

The Norwegian Industrial Property Office Act

Act no. 58 of 22 June 2012: Act on the Norwegian Industrial Property Office and the Board of Appeal for Industrial Property Rights

(the Norwegian Industrial Property Office Act)

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REPLACES: Act on the Board of Industrial Property of 2 February 1910 no 7

This is an unofficial translation of the Norwegian Industrial Property Office Act. Should there be any differences between this translation and the authentic Norwegian text, the decision will be made on the basis of the authentic Norwegian text.

Section 1. *The tasks and purpose of the Norwegian Industrial Property Office*

The Norwegian Industrial Property Office shall consider cases concerning industrial property rights as stipulated in the Patents Act, the Business Names Act, the Designs Act, the Trademarks Act and the Precious Metals Act. The Norwegian Industrial Property Office may provide information services and shall otherwise facilitate innovation and value creation by being a centre of competence for industrial property rights.

Section 2. *The organisation of the Norwegian Industrial Property Office*

The Norwegian Industrial Property Office is a public administrative body that is subordinate to the ministry. The Norwegian Industrial Property Office is independent in its consideration of cases pursuant to the statutes mentioned in Section 1 above, and it cannot be instructed in matters concerning its general interpretation of the law, its decisions in individual cases or its handling of lawsuits brought against decisions in such cases. Nor may the King or the ministry reverse decisions made by the Norwegian Industrial Property Office in such matters.

The Norwegian Industrial Property Office is managed by a director general who is appointed by the King in Council.

The King may issue regulations setting out more detailed rules for the organisation of the Norwegian Industrial Property Office and its case processing, and for the Norwegian Industrial Property Office's information services, including payment for such services.

Section 3. *The Board of Appeal for Industrial Property Rights*

The Board of Appeal for Industrial Property Rights (the Board of Appeal) is the appeal body for cases as stipulated in the Patents Act, the Business Names Act, the Designs Act, the Trademarks Act, the Precious Metals Act and the Act relating to the Plant Breeders' Right.

The Board of Appeal is an independent public administrative body that is subordinate to the ministry. Section 2 first paragraph second and third sentences apply correspondingly to the Board of Appeal in its consideration of appeals pursuant to the statutes mentioned in the first paragraph of this section and in connection with lawsuits brought against decisions made by the Board of Appeal in such cases.

The Board of Appeal shall have a chair, a deputy chair and as many members as are necessary in order to perform the tasks assigned to the Board. The chair and deputy chair of the Board must meet the requirements that apply to judges. Moreover, the members of the Board shall have the competence required to ensure that appeals are given satisfactory consideration.

The chair and deputy chair are appointed by the King in Council. The other members of the Board of Appeal are appointed by the ministry for a term of up to five years, with the option of reappointing them. Employees of the Norwegian Industrial Property Office may not be members of the Board of Appeal.

Section 4. *Case processing by the Board of Appeal*

The decisions of the Board of Appeal shall be made by a committee consisting of three members. The chair decides the composition of the committee for each individual case. The chair may decide that a case shall be decided by a committee of five members. The chair may decide an appeal alone if there are no doubts about the case and it is evident what the decision must be.

The Board of Appeal may take account of circumstances that did not exist when the Norwegian Industrial Property Office made its decision in a case.

The King may issue regulations setting out more detailed rules concerning the organisation of the Board of Appeal and its case processing.

Section 5. *Relationship to the Public Administration Act*

Chapter VI of the Public Administration Act concerning appeals against, and the reversal of, administrative decisions does not apply to the Norwegian Industrial Property Office and the Board of Appeal in cases considered pursuant to legislation on the protection of industrial property rights.

Section 6. *Impartiality*

Sections 106 to 108 of the Act relating to the Courts of Justice apply correspondingly to employees of the Norwegian Industrial Property Office and to employees and members of the Board of Appeal in connection with the consideration of cases pursuant to legislation on the protection of industrial property rights.

An employee of the Norwegian Industrial Property Office or an employee or member of the Board of Appeal may not participate in the consideration of a request for an administrative review when the review case concerns an industrial property right that the person in question has been involved in considering in a previous case. This does not apply, however, if the review case only concerns questions that were not raised in connection with the previous case.

Section 7. *Oral hearings and meetings*

At all stages of their case processing, the Norwegian Industrial Property Office and the Board of Appeal shall on their own initiative assess whether it is expedient to hold a meeting with a party or to hold an oral hearing with the parties. If a party who

has due cause requests that a meeting or an oral hearing be held, the Norwegian Industrial Property Office or the Board of Appeal shall accede to the request insofar as this is compatible with proper performance of its public duties, cf. the Norwegian Public Administration Act Section 11 d. In a case involving a dispute between parties, all the parties which the matter in dispute to be discussed concerns shall be summoned to attend an oral hearing.

Section 8. *Experts*

The Norwegian Industrial Property Office and the Board of Appeal may make use of experts. A person who would have been disqualified from deciding a case on grounds of partiality may not be used as an expert. A person who has been used as an expert during the consideration of an application by the Norwegian Industrial Property Office may nonetheless be used as an expert in connection with the consideration of an appeal, administrative patent limitation and administrative review. Experts may be summoned to attend meetings or oral hearings in the case. They may also participate in discussions, but not in voting.

Section 9. *Costs of cases concerning administrative review*

In cases concerning an administrative review, the party in whose favour it is fully or substantially found can be awarded the necessary costs of the case from the opposing party. Among other things, emphasis shall be placed on whether there were good grounds for having the case reviewed because there were grounds for doubt, and whether it is reasonable, based on the type of case and on the circumstances of the opposing party, to hold the latter liable for the costs of the case. In connection with administrative reviews pursuant to the Designs Act and the Business Names Act, costs may only be awarded in appeal cases.

A claim for coverage of costs must be filed before the matter can be decided. The Norwegian Industrial Property Office or the Board of Appeal shall decide the question at the same time as the decision on the merits of the case is made.

If an appeal is fully or partly successful, the Board of Appeal may also change the decision of the Norwegian Industrial Property Office concerning the costs of the case. A decision on the costs of a case considered by the Norwegian Industrial Property Office may be appealed separately to the Board of Appeal. The chair of the Board of Appeal decides such appeals alone.

Awarded costs may be enforced pursuant to the rules that apply to court judgments.

Section 10. *Entry into force and transitional rules*

The Act shall apply from such date as the King may decide. From the same date as the Act enters into force, the Act of 2 July 1910 No 7 concerning the Office for the Protection of Industrial Property shall be repealed.

Sections 7 and 9 only apply to cases where an application, objection, demand for an administrative review or administrative patent limitation etc. is filed after this Act entered into force. The King may issue more detailed transitional rules.

Section 11. *Amendments to other acts*

From the date on which the Act enters into force, the following amendments shall be made to other acts:

