article, the Panel shall render a decision on finding an appeal inadequate and define a time limit for the appellant to remedy the shortcoming. Where the shortcoming is not addressed in time, the Panel shall decide to leave the appeal without consideration. In case of finding an appeal inadequate, the time limit defined in Paragraph 1 of Article 7 of this Statute shall be suspended.

11. Once the circumstance that served as grounds for leaving appeal without consideration has been overcome, a party may once again refer to the Chamber of Appeals as defined in Paragraph 3 of Article 6 of this Statute.

12. Where an appeal fails to conform to the requirements of Paragraph 9 of this Article, the Panel shall render a decision on inadmissibility of the appeal.

13. Where grounds for both inadequacy and inadmissibility of an appeal exist, the Panel shall render a decision on inadmissibility of the appeal.

14. The Panel shall decide on admissibility for hearing, inadequacy or inadmissibility of an appeal within 10 working days from the date of designation of the Panel.

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Article 8¹. Commercial Secret

1. Upon submitting an appeal, a reply brief or additional documentation, a person shall indicate that this information is his/her commercial secret. The Panel of the Chamber of Appeals within 15 working days shall consider and take a decision on regarding the indicated information as commercial secret, except for the case when the obligation to disclose the information is stipulated by the law.

2. After 15 working days from taking the decision concerning refusal to regard the information as commercial secret the information becomes disclosed, unless the person who owns this information does not appeal to the court against the decision referred to in this Paragraph before expiration of this term in accordance with the established rule. The person shall notify the Chamber of Appeals immediately.

3. The appealing to the court against the decision concerning refusal to regard the information as commercial secret shall not suspend the hearing of the appeal. Before entry into force of the court decision the documentation containing this information may become available to third parties in confidential form.

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Article 9. Proceedings

1. The decisions taken by the Chamber of Appeals: on designation of the Panel of the Chamber of Appeals, inadequacy of the appeal, admissibility of an appeal for hearing, inadmissibility of an appeal, leaving an appeal without consideration, shall be sent by the Secretary of the Chamber of Appeals to the appellant or his/her representative.

2. After admission of an appeal for hearing by the Panel, the Secretary of the Chamber of Appeals shall send to the interested party a copy of the appeal and the appended materials, as well as that of the decision on admission of the appeal for hearing.

3. An interested party is entitled to submit to the Chamber of Appeals a reply brief, in material form or through the electronic system, within 10 calendar days from the receipt of the copy of the appeal. The reply brief shall be submitted in as many copies as there are parties to the proceedings, except the case when the reply brief is submitted through the electronic system. A reply brief shall be submitted with the use of the form approved by the Chairman of the Chamber of Appeals.

4. An appellant is entitled to withdraw the appeal before taking the final decision on the appeal.

5. Proceedings of the Chamber of Appeals shall be held in the Georgian language.

Article 10. Additional information supplied by interested parties and allusion to new circumstances

1. An interested party shall provide additional documents related to the case no later than 5 working days before the oral hearing.

2. The Panel shall not request or the third party shall not submit additional information, if it contains new circumstances and thereby goes beyond the scope of the appeal.

3. If additional information has been submitted which does not go beyond the subject of the appeal, the oral hearings may be postponed for a reasonable period.

4. Additional information shall be submitted by the third party in as many copies as there are parties to the proceedings.

Article 11. Postponement of oral hearing

1. An oral hearing may be postponed by a reasonable period on the basis of the substantiated motion of interested parties or on the accord of the Panel and the interested parties shall be duly notified thereof.

2. In cases where Paragraph 1 of this Article applies, the time limit referred to in Paragraph 1 of Article 7 shall be suspended.

Article 12. Suspension of proceedings on an appeal

1. On the basis of the substantiated motion of a party or on its own accord, the Panel is entitled to suspend proceedings if a circumstance became apparent which is likely to affect the outcome of the case in question.

2. Once the grounds for suspension of the proceedings cease to exist, the Panel shall renew the proceedings on the basis of the request of a party or on its own accord.

3. In cases where Paragraph 1 of this Article applies, the time limit referred to in Paragraph 1 of Article 7 shall be suspended.

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Article 13. Panel hearing

1. The Panel hearing is chaired by the Panel Chairman.
2. The Chairman opens the hearing and announces the case to be heard.
3. The Chairman presents to the parties the composition of the Panel, the identity of the Secretary of the hearing and explains the right to request recusal.
4. The Chairman briefly summarizes the content of the appeal and the main circumstances indicated in the reply brief.
5. The Chairman shall ensure that the matters of importance to the case are examined in oral hearing and shall give the attending interested party the right to state his/her own opinion on the case.
6. After hearing the explanations from the parties or third persons, on the basis of the motion of a party or on its own accord, the Panel shall hear and examine the disputed evidence.
7. If after completion of the oral hearing before taking a decision by the Panel a new circumstance of importance became apparent, the interested party shall be notified thereof and shall be given an opportunity to state his/her own opinion. The Panel is entitled to consider the newly revealed circumstance in oral hearing.
8. The session related with oral hearing is open to the public. On the basis of the substantiated motion of a party, the Panel Chairman is entitled to declare the session closed in order to ensure the protection of personal data, state, commercial or professional secret.

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Article 14. Record of oral hearing session

1. The course of the oral hearing on an appeal shall be recorded in an audio recording, the making of which shall be ensured by the Secretary of the hearing using technical means.

2. In case of requesting the recording of the record of the oral hearing, the interested party shall be provided with the relevant audio recording in electronic form – in the form of an audio disc.

3. In case of requesting by an interested party, it is allowed to issue the record in written form, within 5 working days after submission of the request.

4. If the record is issued in written form, the record shall be stamped by the Chamber of Appeals.

5. In the record issued in written form the following shall be indicated:

- a) The title of the appeal, the special identification number of the appeal being heard;
- b) The time and place of the hearing;
- c) The identity of the Panel Chairman, members and persons present at the hearing;
- d) The subject of the dispute, the brief description of explanations provided by the parties to the hearing.

6. Regarding the record sent on the basis of Paragraph 3 of this Article an interested party is entitled to submit remark within 3 working days from the receipt of the record. If the Panel agrees with the remark, it confirms its correctness and reflects in the record, and if it does not agree, it takes a decision on the rejection of the remark.

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Article 15. Decision and its entry into force

1. In conclusion of hearing on the case merits, the Panel shall render one of the following decisions on:

- a) granting the appeal;
- b) partially granting the appeal;
- c) refusal to grant the appeal.

2. The Panel shall decide by majority of votes *in camera*.

3. The decision of the Panel shall be signed by the Panel members.

4. A member of the Panel in disagreement with the conclusions of the majority may append his/her dissenting opinion in writing. The dissenting opinion shall be appended to the decision.

5. The Panel decision shall note the identification number assigned to the appeal upon its filing.

6. The decision of the Panel shall be entered on a special blank and stamped.

7. The form of the Chamber of Appeals blank and stamp shall be approved by the Chairman of the Chamber of Appeals.

8. The decision of the Panel in conclusion of hearing on the case merits shall be approved by the order of the Chairman of the Chamber of Appeals.

9. The decision of the Panel and the order of the Chairman of the Chamber of Appeals may be appealed in court in accordance with the legislation of Georgia within 1 month from reviewing/receipt of the Panel decision and the order of the Chairman of the Chamber of Appeals.

Article 16. Rule for amending and entering additions to the Statute

Amendments and additions to the Statute are entered by the order of the Sakpatenti Chairman in accordance with the rule established by the legislation of Georgia.

Article 17. Transitional provisions

1. In case of requesting information/documentation by third parties on the cases heard at the Chamber of Appeals before October 10, 2020, the Panel of the chamber of Appeals, in connection with regarding the information as commercial secret, shall involve in the administrative proceedings relevant interested party/parties and shall discuss the issue of regarding information as commercial secret according to the rule defined by Article 8¹.

2. The record related with the appeals heard before entry into force of this Statute shall be issued in accordance with the rule stipulated by Article 14 of this Statute.

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