

ACT ON AUTHORIZED INDUSTRIAL PROPERTY AGENTS 17.1.2014/22

In accordance with a decision taken by the Parliament, the following is enacted:

Section 1

Authorisation

An agent who handles assignments related to industrial property rights may be granted authorisation in accordance with the provisions of this Act.

Section 2

Industrial property agent's examination

The Industrial property Agents Board organises industrial property agent's examinations, which consist of:

- 1) a common section intended for all participants with separate subsections on the industrial property rights system and ethical standards for agents;
- 2) a section specific to one industrial property right with selective sections focusing on patent law, trademark law and design law.

A certificate will be issued to candidates who have passed the industrial property agent's examination. More specific provisions on the organisation of the industrial property agent's examination and the contents of the certificate may be laid down in a government decree.

Section 3

Participation in an industrial property agent's examination

Candidates who have handled assignments related to industrial property rights for at least one year may take part in the industrial property agent's examination. Candidates who select the section on patent law shall also have a Master's degree in the field of technology or some other suitable higher education degree, and those selecting the section on trademark law or design law shall have a Master of Laws degree or some other suitable higher education degree.

The Industrial property Agents Board may grant an exemption on the educational requirements laid down in Subsection 1 for candidates who have handled industrial property assignments for at least five years and obtained a qualification that the Board considers adequate to prove the candidate's standard of knowledge.

Section 4

Register of Industrial property Agent's Examinations

The Industrial property Agents Board shall maintain a register of candidates having sat an industrial property agent's examination for the purpose of keeping examination data on file and monitoring the effectiveness of the industrial property agent's examination system.

Data to be saved in the Register of Industrial property Agent's Examinations will consist of the candidate's name, identity number, municipality of residence and address, as well as the title of the examination, the candidate's results and the date on which the examination was sat. This data will be kept in the register permanently.

Section 5

Qualification requirements

In order to qualify as an authorised agent referred to in this Act, a candidate shall be of age and fulfil the following requirements:

- 1) they may not be bankrupt, and their legal capacity may not be restricted;
- 2) they must be reliable; and
- 3) they must have passed the industrial property agent's examination referred to in Section 2, and no more than three years may have elapsed from the date on which the examination was sat.

A person who has by a final judgement been sentenced to imprisonment in the last five years, or to a fine in the last three years, for an offence that indicates their obvious unsuitability for serving as an authorised agent, shall not be considered reliable in the sense referred to in Subsection 1(2) above. Neither shall a person be considered reliable if they, by their previous actions, have otherwise shown themselves to be obviously unsuitable for serving as an authorised agent.

Section 6

Procedure for applying for and granting authorisation

If a candidate meets the qualification requirements laid down in Section 5, the Industrial property Agents Board shall grant them authorisation. The authorisation is granted for five years. The validity of the authorisation may be extended by five years at a time if the candidate continues to meet the requirements laid down in Section 5, Subsection 1(1) and 1(2) and proves that they have served in the capacity of an authorised agent during the period of validity of the authorisation.

Applications for authorisation shall be submitted to the Industrial property Agents Board. On request, documents showing that the requirements referred to in Section 5(1) are met must be attached to an application for authorisation. To a notification concerning the extension of an authorisation, documents must be attached to show that the candidate continues to meet the requirements referred to in Section 5(1). This notification must be submitted to the Industrial property Agents Board at the earliest six and at the latest three months before the authorisation expires.

A certificate of authorisation is issued to the candidate. More specific provisions on the contents of the certificate may be laid down in a government decree.

Section 7

Right to use a professional title

Only agents authorised as described in Section 6 shall be entitled to use the [Finnish and Swedish] professional titles of patent agent, trademark agent, design agent and industrial property agent.

It is required that a patent agent has passed the section on patent law, a trademark agent has passed the section on trademark law, a design agent has passed the section on design law, and an industrial property agent has passed the sections on patent law, trademark law and design law in the industrial property agent's examination referred to in Section 2, Subsection 1(2).

Section 8

Good professional practice of industrial property agents

An authorised agent must handle the industrial property assignments entrusted to them honestly and conscientiously, and comply with good professional practice in all of their activities. In particular, an authorised agent shall:

- 2) handle assignments entrusted to them with care, precision and the requisite expeditiousness and without incurring unnecessary costs;
- 2) maintain and develop their professional competence and follow the development of legislation, in particular regarding those forms of industrial property rights in which they specialise;
- 3) decline to accept an assignment concerning the same matter from two or more clients without their consent if the clients' interests or rights in the matter are conflicting, or there is an obvious possibility that a conflict of interest may arise.

Provisions on conduct that is inappropriate or otherwise unfair from the point of view of the consumer are also contained in Chapter 2 of the Consumer Protection Act (38/1978).

Section 9

Confidentiality

An authorised agent or their assistant shall not without permission disclose a private, family, business or professional secret of their client's that has become known to them while performing their duties. Also, an authorised agent or their assistant shall not without permission disclose any other information about their client that has become known to them while performing their duties.

Section 10

Industrial property Agents Board

The Industrial property Agents Board operates in connection with the Finnish Patent and Registration Office and is independent in its decision making.

Section 11

Appointment and composition of the Industrial property Agents Board

The Industrial property Agents Board shall be appointed by the Government for three years at a time. The Board shall consist of a chairperson, a vice chairperson and at least five and at most nine other members. A proposal on the Board's chairperson and vice chairperson shall be given by the Ministry of Employment and the Economy after hearing the Finnish Patent and Registration Office. Each member, excluding the chairperson and the vice chairperson, shall have a personal deputy.

The chairperson and the vice chairperson of the Industrial property Agents Board shall have extensive knowledge of the industrial property sector, they shall each have a Master's degree and at least one of them shall have a Master of Laws degree.

One member of the Industrial property Agents Board and their deputy shall represent the Ministry of Employment and the Economy, and two members and their deputies shall represent the Finnish Patent and Registration Office. Two members and their deputies shall be industrial property agents authorised under this Act. The other members shall have thorough knowledge of the industrial property sector and ensure a balanced representation of expertise in different types of industrial property rights.

The grounds for the fees paid to the chairperson, vice chairperson and the members of the Industrial property Agents Board shall be confirmed by the Ministry of Employment and the Economy.

Section 12

Operation of the Industrial property Agents Board

The Industrial property Agents Board shall be quorate when the chairperson of the meeting and at least one half of the other members are present. Decisions at Board meetings shall be made by a simple majority. In the event of a tie, the Board shall adopt the opinion supported by the chairperson.

In order to discharge its duties, the Industrial property Agents Board may establish one or several sub-committees. More specific provisions on processing of matters by the Board may be laid down in a Government decree.

When the chairperson, a member or an official of the Industrial property Agents Board is discharging their duties under this Act, provisions on criminal liability for acts in office shall apply to them. Provisions on liability for damages are laid down in the Tort Liability Act (412/1974).

Section 13

Supervision

The Industrial property Agents Board shall supervise authorised agents' compliance with their obligations under this Act.

Notwithstanding confidentiality, an authorised agent shall submit any documents and information required for the exercise of oversight to the Industrial property Agents Board.

An authorised agent shall notify the Industrial property Agents Board without delay of any material changes in their qualifications for serving as an agent or other circumstances pertaining to their activities as an agent.

Section 14

Removal of authorisation

The Industrial property Agents Board shall remove an agent's authorisation if the agent:

- 1) requests for a removal of authorisation in writing;
- 2) has not given a notification of extending their authorisation as laid down in Section 6(2);
or
- 3) has failed to pay the supervision fee referred to in Section 19(2) within a reasonable period after having been reminded of non-payment.

If an agent's authorisation has been removed under Subsection 1(2) or 1(3), the authorisation can be reinstituted at the agent's request, provided that the candidate continues to meet the requirements laid down in Section 5, Subsection 1(1) and 1(2). Another precondition for the reinstitution of authorisation in cases referred to in Subsection 1(2) of this Section is that the candidate continues to serve as an agent, and in cases referred to in Subsection 1(3), that the candidate has paid the overdue supervision fees within three years of their authorisation having been removed.

Section 15

Warning and reprimand

The Industrial property Agents Board may issue a warning to an authorised agent if they have:

- 1) with negligence or careless action breached this Act or provisions issued by virtue of it; or
- 2) breached their duties as an authorised agent.

In the event that there are mitigating circumstances regarding the actions of an authorised agent referred to in Subsection 1, the Industrial property Agents Board may reprimand them.

Section 16

Cancellation of authorisation

The Industrial property Agents Board shall cancel authorisation if the agent:

- 1) acts dishonestly while carrying out their duties referred to in Section 8, or has otherwise deliberately or with gross negligence violated this Act or provisions issued by virtue of it;
- 2) despite having received a warning, has repeatedly breached their duties as an authorised agent; or
- 3) no longer meets the requirements laid down in Section 5.

If a shortcoming referred to in Subsection 1(3) can be rectified, the Industrial property Agents Board shall, before making a decision on cancelling the authorisation, set the agent in question a deadline for rectifying the shortcoming.

When handling a matter that concerns the cancellation of authorisation, the Industrial property Agents Board may issue an authorised agent with a warning or a reprimand in the event that the preconditions for cancelling the authorisation are not met, but the agent's actions are reprehensible pursuant to Section 15.

If authorisation has been cancelled under Subsection 1, a new authorisation may be granted once the candidate meets the requirements laid down in Section 5. To an agent whose authorisation has been cancelled pursuant to Subsection 1(1) or 1(2), a new authorisation may however not be granted before three years have elapsed from the date on which the decision to cancel authorisation became final.

Section 17

Penal provisions

A person who, in breach of Section 7 of this Act, deliberately uses the professional title of patent agent, trademark agent, design agent or industrial property agent shall be sentenced to a fine for unauthorised use of the professional title of an authorised agent.

Persons guilty of a violation of confidentiality laid down in Section 9 shall be sentenced under Chapter 38, Section 1 or 2 of the Criminal Code (39/1889), provided that a more severe penalty is not laid down elsewhere in the legislation.

The court shall send the Industrial property Agents Board a copy of a ruling given in a matter referred to in Subsection 1 or 2.

Section 18

Register of Agents

The Industrial property Agents Board shall keep a Register of Agents of the authorised agents for the purpose of supervise the agents' activities and extending their authorisations, and to ensure that those in need of industrial property rights services can ascertain whether a valid authorisation exists.

The name, identity number, municipality of residence, address and business address of an authorised agent shall be saved in the Register of Agents, as well as data on the industrial property agent's examination(s) that the agent has passed and the dates of these examinations, the dates on which authorisation was granted and extended, information on a removal of authorisation under Section 14(1), and sanctions and penalties imposed on an authorised agent under Sections 15 or 16. This data will be kept in the register permanently.

Notwithstanding the provisions in Section 16(3) of the Act on the Openness of Government Activities (621/1999), the Industrial property Agents Board may publish the name, municipality of residence and business address of an authorised agent online. This information must be removed without undue delay if the agent's authorisation has been removed under Section 14 or cancelled by a final decision. However, an authorised agent has the right to refuse to have their information published.

Section 19

Fees

A fee, as laid down in the Act on the fees charged for the services of the Finnish Patent and Registration Office (laki patentti- ja rekisterihallituksen suoritteista perittävistä maksuista 1032/1992) and statutes given by virtue of it, shall be charged for participation in an industrial property agent's examination, entries in the Register of Industrial property Agent's Examinations and the Register of Agents, and of granting and extending an authorisation.

In addition, the Finnish Patent and Registration Office has the right to charge the agents a supervision fee of EUR 250, which will be used to cover the costs of the Industrial property Agents Board's activities. The supervision fee must be paid for the year in which the agent is granted an authorisation referred to in this Act, and additionally for each calendar year at the beginning of which the agent's registration is valid.

Section 20

Appeals

A rectification of a decision made by the Industrial property Agents Board to deny the right to participate in the industrial property agent's examination, to fail a candidate in the industrial property agent's examination, or to reject an application for authorisation or a notification of extending authorisation referred to in Section 6(2) may be requested from the Board as prescribed in Chapter 7 a of the Administrative Procedure Act (434/2003). A decision on a request for rectification may be appealed to the Administrative Court in compliance with the provisions in the Administrative Judicial Procedure Act (586/1996). An Administrative Court decision may only be appealed by petitioning the Supreme Administrative Court if the Supreme Administrative Court grants a leave to appeal.

Rectification of a decision on the supervision fee made by the Finnish Patent and Registration Office may be requested from the Finnish Patent and Registration Office as prescribed in Chapter 7 a of the Administrative Procedure Act. A decision on a request for rectification may be appealed to the Helsinki Administrative Court in compliance with the provisions in the Administrative Judicial Procedure Act. The Administrative Court decision may only be

appealed by petitioning the Supreme Administrative Court if the Supreme Administrative Court grants a leave to appeal.

A person who has been issued a warning or a reprimand for a reason referred to in Section 15 or Section 16(3), or whose authorisation has been removed for a reason referred to in Section 14 Subsection 1(3) or cancelled for a reason referred to in Section 16(1), may appeal the decision to the Market Court as prescribed in the Administrative Judicial Procedure Act. The Market Court ruling may be appealed to the Supreme Administrative Court.

Section 21

Further provisions

Further provisions on the manner in which the work of the Industrial property Agents Board is arranged may be given in rules of procedure confirmed by the chairperson of the Industrial property Agents Board.

Section 22

Entry into force

This Act enters into force on 1 July 2014.

This Act repeals the Act on patent attorneys (laki patenttiasiamiehistä 552/1967).

Section 23

Transitional provisions

Notwithstanding the provisions in Section 11(3) on appointing members who represent authorised agents to the Industrial property Agents Board, when appointing the Board for the first time, two of its members shall be persons handling industrial property assignments and represent a balanced distribution of expertise in different industrial property rights.

A natural person entered in the Patent Agents Register kept by the Finnish Patent and Registration Office as this Act enters into force may be authorised even if they have not passed the industrial property agent's examination referred to in Section 2. A natural person who has been handling trademark or design rights issues that are within the remit of the Finnish Patent and Registration Office for a minimum of two years directly preceding the entering into force of this Act may also be authorised even if they have not passed the industrial property agent's examination referred to in Section 2. The authorisation referred to in this Subsection must be applied for within one year of the entry into force of this Act following the procedure laid down in Section 6(2).

A natural person who has applied for entry in the Patent Agents Register at least three months before this Act enters into force, whose application is pending as this Act enters into force and who meets the preconditions for registration valid as this Act enters into force may also be authorised even if they have not passed the industrial property agent's examination referred to in Section 2. Applications for entry in the Patent Agents Register received by the

Finnish Patent and Registration Office in the last three months before this Act enters into force will not be examined.

Notwithstanding the provisions in Section 7, a natural person who is entered in the Patent Agents Register kept by the Finnish Patent and Registration Office as this Act enters into force may use the professional title they are using as this Act enters into force for one year after the date on which the Act entered into force. This also applies to natural persons handling trademark issues or design rights issues who offer their services under the established professional title of a trademark agent or a design agent.