

Pursuant to Article 75 paragraphs 1 & 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

**DECREE
FOR PROMULGATION OF
THE LAW ON INDUSTRIAL PROPERTY**

The Law on Industrial Property, adopted by the Assembly of the Republic of Macedonia on its session held on 12 January 2009, is hereby promulgated.

No. 07-1006/1
12 February 2009
Skopje

President of the
Republic of Macedonia
Branko Crvenkovski

President of the
Assembly of the Republic of
Macedonia,
Trajko Veljanoski

LAW ON INDUSTRIAL PROPERTY

**PART I
GENERAL PROVISIONS**

**Contents of the Law
Article 1**

This Law regulates the acquisition, exercising and protection of industrial property rights.

**Industrial Property Rights
Article 2**

- (1) Industrial property rights shall be: patent, industrial design, trademark, appellation of origin and geographical indications.
- (2) Patent shall be used for protection of invention.
- (3) Industrial design shall be used for protection of new form of body, picture, drawing, contour, composition of colours or their combination – design.
- (4) Trade mark shall be used for protection of trade sign.
- (5) Appellation of origin and geographical indication shall be used for protection of geographical name.

Definitions

Article 3

Certain terms used in this Law shall have the following meaning:

- “Industrial property rights” shall be rights to intellectual creative work and economic ties in the field of industry and trade including agriculture in terms of Article 2 paragraph (1) of this Law;
- “Patent” shall be industrial property right protecting the invention in procedure pursuant to this Law;
- “Industrial design” shall be industrial property right acquired in a procedure in compliance with this Law, and which protects the design;
- “Trademark”(mark for goods, service mark, collective, and certification mark) shall be the industrial property right acquired in a procedure in compliance with this Law and which protects the trade sign;
- “Geographical indication” shall be the industrial property right acquired in compliance with this law by which the geographical name is protected;
- “Appellation of origin” shall be the industrial property right acquired in compliance with this law by which the geographic name is protected;
- “Invention shall be a solution to a technical problem related to a product, a procedure or a material which is the result of a certain procedure;
- “Design” shall be the outer appearance of a product as a whole or its part defined by its designations i.e. lines, contours, colours, shapes, texture, and material from which the product is made, or decorated like and/or its ornaments;
- “Tradesign” shall be a sign that may be presented graphically and fulfils the requirements laid down in Article 175 of this Law;
- “Geographical name” shall be a name and/or designations of the country, the region or the location designating that the product originates from that region;
- “Protected, registered or recognised industrial property right” when used in this Law, shall have the same meaning;
- “Biological material” shall be a material that contains genetic information and may be reproduced alone or in a biological system;
- “Clear biological procedure” shall be a procedure consisting of a natural phenomenon such as crossbreeding or selection;
- “Medical product” shall be any substance or combination of substances in pharmaceutical dosage for the purpose of treatment, diagnosing, or prevention of diseases i.e. for the purpose of prevention, correction or modification of physiological functions of people and animals;
- “Product” shall be a pharmaceutical active ingredient or a combination of active ingredients of the medical product;
- “Basic patent” shall be a patent allocated to any product, including the procedure for manufacturing a product or its use, and which is indicated in the procedure for issuing a certificate;
- “Certificate” shall be a certificate for additional protection of medical products or a certificate for additional protection of products for protection of plants;
- “Plant protection products” shall be active substances and preparations that contain one or more active substances in the form in which they are delivered to the user, to:
 - protect plants or plant products against all harmful organisms or hinder the effects of such organisms, unless such substances or preparations are otherwise defined below;

- impact the life process of plants, without showing characteristics of a nutritive component (for example, regulators of the growth of plants);
- protect plant products;
- exterminate undesired plants; or
- exterminate part of plants, limit or prevent the undesired growth of plants;
- “Substances” shall be chemical elements and their compounds which may occur in a natural or a processed form, including any admixture unavoidably resulting from the production process;
- “Active substances” shall be substances or microorganisms, including also viruses which have general or special effect against harmful organisms or on plants, parts of plants or plant products;
- “Preparations” shall be admixtures or solutions consisting of two or more substances of which at least one is an active substance, and are intended to be used as a product for protection of plants;
- “Plants” shall be living plants or living parts of plants, including also fresh fruit and seeds;
- “Plant products” shall be products of plants in which have not been processed or which underwent simple preparation: grinding, drying or pressing, with the exception of the plants themselves;
- “Harmful organisms” shall be pests on plants or plant products belonging to the world of animals or plants and also viruses, bacteria and microorganisms and other pathogenic agents;
- Paris Convention for the Protection of Industrial Property adopted in 1883, (hereinafter referred to as: “Paris Convention”)
- Agreement on Cooperation in the field of Patents of 19 June 1970, as amended (hereinafter referred to as: “ACP”);
- Madrid Agreement Concerning the International Registration of Marks of 14 April 1891, as amended (hereinafter referred to as: the Madrid Agreement);
- “International Classification of Goods and Services” shall be the classification according to the Nice Agreement concerning the international classification of goods and services for registration of marks of 15 June 1957, as amended;
- „Locarno Classification” shall be the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968, as amended;
- “Paris Union” shall be the union established by the Paris Convention;
- “Hague Agreement Concerning the International Registration of Industrial Design”, Hague document of 28 November 1960, as amended (hereinafter referred to as: Hague Agreement);
- “Agreement on cooperation in the field of patents between the Government of the Republic of Macedonia and the European Patent Organisation and the Provisions regulating the extension of the European patents of 24 June 1997 (hereinafter referred to as “Extension Agreement”);
- European Patent Convention of 5 October 1973, revised on 17 October 1991 and 29 December 2000, adopted by the Administrative Council of the European Patent Organisation on 28 June 2001 (hereinafter referred to as: “EPC”);
- European Patent Office in charge of conducting the procedure to recognise European patents in compliance with the EPC (hereinafter referred to as: “EPO”)
- Patent applications submitted to the EPO which have a fixed date for submission to the EPO (hereinafter referred to as: European applications);
- Patents which the EPO has recognised on the basis of EPC (hereinafter referred to as: European patents);

- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of 27 June, 1989 (hereinafter referred to as: the Madrid Protocol);
- World Trade Organisation, international organisation established by the Marrakesh Agreement (hereinafter referred to as: WTO);
- the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as: “TRIPS”) and
- Convention Relating to International Exhibition signed at Paris on 22 November 1928, last revised on 31 May 1988 (hereinafter referred to as: “Convention for International Exhibitions”).

Principle of legality Article 4

The rights recognised pursuant to this Law may not be used contrary to the Constitution, the laws and the good business practices.

Entities of industrial property rights Article 5

- (1) Entities of industrial property rights shall be national and foreign legal and natural persons.
- (2) The foreign legal and natural persons shall enjoy the same rights as the national legal and natural persons, in accordance with this Law, with regard to the protection of the industrial property rights in the Republic of Macedonia, provided that this arises from the international agreements and conventions or from the application of the principle of reciprocity.
- (3) The existence of reciprocity referred to in paragraph (2) of this Article, shall be proven by the individual that refers to it.

Rights of the entities of industrial property rights Article 6

- (1) The inventor of a patent and the author of industrial design shall have moral and exclusive rights to their creative works laid down by law.
- (2) The entities referred to in paragraph (1) of this Article, as well as the holder of the patent, the industrial design, the mark, the authorised user of appellation of origin and the authorised user of geographical indication, shall also have other rights laid down in the international agreements and conventions, other laws, general acts and contracts.

Moral right Article 7

- (1) It shall be the moral right of the inventor and the author to be stated in the application and documents relating to the patent and the industrial design.
- (2) If the invention or design is the result of the creative labour of more individuals, they shall enjoy the right referred to in paragraph (1) of this Law.

Exclusive rights Article 8

- (1) The exclusive right to the holder of the patent, the industrial design and the trademark shall cover the right of use, availability, right to compensation and right to forbid unlawful use by third parties in the cases and manners provided by the international agreements and conventions, by this law, other laws and a contract.
- (2) The holders of collective trademark and the authorised users of appellation of origin and the geographical indication shall enjoy the rights referred to in paragraph (1) of this Article other than the right to availability.

Competent Institution Article 9

- (1) The works related to the acquiring and safeguarding of the industrial property rights shall be performed by the State Office of Industrial Property (hereinafter referred to as: the Office).
- (2) The Office shall be an administrative organisation with a status of an independent state administrative body with responsibilities laid down with this or other laws.
- (3) The Office has the capacity of a legal person.
- (4) The seat of the Office shall be in Skopje.

Management Article 10

- (1) The Office shall be managed by a director.
- (2) The director shall have a deputy.
- (3) The director of the Office and the deputy shall be appointed and dismissed by the Government of the Republic of Macedonia.
- (4) The director shall represent the Office.

Competences Article 11

The Office shall perform the following tasks:

- to accept applications related to the protection of industrial property rights;
- to carry out administrative procedure to acquire industrial property rights;
- to maintain a register of acquired rights and other registers laid down with this Law;
- publish an official newsletter that includes data on registered and recognised industrial property rights;
- to conduct examination for the representatives in the field of industrial property to protect the industrial property right;
- to prepare proposals to adopt legal and other acts in the field of industrial property;
- to promote the protection of industrial property;
- to represent the Republic of Macedonia and to stand for its interests in international, European and regional organisations for industrial property.

- to launch initiatives concerning the ratification of international agreements and to take care of the delivery of obligations in the field of industrial property arising from the ratification of international agreements signed by the Republic of Macedonia;
- to prepare and publish guidelines, manuals and comments in the field of industrial property;
- to cooperate with other entities involved in the system of protection industrial property rights in the country and abroad; and
- to perform other tasks laid down by law.

Financing Article 12

(1) The operating assets of the Office shall be provided by its own incomes and, if necessary, also by additional resources from the budget of the Republic of Macedonia.

Incomes Article 13

The Office shall use its own incomes for the assignments it performs according to the Madrid Agreement, the Madrid Protocol and the Hague Agreement, the Extension Agreement including from the collection of costs in the procedure and from fees for providing information services.

Relation of the Office with other authorities and users Article 14

The Office shall cooperate with other state administrative bodies, legal and natural entities and associations of citizens in the field of industrial property when performing its activity and shall exchange information with other offices abroad, unless otherwise determined by law for certain type of exchange of information.

Report Article 15

The Office shall report at least once a year regarding their work to the Government of the Republic of Macedonia.

Registers and publication of data from the Office Registers Article 16

- (1) The Office shall maintain registers of registered and recognised industrial property rights and a register of representatives in the field of industrial property.
- (2) The register shall also include the later changes regarding the applicant, the right holder and the right itself.
- (3) The registers of paragraph (1) of this Article shall be public.
- (4) The registers of the Office shall be maintained electronically.
- (5) The data regarding the submitted applications and the recognised industrial property rights shall be published in the official newsletter in compliance with the provisions of this Law.

(6) The official newsletter shall be issued electronically and announced on the web site of the Office.

Types of applications for protection of industrial property rights Article 17

- (1) The protection of industrial property rights in the Republic of Macedonia shall be claimed by filing a relevant application to the Office.
- (2) The Office shall accept applications claiming protection of industrial property rights abroad, when this is in compliance with the international agreements and conventions ratified by the Republic of Macedonia.
- (3) The protection of industrial property rights in the Republic of Macedonia may be claimed also by an application filed abroad provided that it is in compliance with the international agreements and conventions ratified by the Republic of Macedonia.
- (4) The applicant referred to in paragraph (3) of this Article shall be entitled to the same rights as the applicant of a national application, unless otherwise determined by a separate agreement or convention.

Application filing method Article 18

- (1) The application to obtain industrial property rights shall be filed in writing, in person, by mail or electronically.
- (2) The application referred to in paragraph (1) of this Article shall be filed in Macedonian language and its Cyrillic letter.
- (3) The application for acquiring industrial property right may also be filed in a foreign language provided that it includes an indication to the type of protection claimed and data on contact with the applicant in Macedonian language.
- (4) If the application is filed in foreign language, the applicant within 90 days after the date of filing the application in a foreign language, must submit a translation of the application in Macedonian language, otherwise the application shall be deemed withdrawn and shall be concluded to cease the procedure.

Administrative procedure Article 19

- (1) The Office shall decide by a decision in the administrative procedure for obtaining, achieving, maintaining and protecting the industrial property rights.
- (2) In the administrative procedure, the Office shall proceed in compliance with the provisions of this Law and the regulations adopted pursuant to this Law.
- (3) The Law on General Administrative Procedure shall apply on everything which is not provided for in this Law.

Lawsuit against the decisions of the Office

Article 20

- (1) The decisions of the Office referred to in Article 19, paragraph 1 of this Law are final.
- (2) The party shall have the right to initiate administrative dispute against the decisions of the Office.
- (3) Administrative dispute shall be initiated with a lawsuit to the Administrative Court of the Republic of Macedonia.
- (4) The lawsuit shall be filed within 30 days from the date of submitting the decision to the party.

Acting in compliance with international agreements

Article 21

The procedure relating to the filing of applications referred to in Article 17, paragraph (2) and (3) of this Law, the Office shall conduct in compliance with the provisions of this Law and the international agreements ratified by the Republic of Macedonia.

Enforcing rights through a legal representative

Article 22

- (1) In the procedure before the Office, foreign legal and natural persons shall enforce the rights of this Law through an attorney registered to represent them with the Office in compliance with this law.
- (2) The provision of paragraph (1) of this Article shall not be applied in the cases referred to in Articles 48 and 86 of this Law.

Availability of documentation and information of the Office

Article 23

- (1) The Office shall be bound to avail to the interested legal and natural persons its documentation and information on filed and recognised industrial property rights, with the exception of that documentation which is not published in the official newsletter of the Office.
- (2) For the registered industrial property rights, only information contained in the register of applications shall be available.
- (3) Insight in the unregistered application shall be possible only with the permission of the applicant.
- (4) The content and type of information relating to the inventions of microbiological and biological material shall be determined by a regulation adopted by the director of the Office in compliance with the international agreements ratified by the Republic of Macedonia.
- (5) For a written document from the documentation and information referred to in paragraph (1) of this Article, as well as for the other services related to the protection of industrial property, fees shall be paid in compliance with the Tariff of the State Office of Industrial Property.

Fees and charges

Article 24

- (1) Fees shall be paid for acquiring and maintaining industrial property rights, in compliance with the Law on Administrative Fees, as well as special charges for the procedure of right recognition.
- (2) The amount of special charges for the procedure of paragraph (1) of this Article and the charges for providing information services of Article 23, paragraph (5) of this Law shall be determined by the director of the Office by a tariff for which the Government of the Republic of Macedonia provides a consent.
- (3) If the fees for maintenance of the rights of this Law are not paid within the time limits defined by this Law, they may be paid within a period of three months from the date these time limits are over, by paying the regular fee increased by 25%, and it can also be paid in an extended period of up to six months after the date of the expiry of the additional period of three months but in a doubled sum.

PART II

PATENT

Patentable inventions

Article 25

- (1) A patent shall protect an invention in all fields of technology, if it is new, if it contains inventive step and if it is susceptible of industrial application.
- (2) If the requirements referred to in paragraph (1) of this Article are fulfilled, a patent shall also protect an invention that referred to:
 - a product comprising of or containing biological material; and
 - a method for obtaining biological material, for processing it or for using it.
- (3) An invention shall not be considered as invention within the meaning of paragraphs (1) and (2) of this Article if it is:
 - 1) a discovery, scientific theory and mathematic method;
 - 2) an aesthetic creations;
 - 3) a plan, rule and a procedure for carrying out intellectual activities, for games, or for carrying out business activity, as well as computer program;
 - 4) presentation of information; and
 - 5) human body in different stages of its formation and development or simple discovery of one of its elements, including a sequence or a partial sequence of a gene.
- (4) Exception from paragraph (3) of this Article shall be possible only if the application of a patent itself does not relate to some of these subjects.
- (5) Element which is isolated from the human body or produced by means of a technical process containing a sequence or a partial sequence of a gene may also be protected by a patent when the structure of that element is identical with the one of the natural element, whereby the industrial applicability must be contained in the description of invention included in the application form.

Exceptions to patentability Article 26

A patent may not protect an invention:

- which relates to new animal types and plant varieties and clear biological procedures for creating animals and plants, with the exception of biotechnological inventions, for which the technical feasibility is not restricted to a certain type, and microbiological processes and products generated from such processes;
- for surgical and diagnostic procedure or treatment procedure of alive human or animal body, except for an invention that relates to a product, especially a matter or a compound for application of one of these procedures; and
- the application of which is contrary to the public order or moral, whereby, the application of the invention cannot be perceived as such only due to the fact i.e. forbidden by law, especially the inventions relating to: cloning processes and modification of human genetic identity of the inheritance line, the use of human embryos for industrial and commercial purposes, the processes of modification of the genetic identity of animals that would most probably cause suffering without providing any significant medical use for the human or the animal, and also animals resulting from those processes.

Novelty Article 27

- (1) The invention shall be new if it is not covered with the state of the art.
- (2) The state of the art shall mean anything available to the world public, describing the invention in writing or verbally, by using it or in any other manner prior to the date of filing the patent application, in a manner enabling the expert in the relevant field to apply it
- (3) The state of the art referred to in paragraph (2) of this Article shall also include:
 - the contents of the national patent applications, as filed in the Office, except for the patent applications that are rejected, withdrawn, or for which the procedure of examination has been ceased;
 - European patents for which protection on the territory of the Republic of Macedonia is requested as recognised and published by the EPO, in compliance with the EPC and the Extension Agreement; and
 - international applications, filed in accordance with the PCT, submitted to the Office as elected institution.
- (4) Paragraphs (2) and (3) of this Article shall not be an exception from the patentability of any substance or compound covered by the state of the art if they should be used in a method or treatment referred to in Article 26, indent 2 of this Law, if such use is not contained in the state of the art.

Non-prejudicial disclosures Article 28

- (1) When assessing whether the filed invention is new or not in terms of Article 27 of this Law, the fact that the invention has become available to the public prior to the expiry of six months after the date of filing the application in one of the following manners, shall not influence the assessment:

- by apparent misuse against the applicant or its legal predecessor; or
- by displaying the invention at official or officially recognised exhibition by the applicant or its legal predecessor in compliance with the Convention for International Exhibitions.

(2) Paragraph (1), indent 2 of this Article shall apply only if the applicant, when filing the application, invokes to the fact that the invention has been exhibited, and if the applicant submits an evidence in writing issued by an authorised institution of the country where it has been exhibited.

Inventive step Article 29

(1) The invention shall have inventive step if for the expert in the field the subject of the invention is not apparently arising from the state of the art included in Article 27, paragraph (2) of this Law.

Industrial application Article 30

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Entities of patent right Article 31

- (1) Patent granting procedure may be initiated by the inventor and his legal successor.
- (2) If the invention is a product of the joint work of more inventors, then all the inventors or their legal successors shall have the right to initiate a patent granting procedure.

Inventor Article 32

- (1) An inventor shall be a natural person that has created the invention in the course of his creative work.
- (2) An inventor shall not be considered the one who in the creation of the invention has provided only technical assistance.

Inventor's successor in title Article 33

- (1) Inventor's successor in title shall be legal or natural right-owner entitled to acquire a patent right by virtue of law, legal business, inheritance or court decision.
- (2) The employer shall be considered to be inventor's successor in title where by virtue of law or employment contract he has the right to acquire patent for invention created under inventor's employment.

Initiating a procedure
Article 34

- (1) The patent granting procedure shall be initiated by filing the patent application to the Office.
- (2) The patent granting procedure may also be initiated by filing an application in compliance with the PCT, the Extension Agreement and the EPC.

Unity of the invention
Article 35

- (1) A separate patent application shall be filed for any invention.
- (2) One patent application may include even more inventions, which are so interconnected that they make a unique inventive concept.
- (3) The contents of the patent application which fulfill the condition for unity of the invention shall be determined by a regulation adopted by the director of the Office.

Right of priority
Article 36

- (1) Since the date of the receipt of a duly patent application form in the Office, the patent applicant shall have a right of priority against any other person that will later file an application for the same invention.
- (2) There will be an exception from paragraph (1) of this Article if the requirements for recognition of exhibition and union priority right, provided for in Articles 37 and 38 of this Law are fulfilled.

Exhibition priority right
Article 37

- (1) The person who had exhibited an invention at an officially recognised exhibition or fair of international character in the Republic of Macedonia or in any other member state of the Paris Union, or the WTO, within a period of 90 days after the date of closing the exhibition (fair) may request with an application a right of priority, from the first day of exhibition i.e. from the date when starting to use it.
- (2) The application form referred to in paragraph (1) of this Article must be accompanied by a certificate by the competent authority of the member state of the Paris Union or the WTO that the exhibition (fair) is officially recognised in terms of the Convention for International Exhibitions, including data on the type of exhibition or fair, venue, date of opening and closing i.e. date of use.
- (3) The recognising of the right of priority referred to in this Article shall not extend the time limits referred to in Article 38 of this Law.

Union priority right Article 38

(1) The legal or natural person that has duly filed a patent application in one of the member states of the Paris Union or the WTO shall be recognised a priority right in the Republic of Macedonia from the date of filing the first application, if requested so within 12 months from the date of filing the first application.

(2) Duly application referred to in paragraph (2) of this Article shall be any application the filing date of which is determined in compliance with the national legislation of the member state of the Paris Union or of the WTO in which it has been filed or in compliance with the international agreements signed between the member states of the Paris Union, regardless of the subsequent legal result of the application.

Obligations of the patent applicant with union priority Article 39

The patent applicant intending to use the priority right referred to in Article 39 of this Law shall be bound in the application filed in the Republic of Macedonia to include all the data related to the application he invokes to, and within a period of 90 days from the date of filing the application to submit a document on the priority, verified by the competent authority of the member state of the Paris Union or the WTO, where the first application has been filed.

Multiple right of priority Article 40

(1) The patent applicant in the request for grant may invoke to a multiple priority right on the basis of several previously submitted applications in one or more member states of the Paris Union or the WTO.

(2) If the applicant invokes to the multiple priority right, the time limits in accordance with this Law shall start from the date of the recognised priority right, counting from the earliest date of the multiple priority right.

Scope of the requested right of priority Article 41

(1) The claim to recognise the priority right shall cover only those elements of the application contained in the first application or applications, on the basis of which the applicant invokes to the priority right.

(2) If the patent claim, stated in the first application, does not include some of the characteristics of the invention for which the priority right has been requested, for the recognition of the priority right it shall be sufficient if the rest of the elements of the application discover in detail these characteristics.

Certificate for right of priority Article 42

(1) The Office, on the request of the applicant, shall issue a certificate for priority right, that will be valid from the date of filing the patent application.

(2) The contents of the request and the certificate for the priority right shall be laid down with a regulation adopted by the director of the Office.

Contents of the patent application Article 43

(1) The patent application must include:

- 1) request for grant of patent;
 - 2) description of invention;
 - 3) one or more patent claims;
 - 4) abstract concerning the essence of the invention;
 - 5) drawing (if required) to which the description refers and a patent claim;
 - 6) evidence for paid fee for filing; and
 - 7) translation into Macedonian language, if the application was filed in a foreign language.
- (2) Other constituent elements and documents shall be attached to the application referred to in paragraph (1) of this Article.
- (3) The contents and form of the application and the other elements and attachments to the application shall be determined with a regulation adopted by the director of the Office.

Contents of request for grant of patent Article 44

(1) The request for grant of a patent must contain:

- clear indication that grant of patent is required;
- invention name reflecting the essence of the invention; and
- data on the applicant and the inventor.

(2) A written statement that the inventor does not want to be stated in the application must be filed to the Office within 60 days from the date of filing the application.

Description of the invention Article 45

The description of the invention should be clear and precise, so that an expert in a certain field is able to apply it.

Patent claims Article 46

- (1) The patent claims shall determine the item for which the protection is requested.
- (2) The patent claims should be clear and included in the description of the invention.

- (3) The patent claims may be independent and dependent.
- (4) The independent patent claims shall include new, important features of the invention.
- (5) The dependent patent claims shall include the specific features determined by an independent or any other dependent patent claim.

Abstract Article 47

- (1) The abstract shall be a short summary of the essence of the invention with exclusive purpose to provide technical information about the invention.
- (2) The abstract may not be used for the needs of defining the scope of the requested protection.

Filing date Article 48

- (1) The Office shall set the filing date for the patent application if on that day the application includes as follows:
 - 1) clear indication that grant of patent has been requested;
 - 2) data of the applicant, the name and the place of residence i.e. head office; and
 - 3) part that may be considered as a description of the invention.
- (2) For the purpose of setting out the filing date, the foreign legal and natural person may file the application and undertake all the actions related to setting out the filing date without an agent, if they state the address for communication in the Republic of Macedonia.
- (3) Paragraph (1) of this Article shall not apply for applications otherwise determined by international agreement or this Law.

Setting the filing date for the application Article 49

- (1) If the application does not have the contents provided for in Article 48 of this Law, the Office shall notify the applicant that his application is not appropriate and the filing date cannot be accepted.
- (2) The Office shall invite the applicant within 60 days upon the receipt of the invitation in order for him to eliminate the established shortcomings in compliance with paragraph (1) of this Article.
- (3) If the applicant eliminates the shortcomings in the foreseen period, the Office shall set out the filing date of the application.
- (4) Filing date shall be the date of receiving the duly filed application upon which the applicant has proceeded in compliance with the notification, within the meaning of Article 48 of this Law.
- (5) If the applicant within the time limit referred to in paragraph (2) of this Article fails to eliminate the shortcomings, the application shall be deemed withdrawn and a conclusion for termination of the procedure shall be made.

Alterations of the patent application which are not allowed
Article 50

The patent application, the filing date of which has been determined, may not be additionally altered by extending the subject for which protection is requested.

Register of patent applications
Article 51

- (1) The patent application shall be entered in a Register of patent applications.
- (2) The content and the method of maintaining the Register of patent applications and the excerpt from the Register shall be established by a regulation adopted by the director of the Office.

Statement on the method for conducting the examination procedure
Article 52

- (1) The applicant of the patent application referred to in Article 43 of this Law should state in the request for grant of patent whether the procedure of examination will be carried out as:
 - 1) a substantive examination in the institutions referred to in Article 63, paragraph (1) item 1 of this Law;
 - 2) a substantive examination in the institution referred to in Article 63, paragraph (1) item 2 of this Law; and
 - 3) an examination carried out in the Office.
- (2) If the applicant has failed to proceed in accordance with paragraph (1) of this Article, he shall be bound to make a statement within six months after the date specified as the filing date of the application to the Office.

Division of patent application
Article 53

- (1) The applicant may divide the subject of the patent application the filing date of which has been determined (the original application) into two or more applications and to proceed with a separate procedure on the basis of each of them.
- (2) The division of the patent application shall be allowed until a decision for grant of patent is made.
- (3) The patent application arising from the division of the original patent application (divisional application) shall keep the filing date of the original application and the priority of the original patent application.
- (4) The contents and the form of the divisional application shall be established by a regulation adopted by the director of the Office.

Formal examination of the application
Article 54

- (1) After the entering of the patent application in the Register of patent applications, the Office shall check if:

- 1) the required fee has been paid;
 - 2) a translation into Macedonian language of the application has been submitted, when the application is drafted in a foreign language;
 - 3) the patent applicant has stated his opinion on the manner of conducting the procedure of examination referred to in Article 52 of this Law;
 - 4) the drawings referred to in Article 43, paragraph (1), item 5 of this Law have been submitted; and
 - 5) a duly power of attorney has been attached, when the application had been filed by an agent.
- (2) If the patent application does not contain the components stipulated in paragraph (1) of this Article, the Office shall invite the applicant within a period that cannot be longer than sixty days, counting from the date of receiving the invitation, in order to eliminate the identified shortcomings.
- (3) The time limit referred to in paragraph (2) of this Article regarding the elaborate request by the applicant, may be extended for sixty days due to acceptable reasons.
- (4) If the applicant fails to eliminate the shortcomings referred to in paragraph (2) of this Article within the specified period, the Office shall reject the application by a decision.
- (5) Where the application invokes to drawings that are not included in the application, the Office shall invite the applicant to submit the drawings within the specified period.
- (6) If the applicant fails to proceed in accordance with the notification given by the Office referred to in paragraph (5) of this Article, when examining the applications the drawings shall be considered nonexistent.
- (7) If the applicant arranges the application within the prescribed period, the application shall be considered as duly filed.

Request for immediate procedure of considering the application Article 55

- (1) In case of a dispute regarding the application right, the applicant may request the Office to start considering the application immediately.
- (2) A request for immediate procedure of considering the application cannot be submitted prior to the expiry of 12 months from the date of filing the patent application.
- (3) In case of a dispute referred to in paragraph (1) of this Article, the applicant of the patent application must provide evidence from the substantive examination, carried out in one of the institutions referred to in Article 63 of this Law.

Examination of the application in procedure in the Office Article 56

- (1) When examining the patent application, the Office shall check whether:
 - 1) the inventor has been indicated;
 - 2) the priority right recognition has been requested in compliance with Articles 37 and 38 of this Law;
 - 3) the application is in conformity with the unity rule of invention stipulated in Article 35 of this Law;
 - 4) the separate parts of the application comply with Articles 43, 44, 45, 46, and 47 of this Law; and

- 5) the subject of the application is an invention, which at first may be protected by a patent in terms of Article 25, paragraph (3), Articles 26, 27, paragraph (3), and Article 30 of this Law.
- (2) When examining the application, the Office shall not examine whether the requirement stipulated in Article 29 of this Law has been fulfilled.

Shortcomings of the application

Article 57

- (1) The Office shall notify the applicant by a letter, if after the examination it has been established that the requirements stipulated in Article 56, paragraph (1), items 1, 2, 3, and 4 of this Law are not fulfilled, and it shall invite the applicant to eliminate the identified shortcomings within 60 days from the receipt of the notification.
- (2) On the basis of the elaborate request by the applicant, the Office may extend the time limit stipulated in paragraph (1) of this Article at least sixty (60) days.
- (3) The Office shall make a decision to reject the patent application, if the applicant fails to eliminate the shortcomings given in the notice referred to in paragraph (1) of this Article, within the specified period of time.

Decision to reject the patent application

Article 58

- (1) The Office shall make a decision to reject the patent application if the application relates to an invention that may not be protected by a patent in terms of Article 56, paragraph (1), item 5 of this Law.
- (2) The Office may not make a decision to reject the patent application if it has not informed previously the applicant, in writing, about the reasons due to which the requested right cannot be recognised, and if it has not invited the applicant to clarify those reasons within a reasonable time limit.
- (3) At the elaborate request by the applicant, the time limit referred to in paragraph (2) of this Article may be extended to six months.

Payment of costs and fees

Article 59

- (1) If during the procedure of examining the application the Office finds that the requirements and conditions stipulated in Article 56 of this Law have been fulfilled, it shall notify and invite the applicant within 30 days to pay the costs for patent publication in the newsletter of the Office, the costs for issuing a patent certificate and the fee for validity maintenance.
- (2) If the applicant fails to proceed in accordance with the notification referred to in paragraph (1) of this Article, the Office shall make a decision to reject the application.

Decision for grant of patent Article 60

- (1) If the requirements referred to in Article 56 are fulfilled and if the applicant pays the costs and fees stipulated in Article 59, paragraph (1) of this Law within the specified period of time, the Office shall make a decision for grant of patent.
- (2) The data from the decision for grant of patent shall be entered in the patent register on the date of making the decision and shall be published in the official newsletter of the Office within 90 days from the date of making the decision.

Examination of the application on the basis of a substantive examination Article 61

- (1) Articles 54, 55, and 56, paragraph (1), items from 1, 2, 3 and 4 of this Law shall apply to the applications for which the applicant requested procedure for substantive examination.

Evidence and procedure concerning the evidence of the substantive examination Article 62

- (1) The patent applicant who has stated to implement the procedure in compliance with Article 52, paragraph (1) items 1 and 2 of this Law, shall submit a request for substantive examination in one of the examining institutions referred to in Article 63 of this Law, two years at the latest from the date of submitting the patent application to the Office,.
- (2) The person referred to in paragraph (1) of this Article shall submit a copy of the submitted request to the Office.
- (3) The applicant referred to in paragraph (1) of this Article shall be bound, within a period of six months from the date on which it has received the evidence of the examination referred to in Article 64 of this Law, to submit to the Office the evidence and the translation of the evidence in Macedonian language.
- (4) In case that the patent applicant fails to proceed in compliance with paragraphs (1), (2), and (3) of this Article, the Office shall make a decide to reject the application.
- (5) The Office may not make the decision referred to in paragraph (4) of this Article if it previously had not notified in writing the applicant about the reasons for which it rejected the application and if it previously failed to invite the applicant in a reasonable time limit to explain those reasons.
- (6) The applicant or the owner of the exclusive right shall also be bound to present the evidence from the substantive examination when a third party lawsuits due to the infringement of the right to a patent.
- (7) In case of paragraph (6) of this Article, the Office shall issue one of the decisions referred to in Article 66 of this Law by urgent procedure.
- (8) The contents of the evidence of the substantive examination shall be determined by a regulation adopted by the director of the Office.

Institutions for substantive examination Article 63

The substantive examination of the patent application referred to in Article 64 of this Law shall be conducted in:

- 1) one of the selected institutions, which by rule are national and international offices and which on the basis of PCT have a status of authorised institutions for international search i.e. preliminary international examination of international patent applications, or
- 2) some of the institutions with which a special agreement is signed for the purpose of searching and substantive examination.

Contents of the evidence from substantive examination Article 64

- 1) The evidence of the substantive examination shall determine if the invention fully meets the conditions for acknowledgement of the patent right i.e. if the subject of the application is:
 - an invention that may be patent granted in accordance with Articles 25 and 26 of this Law;
 - the invention described in a manner that an expert in the field may apply in accordance with Article 27, paragraph (2) of this Law;
 - invention which is in accordance with the rule of unity of invention referred to in Article 35 of this Law; and
 - invention which is new in accordance with Articles 27 and 28 of this Law, which has inventive step in accordance with Article 29 of this Law, and is applicable in industry in accordance with Article 30 of this Law.

Additional examination Article 65

- 1) The Office shall make the decision laid down in Article 66 of this Law on the basis of the presented evidences from the substantive examination referred to in Article 64 of this Law and on the basis of the additional examinations of this Article.
- (2) The additional examination of patent application shall determine whether the requirements for grant of patent have been satisfied i.e. whether the subject of application is in compliance with Article 56, paragraph (1) item 5 of this Law.
- (3) The Office may not make the decision referred to in Article 66 paragraph (1) item 2 or of this Law if it previously had not notified in writing the applicant about the reasons for which it cannot accept the requested right as a whole or partially and if it previously failed to invite the applicant in a reasonable time limit to explain those reasons.
- (4) Upon an elaborated request by the applicant, the time limit referred to in paragraph (3) of this Article may be extended up to six (6) months.

Decisions based on the evidence from the substantive examination

Article 66

(1) On the basis of the presented evidence, the Office shall determine to what extent the contents and scope of the patent claims regarding the relevant invention meet the conditions of Articles 27, 29, and 30 of this Law and shall issue one of the following decisions:

- 1) a decision that the invention related to the required patent meets all the conditions referred to in Articles 27, 29, and 30 of this Law and that the patent claim or patent claims are fully in compliance with those conditions.
- 2) decision that the invention only partially meets the conditions referred to in Articles 27, 29, and 30 of this Law, and a decision which provides limited further validity of the patent claim or patent claims in a scope that fulfils the conditions; and
- 3) decision to announce nullity at the time when the patent as of the date of filing the patent application does not fulfill the conditions referred to in Articles 27, 29, and 30 of this Law.

Register of patents

Article 67

- (1) The data from the decision for grant a patent, together with the publishing date and number of that decision shall be entered in the Register of patents maintained by the Office.
- (2) The data from the decision rejecting the application for patent granting shall be recorded in the Register of patent applications.
- (3) The contents and manner of maintaining the Register of patents and the excerpt from the registers shall be determined by a regulation adopted by the director of the Office.

Recording changes in the registers

Article 68

- (1) In the Register of patent applications and the Register of patents, the changes relating to the applicant, the right holder and the right itself shall be recorded.
- (2) The changes recorded in the Register of patents shall be published in the official newsletter of the Office.
- (3) The changes recorded, the contents, the form of the request and the procedure for recording the changes shall be laid down with a regulation adopted by the Office.

Publication

Article 69

- (1) The data of the decision for patent granting shall be published in the official newsletter of the Office within 90 days at the latest from the date of adoption of the decision.
- (2) The invention abstract shall be published together with the data of the decision issued in accordance with Article 60 of this Law.
- (3) The first patent claim shall be published together with the data of the decision issued in accordance with Article 66 of this Law, and the number of other patent claims shall be stated.
- (4) The contents of the data of a granted patent which are published in the official newsletter of the Office shall be laid down with a regulation adopted by the director of the Office.

Patent certificate
Article 70

- (1) The Office shall issue the holder of a patent right a certificate within six months from the date of making the decision for grant of a patent.
- (2) On the request of the patent holder, the Office shall issue a patent specification.
- (3) The contents of the certificates and the patent specification shall be laid down with a regulation adopted by the director of the Office.

Confidential patent
Article 71

- (1) The applications for grant a patent relating to defence shall be deemed confidential and are filed to the Minister for Defence.
- (2) If during the examination process of the filed application, the Minister for Defence finds that the invention is not confidential, the application shall be forwarded to the Office.
- (3) The provisions of this Law shall also be applied in the process of patent granting with regard to confidential invention, unless otherwise determined by this Law.
- (4) If during the examination process of the filed application, the Minister for Defence finds that the invention is not confidential, the application shall be forwarded to the Office.
- (5) If during the examination procedure of the application, the Office finds the invention to be confidential, it shall forward the application to the Minister for Defence.
- (6) If the Minister for Defence finds that the invention has ceased to be confidential, the whole subject shall be submitted to the Office.
- (7) After receiving the subject, the Office shall note the patent in the register of patents and shall issue the patent holder a patent certificate or a specification and publish the data within the meaning of Article 60 of this Law.

Use of confidential invention
Article 72

- (1) The Ministry of Defence shall have the exclusive right to use the confidential invention and have at its availability that invention.
- (2) The holder of the right shall be entitled to a one-time compensation for confidential invention which is protected with a patent, regardless if the invention is used for the needs of defence and to what extent.
- (3) The amount of the compensation referred to in paragraph (2) of this Article shall be determined amicably by the right holder and the Minister for Defence.
- (4) In case agreement is not reached, the holder of the patent right, in accordance with the rules outside the proceedings, may request the court to determine the amount of the compensation.

Properties of the confidential patent
Article 73

- (1) The patent related to a confidential invention shall not be published.

- (2) The local and natural persons may request protection of a confidential invention abroad only on the basis of an approval in writing by the Minister for Defence.
- (3) Articles 71 and 72 of this Law shall apply accordingly to the patent applications for grant of a patents for inventions which are of interest to the state security.
- (4) The Minister for Interior shall be competent to decide on the applications referred to in paragraph (3) of this Article.
- (5) The Government of the Republic of Macedonia shall prescribe which inventions are considered as confidential within the meaning of Articles 71 and 73 of this Law, as well as the method of patent granting for such inventions.

Patent validity Article 74

- The patent right shall be valid for 20 years, counting from the date of filing the application.
- (2) The validity of the patent right laid down in paragraph (1) of this Article may be extended to more than 20 years, but not more than 5 years in case when the subject matter of the patent is a medical product, product for plant protection, or a process through which they are produced, for which, prior to placing them on the market, an administrative procedure of authorisation, prescribed by law, needs to be conducted.
- (3) The patent right obtained on the basis of the decision in Article 90 of this Law shall be valid for 10 years from the date of filing the application.

Supplementary protection certificate Article 75

- (1) The validity of the patent right referred to in Article 74, paragraph (2) of this Law may be extended by issuing a certificate.
- (2) The contents of the request and the other constituent elements and attachments to the request for granting a certificate for protection of medical products and a certificate for protection of products for protection of plants shall be defined in details by regulations adopted by the director of the Office.

Conditions for granting a certificate Article 76

The Certificate referred to in Article 75, paragraph (1) of this Law shall be issued if on the date of submitting the request in the Republic of Macedonia:

- 1) there is a valid basic patent for the product;
- 2) the product has been placed on the market on the basis of approval issued in accordance with the regulations regulating the placing of medicines on the market i.e. by the regulations regulating the placing of products for protection of plants on the market;
- 3) the product previously has not been put on the market, or there is no previously issued certificate for the same product as a medical product i.e. as products for protection of plants; and
- 4) the approval laid down in item 2 of this Article is the first approval for placing the product on the market of the Republic of Macedonia as a medical product i.e. as products for protection of plants.

Subject protected by the Certificate Article 77

- (1) The certificate shall be issued for a product protected by a basic patent for which there is an approval for placing on the market and using a medical product or a product for plant protection authorised prior to the expiry of the certificate.
- (2) The right for which the certificate has been issued shall be identical with the right of the basic patent and shall be subject to the same limitations and obligations as the basic patent.

Entities to the right of the Certificate Article 78

- (1) Entities to the right of the certificate shall be the holder of the basic patent or its legal successor.
- (2) In case that there are more holders of the basic patent, the procedure for issuing the certificate may be initiated by the joint representative or any of the holders upon prior consent of the other holders or of their legal successor.

Initiating a procedure for issuing a certificate Article 79

- (1) The procedure for issuing a certificate referred to in Article 75 of this Law shall be initiated by submitting a request for obtaining a certificate by the Office.
- (2) The request for a certificate shall be filed within six months after the date when the first approval for placing the product on the market of the Republic of Macedonia has been issued, or within six months from the date of granting of the basic patent, if the approval to place the product on the market has been issued prior to the granting of the basic patent.
- (3) There is a specific form for submitting the request referred to in paragraph (1) of this Article.

Contents of the requests for issuance of a Certificate Article 80

- (1) There is a specific form for submitting the request for a certificate referred to in Article 79 paragraph 1.
- (2) The approval for placing the product on the market within the Republic of Macedonia, issued by the competent authority, shall be attached to the request.
- (3) Other documents and attachments shall also be attached to the request referred to in paragraph (1) of this Article.
- (4) The contents and the form of the request for issuing a certificate shall be determined by a regulation adopted by the director of the Office.

Formal examination of the request for issuing of a certificate Article 81

- (1) The Office, within the procedure of formal examination, shall examine if:

- 1) the request includes the constituent elements and attachments laid down in Article 75, paragraph (2) of this Law;
 - 2) the request is filed within the period laid down in Article 79, paragraph (2) of this Law; and
 - 3) the attachments laid down in Article 80, paragraph (2) of this Law were filed.
- (2) If the request was not filed in compliance with paragraph (1) of this Article, the Office shall invite the applicant, to correct the identified shortcomings within a period of 60 days, counting from the date of receiving the invitation.
- (3) The time limit set out in paragraph (2) of this Article may be extended for additional 60 days at the most in case of elaborate request by the applicant.
- (4) If the applicant fails to correct the shortcomings within the specified period referred to in paragraph (2) of this Article, the Office shall make a decision to reject the request.

Procedure for examination of the request for issuance of the certificate Article 82

Within the examination procedure for issuing a certificate, the Office shall examine if on the date of filing the request, the conditions for issuing a certificate provided for in Article 76 of this Law have been fulfilled.

Approving the request Article 83

- (1) If the Office finds that the conditions of Article 76 of this Law have been fulfilled, it shall notify the applicant within a period of 30 days to pay the costs for publication the data of the certificate in the official newsletter of the Office, and the fee for validity maintenance.
- (2) If the applicant pays the costs and the fee referred to in paragraph (1) of this Article within the specified period, the Office shall issue a decision for a certificate.
- (3) If the applicant fails to pay the costs referred to in paragraph (1) of this Article, the Office shall conclude to reject the request.

Validity of the certificate Article 84

The certificate shall start to be valid upon the expiry of the legally prescribed period of validity of the basic patent, for a period equal to the time between the date of filing the application for a basic patent and the date of receiving the approval for placing a product on the market of the Republic of Macedonia, but reduced for five years.

Rejecting the request Article 85

- (1) In case it is found that the conditions provided for in Article 76 of this Law have not been fulfilled, or the request has not been filed by a person provided for in Article 78 of this Law, the Office shall notify the applicant in writing on the reasons for which the certificate may not be

issued and shall invite the applicant to elaborate those reasons within the specified time limit that cannot be longer than six months.

(2) In case the applicant fails to state the reasons within the specified period, the Office shall reject the request with a decision.

Fees and charges

Article 86

(1) In the procedure of granting and maintenance of the patent right, fees and charges for the procedure shall be paid:

(2) The annual fees for maintaining the validity of the patent right and the certificate shall be paid counting from the date of filing the patent application.

(3) The annual fee for maintenance of the patent right shall be paid by the beginning of the year for which the fee is paid i.e. by the date of filing the application.

(4) The fees and charges may be paid by anyone without the approval of the agent.

Termination of the patent prior to the expiry of the validity

Article 87

(1) The patent right shall cease to be valid prior to the expiry of the validity period in the following cases:

1) if the prescribed fees are not paid – the day after the date of missing the deadline for fee payment;

2) if the holder waives the right – the day after the date of filing the waiving request to the Office;

3) on the basis of a court decision i.e. act of the Office in the cases provided for in this Law – on the date set out in the decision i.e. in the act and

4) if the legal person i.e. a holder of the patent right has ceased to work – on the date of termination, i.e. if the natural person which is a holder of the patent right has died – on the date of death, or if a disappeared person which is a holder of the patent right is proclaimed dead - on the date when the decision becomes legally effective, unless that right has been assigned to the successors of the legal person i.e. of the natural person.

(2) The Office shall make a decision to terminate the validity of the patent if the conditions referred to in paragraph (1) of this Article occur.

Rights of third parties

Article 88

(1) If a licence, a pledge or another right in favour of a third party is entered in the register of patents, the patent holder may not waive from the rights without a consent in writing by the person under the name of which the licence, the pledge or another right has been registered.

(2) If the patent holder fails to pay the prescribed fee within the specified period, and a licence, a pledge or another right is entered in the register in favour of a third person, the Office shall notify that person that the fee has not been paid and that that person may pay it within six months from the date of the notification and keep the registered right.

(3) In case of a dispute regarding the providing of registered rights to a third party, the court, if necessary for the providing of those rights, may decide the patent right to be assigned to the person under the name of which the license, the pledge, or another right has been registered, until the fulfillment of the obligations.

Exclusive rights

Article 89

(1) The holder of a patent shall have the exclusive right:

- 1) to use the protected invention in production;
- 2) to place on the market items manufactured according to the protected invention, and
- 3) to dispose of the patent.

(2) The patent holder shall have the right to forbid the use of the protected invention in the production or in trade by third parties that do not have a license for such use if such a use relates to production, offering for sale, export, or import and storage of products for those purposes.

(3) The patent holder shall have the right to forbid another person to offer and deliver products which are significant elements for the invention, without his consent, if the one offering and delivering has known or should have known from the circumstances of the case that this product is intended for applying on someone else's invention.

(4) The right laid down in paragraphs (1), (2), and (3) of this Article shall apply to a patent for procedure and to the product derived directly from that procedure.

Exclusive rights of patents in the field of biotechnology

Article 90

(1) The right laid down in Article 89 paragraphs (1) and (2) of this Law shall apply to any biological material with specific characteristics as a result to the invention, and shall be extended to the biological material derived from that biological material by propagation or multiplication in an identical or in a divergent form and having the same characteristics.

(2) The right referred to in Article 89 paragraph (4) of this Law shall apply to the procedure of producing biological material with specific characteristics as a result to the invention and shall be extended to the biological material derived directly from that procedure and from any biological material derived from the biological material by propagation or multiplication in an identical or a divergent form and having the same characteristics.

(3) The right referred to in Article 89 paragraph (3) of this Law shall also apply to a product containing or is comprised of genetic information and shall extend to all biological materials in which genetic information is contained and perform their functions, with the exception of the materials referred to in Article 25, paragraph (5) of this Law.

Free use

Article 91

The right of the patent holder laid down in Article 89 of this Law regarding the exclusive utilisation of the invention shall not relate to:

- 1) utilisation of the invention for personal and non-commercial purposes;

- 2) undertaking activities for research and development of the subject of the protected invention, in particular: manufacture, use, offer for sale, export or import of the protected invention, including also activities for obtaining approval for placing medications for human and veterinary medicine and products for protection of plants on the market; and
- 3) direct and individual preparation of the medicine in pharmacy on the basis on single medical recipe and of procedures which relate to so prepared medicine.

Patent for procedure Article 92

- (1) If the patent is issued for procedure, its application shall also be expanded to the products and materials directly obtained through that procedure.
- (2) In case of a lack of contra evidences, the product shall be considered as obtained through a protected procedure if the product is new, or if there is a reasonable doubt that the product is obtained through a protected procedure and that the holder of a patent was not been in a position, besides the reasonable effort made, to determine the procedure that was used.
- (3) There is a reasonable doubt within the meaning of paragraph (2) of this Article that the product has been obtained through a protected procedure, if the protected procedure is the only known procedure.
- (4) The burden of proof referred to in paragraph (1) shall lay with the alleged infringer if only one of the conditions referred to in paragraph (2) of this Article is fulfilled.

Scope of exclusive right Article 93

The scope of exclusive rights of the patent holder shall be determined in accordance with the text of the patent claims that are finally accepted in the patent granting procedure where the description and the drawings serve to interpret the patent claims.

Right based on previous use Article 94

- (1) The patent right shall not apply on the person, which prior to the filing date of the application or prior to the date of the recognised priority right, has used the invention conscientiously and not in public in the Republic of Macedonia, or has prepared everything i.e. necessary for its use.
- (2) The person referred to in paragraph (1) of this Article shall have the right, without a consent by the holder of the patent, to continue the utilisation of the invention to the extent it has utilised or prepared until the date of filing the patent application for the requested invention.

Exemption from the infringement of the patent right Article 95

It shall not be considered as infringement of the exclusive rights to the patent holder if the subject of the invention relates to products manufactured according to the patent used in the construction or the equipment of ships, aircrafts or land vehicles that belong to any of the states of the Paris Union or the WTO, if such a means of transportation is temporarily or suddenly in

the territory of the Republic of Macedonia, provided that the mounted product serves exclusively for the needs of that vehicle.

Exemption from the infringement of patent right in the field of biotechnology Article 96

(1) The person using the plant material for reproduction, on the basis of the consent by the patent holder, shall not infringe the right referred to in Article 90 of this Law relating to the selling or other types of commercial exploitation of plant material for reproduction, if the product of their own harvest is used it for propagation and multiplication for their own needs and for the needs of their own property.

(2) The person that uses the cattle or other animal reproductive material, on the basis of the consent of the patent holder, shall not infringe the right referred to in Article 90 of this Law relating to the selling or other types of commercial exploitation, if the protected cattle is used for agricultural activities, including reproduction of animals and production of other animal reproductive material for the purposes of their agricultural activity, but not for commercial reproductive purposes.

Compulsory license Article 97

(1) If the patent holder does not use the invention protected by a patent or uses it in a scope which is insufficient to the needs of the national market, and rejects to enter into a license agreement or sets unmarketable conditions for entering into that contract, the right to use the invention, by a compulsory license, may be assigned to another person, with the obligation to pay the fee to the patent holder.

(2) Compulsory license may also be issued if the utilisation of the invention protected by a patent is necessary due to emergency situations in the country, protection of public interest in the area of health, food, protection and promotion of the environment or if it is of particular interest to a certain industrial field or if it is necessary for implementing the judicial and administrative procedure related to protection of competition.

(3) The exemptions in granting compulsory license as referred to in paragraph (1) of this Article shall be possible in the situations referred to in paragraph (2) of this Article, for which the patent holder shall be notified as soon as possible.

(4) Request for a compulsory licence referred to in paragraph (1) of this Article may not be submitted prior to the expiry of a period of four years from the date of filing the patent application i.e. prior to the expiry of a period of three years from the date of the patent granting, in case this period expires later.

(5) A compulsory licence shall not be issued if the patent holder proves that there are legal constraints which justify the fact that invention protected by a patent has not been used or has been insufficiently used.

(6) In the cases referred to in paragraph (2) of this Article, the compulsory license may be issued even prior to the expiry of the period laid down in paragraph (4) of this Article.

Particularities of the compulsory license Article 98

- (1) A compulsory license may not be exclusive.
- (2) The compulsory licence shall be valid as long as there is reason for which it has been issued.
- (3) On the elaborated request of the interested person, the compulsory license shall be cancelled if there are no longer the reasons for which the license has been issued, and there is no possibility for those reasons to occur again, provided that the legitimate rights to the assignee of the compulsory licence are protected.
- (4) The compulsory license may not be transferred, unless the transfer is done together with the production capacity i.e. with part of it that uses the invention for which the license has been issued.
- (5) Compulsory license shall be issued for the needs of the national market, unless it is proved in the legal proceedings that this is contrary to the protection of competition on the market.

Compensation Article 99

- (1) In case a compulsory license is issued, the patent holder shall be entitled to an adequate compensation.
- (2) The amount of the fee shall be set out with an agreement between the patent holder and the user who has been given the license, i.e. who uses the invention protected by a patent.
- (3) The amount referred to in paragraph (2) of this Article shall be adequate to the value of the economic license and the need for harmonisation with the procedure for protection of competition.
- (4) If an agreement on the amount of the compensation referred to in paragraph (2) of this Article cannot be reached, the competent court shall determine the amount of the compensation.
- (5) The user who has been given the license shall not be prevented from using the invention if there is no agreement i.e. court decision.

Compulsory licence for dependent patent Article 100

- (1) A compulsory licence may also be issued if the invention protected by a patent cannot be used as a whole or partially without using another invention protected by a former patent, whereby the later invention, representing a more significant technical improvement, is of particular importance to the economy or to fulfilling the general needs.
- (2) If a compulsory license is issued in accordance with paragraph (1) of this Article, the holder of the previous patent may request a compulsory license to use the invention of the latter patent for a relevant fee.

Competence to grant compulsory license Article 101

- (1) The court competent for settling disputes concerning industrial property rights in legal proceedings shall decide on the issuing of the compulsory license.

- (2) The procedure to issue a compulsory licence shall be initiated with a lawsuit against the patent holder or a supplementary protection certificate protection, which contains a request for issuing compulsory license.
- (3) In the procedure for issuing compulsory license, the patent holder referred to in paragraph (2) of this Article, which is registered in the patent register, shall be considered as a patent holder.

Compulsory license for the needs of public health Article 102

- (1) Any person that has filed an application in compliance with the provisions of this Law may be issued, by the court, a compulsory patent license i.e. a supplementary protection certificate for the needs of production and sale of pharmaceutical products, where such a product is intended to be exported in the importing countries with problems in public health.
- (2) When deciding upon issuing compulsory license, the court shall take into consideration the WTO General Council Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health of 14 November 2001, (hereinafter referred to as: "Decision").
- (3) The pharmaceutical product referred to in paragraph (1) of this Article shall be any product in the pharmaceutical industry, including the medications for human use, which include any substance or mixture of substances designed for treatment or prevention of human diseases including any substance or mixture of substances which may be applied to people in terms of renewal, improvement, or adjustment to their physiological functions by causing pharmaceutical, immunological, or metabolic effects or by giving the medical diagnosis, including active components and accessories to diagnose outside the alive human body.

Importing country Article 103

- (1) Importing country within the meaning of Article 102 paragraph (1) shall be any country in which pharmaceutical products are exported and it can be:
- 1) any least developed country stated as such in the list of the United Nations (UN);
 - 2) any WTO member, except the least developed member state referred to in item (1) of this paragraph, which has send a notification to the TRIPS Council on the intention to use the system as an importing country, either to use the system in that regard as a whole or partially;
 - 3) any country, which is not a WTO member, and which has been listed by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) as a country with low income of gross national product per capita i.e. less than USD 745 and for which the Ministry of Economy is notified about the intention to use the system as an import country, regardless if it will use the system in this way as a whole or partially.
- (2) If a WTO member state has given a statement that it will not use this right, then it shall not fulfill the requirements to use the system as an importing country.
- (3) The importing countries that are not WTO members, and are the least developed countries and developing countries and fulfill the requirements offset out in paragraph (1) of this Article, must fulfill the additional requirements:
- 1) the importing country shall be bound to send a notification directly to the Ministry of Economy;

- 2) the importing country shall be bound to state in the notification that it will use the system to resolve public health problems, and will not use it as a means for achieving industrial and commercial goals, and that it will apply the measures referred to in item 4 of the Decision;
- (4) On the basis of a lawsuit submitted by the right holder or the Ministry of Economy, the court may repeal the compulsory license if the importing country does not comply with the obligations referred to in paragraph (3), item 2 of this Article.

Lawsuit to issue compulsory license for the needs of public health Article 104

- (1) The lawsuit that includes an application for issuing a compulsory license for the needs of the public health shall be submitted to the court in compliance with Article 101 of this Law if there is a patent or a supplementary protection certificate in the territory of the Republic of Macedonia that covers the works for production and sale for the purpose of exporting.
- (2) The one submitting the lawsuit for compulsory license shall be bound to attach the following to the lawsuit:
- 1) applications for compulsory licenses in other countries for the same product, with data on the quantities and the importing countries;
 - 2) the applicant for compulsory license, and in case there is an agent, data about the agent;
 - 3) name of the pharmaceutical product i.e. not subject to protection, which the applicant plans to produce on the basis of compulsory license;
 - 4) quantity of the pharmaceutical product that the applicant plans to produce on the basis of compulsory license;
 - 5) data on the importing country;
 - 6) evidence about the previous negotiations with the right holder in compliance with paragraph (5) of this Article; and
 - 7) evidence about the application of the authorised agent of the importing country or the non-governmental organisation which operates with an authorisation from one or more importing countries or UN bodies or another international health organisation, which operates with an authorisation of one or more importing countries indicating the quantity of the required product.

Preconditions for compulsory license Article 105

- (1) Compulsory license may be issued only if within a period of 30 days prior to submitting the lawsuit, the applicant has unsuccessfully tried to get a consent from the right holder to utilise the protected invention under reasonable conditions and terms.
- (2) The provision of paragraph (1) of this Article shall not apply in case of necessity or other circumstance of final necessity in the country or in case of non-commercial use, in compliance with Article 31, item b) of the TRIPS Agreement.

Notifying the patent holder Article 106

The court, without delay, shall notify the right holder on the application filed for granting a compulsory licence and shall provide opportunity for explanation.

Properties of the issuing compulsory license for the needs of public health Article 107

- (1) The compulsory license may not be exclusive.
- (2) The duration and the scope of the compulsory license stated in the court decision regarding the license shall depend only from the duration of the reason due to which it had been issued.
- (3) The quantity of products that may be produced on the basis of the compulsory license must not exceed the quantity which is necessary to respond to the needs of the importing countries i.e. the importing countries stated in the lawsuit, taking into consideration the quantity of products produced in other countries on the basis of the compulsory license.
- (4) The compulsory license may be transferred only together with the production capacity i.e. with the part of it, in which the invention for which the compulsory license has been issued is used

Requirements for issuing compulsory license for the needs of public health Article 108

- (1) The product which is produced or imported on the basis of a compulsory licence may not be offered for sale or placed on the market of a country i.e. not indicated in the application, except when the importing country, in compliance with item 6, subitem (i) of the Decision, imports in a country that has also signed the regional trade agreement and has the same problem in the field of health.
- (2) The packing or any relevant text must contain a clear indication that the product is a subject to a compulsory license, the name of the court granting the license and the number of the subject, a clear indication that the product is intended exclusively for export and distribution in the importing country or the importing countries and detailed data regarding the product provided for customs authorities in the Republic of Macedonia.
- (3) Compulsory license shall be issued for the needs of the local market, unless proved in the judicial procedure of issuing that this is contrary to the protection of competition on the market.
- (4) If the product for which in the Republic of Macedonia a compulsory license has been issued, is patent granted in the import country indicated in the application, the product may be exported only if that country has issued a compulsory license for export, sale, and/or distribution of that product.
- (5) The conditions under which the license is issued shall not affect the method of distribution in the importing country.

Procedure of issuing compulsory license Article 109

- (1) When deciding upon the application for issuing compulsory licence, the court shall check if:
 - 1) every importing country, member of the WTO and stated in the application, has sent a notification to the WTO in compliance with the Decision i.e. if every importing country, which is not member of the WTO and is stated in the application, has notified the Ministry of Economy in compliance with the provisions of this Article for each product from the application despite of the possibility, which the least developed countries have, in compliance with the Decision;

- 2) the product quantity stated in the application does not exceed that on which the importing country as a WTO member has notified the WTO i.e. the Ministry of Economy,;
- 3) the total quantity of products for which production is allowed with regard to any importing country has not significantly exceeded the quantity on which that country has notified the WTO i.e. the Ministry of Economy, taking into consideration the other granted compulsory licences.
- (2) The court decision shall state the actions for the production of which the applicant shall be authorised, and which are necessary for production, export, and distribution in the country i.e. the countries stated in the application.
- (3) The court decision shall order the products to be clearly marked with special labels or indications that they are produced on the basis of the compulsory licence so that they will differ from those produced by the right holder by the special packing i.e. special colours and shapes, if such a difference is possible and does not have big impact on the price.
- (4) The court in the decision may order the licensee prior to the delivery in the importing country, to put data on the web site concerning the quantity of products that he supplies the importing countries with, the products obtained with the compulsory, as well as the way of labelling those products, and to notify the Ministry of Economy and the Ministry of Health about the website.
- (5) On the basis of the proposal by the right holder for ensuring evidence, the court may pronounce a measure to make an insight in the working books and other documents for license, only to check if all the obligations of the decision to issue a compulsory license are met, in particular, to check the product final destination, whereby the working books and documents must contain an evidence on export of the product in the form of an export declaration that has been inspected by the customs and, as well as import evidence.

Compensation Article 110

- (1) In its decision, the court shall order the applicant to pay compensation to the right holder, which is determined in case of a serious danger to human health or other circumstances in case of urgent necessity or public non-commercial use laid down in Article 31 (b) of TRIPS Agreement.
- (2) The compensation referred to in paragraph (1) of this Article shall amount 4% at the most from the total price paid by the importing countries or which is paid in the interest of such a country.
- (3) Notwithstanding paragraph (2) of this Article, in all other cases, the compensation shall be established by taking into consideration the economic values of the use for which the respective country or the importing countries are authorised, as well as the humanitarian and non-commercial circumstances with regard to the issue of a license.

Refusal of the application for issuing a compulsory license Article 111

- (1) The court shall reject the request for issuing of a compulsory license if it fails to include elements necessary for making the decision or if the conditions for granting a compulsory license laid down in Articles 105 and 108 of this Law, are not fulfilled.

(2) The Court shall not make the decision referred to in paragraph (1) of this Article if it has not previously called the applicant to explain the reasons for which the court is not able to issuing a compulsory license.

Cessation or reconsideration of compulsory license Article 112

(1) The right holder or the licensee has the right to make a lawsuit and ask the court to abolish the compulsory license if it finds out that the opposite party does not respect the decision for issuing of a compulsory license.

(2) In the judgement by which it is decided for cessation of the compulsory license, the court shall define a deadline in which the licensee is obliged, on its own account, to re-intend all the products in its ownership or competence or to allow the importing country to do it or remove it in some other way, in agreement with the right holder.

(3) When the importing country gives an information that the quantity of pharmaceutical products has become insufficient to meet its need, the licensee may file a lawsuit and ask for change of the conditions for issuing a license, for the purpose of production and export of additional quantities of products to the level of the quantities required to meet the needs of the importing country. In such cases the court proceeds urgently. If the required quantity of the product does not exceed 25%, of the total quantity allocated by the basic license, the provisions from Article 109 paragraph (1) item 1 of this Law, shall not be applied.

Notifications Article 113

(1) The Court shall inform, through the Ministry of Economy, the TRIPS Council about the effective verdicts for the issuance of a compulsory license, the conditions under which it has been issued, its cessation and modification.

(2) Data which shall be filed are as follows:

- 1) the name and address of the licensee;
- 2) the product it refers to;
- 3) provided quantity;
- 4) importing country;
- 5) duration of the license;
- 6) address of the web-site according to Article 109 paragraph (5) of this Law.

Prohibition on import Article 114

(1) In the Republic of Macedonia there shall be a prohibition on import of products on the basis of the provisions of this Law, because of free trading, re-import, suspension procedures or because of putting into free zone or free warehouse.

(2) Paragraph (1) of this Article shall not apply in case of repeated export in the importing country stated in the application and identified on the packaging and the supporting documents for the product, or of putting into procedure at customs or transit warehouse or in free zone or free warehouse for the purpose of repeated export in the importing country.

Operation of the customs Article 115

- (1) If there is a ground to suspect that the products produced on the basis of the compulsory license issued in accordance with the provisions of this Law are imported on the territory of the Republic of Macedonia, contrary to the provisions referred to in Article 113 paragraph (1) of this Law, the customs authorities shall retain for checking the concrete products as long as necessary, but up to ten working days at the most. In case of special circumstances, the customs authorities may decide to extend the deadline for additional ten working days at the most.
- (2) The customs authorities shall, without delay, inform about the retention referred to in paragraph (1) of this Article, the right holder and the producer or exporter of these products, and shall invite them to submit data and evidence for the products.
- (3) If customs authorities, within the period of retention, find out that there is infringement of the compulsory license, contrary to the prohibition referred to in Article 114 paragraph (1) of this Law, they shall confiscate the products and withdraw them from the market, in accordance with the customs regulations.
- (4) Procedure for retention and confiscation shall be on the account of the importer, in accordance with the customs regulations. In solidarity with the importer, any other person, which has tried to make unlawful import, shall be held responsible for the costs.
- (5) If it is established that by the import of products which are retained in accordance with the provisions of this Article, there has been infringement of the ban referred to in Article 114 paragraph (1) of this Law and if the customs regulations have been respected, the customs authorities shall place the products on the market in the territory of the Republic of Macedonia.
- (6) The customs authorities shall report to the Ministry of Economy with regard to the confiscation and destruction of products in accordance with the provisions of this Article.

APPLICATION FORMS FILED ACCORDING TO INTERNATIONAL AGREEMENTS

Application forms filed through the Office as receiving office in accordance with PCT Article 116

- (1) The provisions of PCT and the provisions of this Law shall be applied to the applications which are internationally filed through the Office as receiving office.
- (2) The applications referred to in paragraph (1) of this Article shall be filed in English language.
- (3) The contents of the application and the form of the applications referred to in paragraph (1) of this Article shall be established by a regulation adopted by the director of the Office.

Applications in which the Office is designated or elected office in accordance with PCT Article 117

- (1) The provisions of PCT and the provisions of this Law shall be applied to the applications filed to the Office as designated or elected office.

(2) The contents of the application and the form of the request for the applications referred to in paragraph (1) of this Article shall be established by a regulation which is adopted by the director of the Office.

Applications which are filed in accordance with the Extension Agreement Article 118

(1) The provisions of the Extension Agreement and the provisions of this Law shall be applied to the applications filed in accordance with the Extension Agreement.

(2) The contents of the application and the form of the requests for the applications referred to in paragraph (1) of this Article shall be established by a regulation which is adopted by the director of the Office.

Right that applies to European applications and European patents Article 119

The provisions of this Law shall be applied to the European patents which have been granted by EPO in accordance with EPC and the European applications filed in accordance with EPC for which protection is requested in the Republic of Macedonia, unless otherwise determined by EPC.

Filing of European applications Article 120

(1) The European applications, with the exception of the European divisional applications, shall be filed in any language.

(2) The application referred to in paragraph (1) should contain clear designation that European application is filed.

(3) The provisions of Articles 71, 72 and 73 shall also be applied to the European applications relating to the security and defence of the Republic of Macedonia.

Rights from the European applications Article 121

(1) The European application for which protection has been requested in the Republic of Macedonia and on which there is a date determined for submission to EPO, shall be considered as a regular national application for a patent, no matter of the procedure results.

(2) European application published in accordance with EPC for which protection has been claimed in the Republic of Macedonia, shall be protected in accordance with Article 301 paragraph (5) of this Law counted from the date on which the translation of the patent claims for that application has been filed to the person who uses the invention in the Republic of Macedonia.

Rights from European patent Article 122

- (1) The European patent for which protection has been requested in the Republic of Macedonia in accordance with paragraphs (2) to (4) of this Article shall have the same rights referred to in Article 89 of this Law with the national patent, counted from the date of the granting in EPO.
- (2) The holder of the European patent shall be bound within 3 months following the date of the granting publication in EPO, in addition to the application for granting of the patent, to submit to the Office also translation into Macedonian language of the patent claim and the drawings if the application includes drawings and to pay the prescribed taxes and charges of the procedure.
- (3) The obligation and the deadline referred to in paragraph (2) of this Article shall also be applied to the European patent which is maintained with changed scope of protection as a result of the objection procedure in EPO.
- (4) The Office shall publish the translations referred to in the paragraphs (2) and (3) of this Article in the official newsletter.
- (5) The European patents which have been filed in accordance with paragraph (2) of this Article shall be entered into the register of the Office and published in the official newsletter of the Office.
- (6) If the holder of a European patent fails to submit the translations referred to in paragraphs (2) and (3) or fails to pay the taxes and charges of the procedure within a specified time, the Office shall reject the application referred to in paragraph (2) of this Article.

Language of the European patents Article 123

- (1) If the translation of the patent applications into Macedonian language referred to in Articles 121 paragraph (2) and 122 paragraphs (2) and (3) of this Law provides protection with a reduced scope compared to the protection of the European application or the European patent in the language of the procedure, the translation in Macedonian language shall be applied in all procedures except in the procedure of a complaint in front of EPC.
- (2) The applicant i.e. the holder of the European patent may submit the corrections of the translation referred to in paragraph (1) of this Article as far as the procedure for granting in front of EPO is completed.

Maintenance of the European patents Article 124

- (1) For the purpose of maintaining the European patents in the Republic of Macedonia, taxes shall be paid for each year following the year of publishing the granting of the European patent, but not later than two months following the date of publication of the granting of the European patent in accordance with EPC.
- (2) As for the payment of the funds for maintenance referred to in this Article paragraph (1), Article 141 paragraph (2) from EPC shall be appropriately applied.

Conversion into national application Article 125

- (1) The European application for which protection is claimed in the Republic of Macedonia may be converted into a national application if it is considered withdrawn in accordance with Article 77 paragraph (5) of EPC or if the translation of the patent requests in accordance with Article 14 paragraph (2) of EPC has not been filed within the deadline referred to in Article 90 paragraph (3) of EPC.
- (2) The applicant referred to in paragraph (1) of this Article shall be bound to submit to the Office a translation of the application into Macedonian language and to pay the taxes and fees prescribed.

Parallel protection Article 126

If a European patent and a national patent have the same date of submission or if a right to priority has been claimed and that same date has been acknowledged to the same person or to his legal successor, the national patent shall not have legal action to the extent in which the same invention is covered by the European patent, counted from the date on which the deadline for entering an objection has expired, and an objection has not been filed or from the date on which in a complaint procedure a final decision has been taken that the European patent remains into effect.

PART III INDUSTRIAL DESIGN

Subject to protection Article 127

- (1) The right to industrial design shall protect the design which is new and has individual character.
- (2) Design in view of paragraph (1) of this Article shall be the outer appearance of a product as a whole or of its part which is determined by its characteristics, in particular the lines, contours, colours, shape, texture and the materials which the product is made of or ornamented, and/or also its decorations.
- (3) "Product", within the meaning of paragraph (2) of this Article shall be an industrial or handcraft item, including, *inter alia*, also parts intended to be combined in a complex product, packaging of the product, graphic symbols, typographical signs, except computer programs.
- (4) "Complex product" within the meaning of paragraph (3) of this Article shall be a product composed of more parts which could be replaced so that they enable dismantling and assembling of the product again.
- (5) The design applied to a product or contained in a product which composes an integral part of a complex product, shall be deemed new and it has an individual character if:
 - 1) an integral part built in a complex product remains visible throughout the normal use of the complex product; and

2) visible characteristics of the integral part fulfill the conditions of novelty and individual character.

(6) "Normal use" according to paragraph (5) item 2 shall mean use by the end user, excluding maintenance, servicing and repair of the product.

Novelty of design Article 128

(1) A design shall be considered as new if an identical design has not become available to the public prior to the date of filing of the application for acknowledgement of that particular design or if there has been a claim for a priority right prior to the date of the claimed priority right or if there is no any earlier application filed for acknowledgement of an identical design.

(2) A design shall be considered as identical also when it differs in unessential parts.

Individual character Article 129

(1) A design shall be considered to have individual character if the total impression it makes to the informed user differs from the total impression that any other design makes to such a user, and which has become available to the public prior to the date of filing the application for an industrial design or if a priority right has been claimed prior to the date of the acknowledged priority right.

(2) In assessing the individual character of a design, the degree of freedom that the author has had while creating the design, shall be taken into consideration.

Announcing the design Article 130

(1) It shall be considered that the design has become available to the public, according to Article 128 paragraph (1) of this Law if it had been published, exhibited, used in trade or otherwise discovered prior to the date of filing of an application for design recognition or the date of the priority right if it has been claimed except if the discovery, for justified reasons, could have not been known in the regular operation in the specialised areas in the Republic of Macedonia, prior to the date of filing of the application for an industrial design or if a priority right has been requested, prior to the date of the priority.

(2) It shall not be considered that a design has become available to the public according to paragraph (1) of this Article, if it has been:

1) discovered by a third party under clear or assumed conditions of secrecy.

2) discovered by the designer, his legal successor or a third party on the basis of information or activities undertaken by them in the course of 12 months, prior to the date of filing the application for industrial design or if right to priority has been claimed, since the date of the priority.

Design conditioned by technical functions
and design of connected elements
Article 131

A design shall not be protected by an industrial design, if:

- 1) it is exclusively determined by the technical functions of the product, or
- 2) it has to be reproduced in its accurate shape and dimensions so the product in which it is contained or on which the design is applied to, could be mechanically connected to other product or placed inside, close to or around other product so that the two products could perform their function.
- (2) If the conditions referred to in Articles 128 and 129 of this Law are fulfilled, notwithstanding the provisions referred to in paragraph (1) item (2) of this Article, a design which enables multiple assembling or connection of mutually replaceable products in a modular system may be protected.

Absolute grounds for refusal
Article 132

(1) A design shall be protected by a right of an industrial design if:

- 1) it is not in accordance with Article 127 paragraph (2) of this Law;
- 2) it is contrary to the public order or the morality;
- 3) it represents a technical plan or a scheme;
- 4) it represents exclusively cartographic or photographic work;
- 5) it contains state or other public coat of arms, flag or emblem, title or abbreviation of the title of some international organisation, unless it has provided a permission from the competent authority of the respective country or organisation;
- 6) it contains or imitates figure or name of a historical or deceased famous person from the Republic of Macedonia, unless it has provided a permission from a competent state administrative body.
- 7) it contains or imitates name, shape or other recognisable part of protected cultural inheritance in the Republic of Macedonia, unless it has provided a permission from a competent state administrative body.
- (2) Competent body for granting the permission referred to in paragraph (1) items 5 and 6 of this Article shall be the Ministry of Justice, and regarding the issuance of the permit referred to in paragraph (1) item 7, competent authority shall be the Administration for Cultural Inheritance Protection.

Relative grounds for refusal
Article 133

(1) A design maynot be protected by an industrial design right, if:

- 1) it is not new according to Article 128 of this Law;
- 2) it does not have an individual character according to Article 129 of this Law;
- 3) it can not be protected in accordance with Article 131 of this Law;
- (2) An industrial design maynot protect a design which infringes previously acquired rights of:
 - 1) the holder of the previously protected right from industrial property;
 - 2) the person who has copyright to a work identical or similar to the design.

(3) The reasons for excluding from the protection of the right to industrial design in accordance with paragraph (1) item 4 of this Article, could be invoked only by the applicant of a previously filed application or the holder of a previously acquired right.

(4) Industrial design that has been declared earlier shall be a reason for refusal only if it is registered.

Applicant Article 134

(1) Procedure for acquiring a right to industrial design may be initiated by the author or his successor only.

(2) If the design is creation of several authors, then all the authors and their successors Article shall be entitled to the right to initiate the procedure referred to in paragraph (1) of this.

(3) If the application for industrial design has not been filed by the author, then it shall be deemed that it has been filed in accordance with paragraph (1) of this Article, until contrary proved.

(4) Application for industrial design could also be filed by the customer if the design has been made on the basis of an order contract, unless otherwise determined by the contract.

(5) Application for industrial design may also be filed by the employer if the design is made by an employee in the frames of his working obligations, following the instructions of his employer, unless otherwise determined by the work contract.

Author Article 135

(1) Author shall be a natural person who has created the design by his creative labour.

(2) Author shall not be deemed the person who, in the creation of the design, has offered technical assistance only.

Legal successor Article 136

(1) Legal successor to the author shall be a legal or natural person whose acquirement of the right to industrial design is based on law, legal work, inheritance and court decision.

Initiation of a procedure Article 137

(1) The procedure for grant an industrial design right shall be initiated by filing an application for industrial design right to the Office.

(2) Procedure for acknowledgement of a right to industrial design may also be initiated by filing an application in accordance with the Hague Agreement.

(3) Procedure for international registration of an industrial design, in accordance with the provisions of the Hague Agreement, shall be initiated by filing an application for international registration of an industrial design directly to the International Bureau, of the World Intellectual Property Organisation.

Uniqueness of a design Article 138

- (1) Separate application shall be filed for each design for which protection is requested.
- (2) It shall be possible to claim protection of more designs of products (multiple applications) through one application for recognition of an industrial property right,.
- (3) If a multiple application is filed, all designs from the application shall have to be intended to be applied to products classified in same class according to the Locarno classification.
- (4) The multiple application may contain maximum of a hundred designs.

Right of priority Article 139

- (1) From the date of receipt of proper application for industrial design in the Office, the applicant filing a proper application for industrial design has the right to priority in relation to any other person who files an application.
- (2) Exception from paragraph (1) of this Article shall be when the conditions for filing of an application for industrial design as provided for in Articles 140 and 141 of this Law, are fulfilled.

Exhibition priority right Article 140

- (1) A person who exhibits a design at an officially acknowledged international exhibition or fair in the Republic of Macedonia or in other member state of the Paris Union or WTO, may, within three months from the date when the exhibition (fair) is closed, apply for a right to priority from the first day of the exhibit i.e. from the date of use.
- (2) When the application referred to in paragraph (1) of this Article is filed, it has to be accompanied by a written confirmation from the competent authority of the member state of the Paris Union or the WTO confirming that it is an officially acknowledged exhibition (fair) according to the Convention relating to International Exhibitions and designating data for the type of the exhibition or fair, the venue in which it takes place, the starting and ending date, i.e. the date of use.
- (3) By acknowledging the priority right referred to in this Article, the deadlines of Article 141 of this Law, shall not be extended.

Union priority right Article 141

- (1) A legal or a natural person that has filed a regular application for industrial design in a member state of the Paris Union or the WTO shall be acknowledged priority right in the Republic of Macedonia from the date of submission of its first application, if requested so within 6 months from the date of submission of the first application.
- (2) Regular application referred to in paragraph (1) of this Article shall be considered to the application the date of submission of which has been established in accordance with the national legislation of the member state of the Paris Union or the WTO in which the application has been

filed, or in accordance with the international treaties signed between the member states of the Union, regardless of the legal destiny of the application later on.

Obligations of the applicant with union priority Article 142

The submitter of the application for industrial design who intends to use the priority right referred to in Article 141 of this Law, shall be bound, in the application filed in the Republic of Macedonia, to state all data concerning the application he invokes to, and within three months from the date of submission of the application for acknowledgement of the priority right, to submit a copy of the first application, certified by competent authority of the member state of the Paris Union or the WTO in which the application has been filed.

Multiple priority right Article 143

- (1) The applicant for industrial design may invoke to the multiple priority right on the basis of more previously filed applications in one or more member states of the Paris Union or the WTO.
- (2) If the applicant invokes to the multiple priority right, the deadlines which, in accordance with this Law, start with the date of the granted priority right, shall be considered from the very first date of the multiple priority right.

Certificate for priority right Article 144

- (1) At the request of the applicant, the Office shall issue a certificate on priority right which is valid from the date established as date of filing the application for industrial design.
- (2) The contents of the application and the contents of a certificate for priority right shall be established by a regulation which is adopted by the Director of the Office.

Contents of the application Article 145

- (1) Application for industrial design must contain the following:
 - 1) request for recognition of the right to industrial design;
 - 2) data related the applicant;
 - 3) representation of the design for which protection is requested.
- (2) The application referred to in paragraph (1) of this Article shall also be accompanied by other elements and enclosures.
- (3) If a request to postpone the publication of an application for a two-dimensional industrial design according within the meaning of Article 155 paragraph (1) of this Law has been filed, the request may also be accompanied by samples of the object on which the design has been applied instead of summaries of the design.
- (4) The contents and form of the application and other elements and enclosures to the application, shall be defined in more details by a regulation adopted by the Director of the Office.

Date of filing the application Article 146

- (1) If the application does not have the contents provided for in Article 145 paragraph (1) of this Law, the Office shall notify the applicant that his application is not correct and the date of filing the application cannot be acknowledged.
- (2) If the date of filing the application for industrial design cannot be acknowledged, the Office shall advise the applicant to correct the shortcomings within 30 days from the notification received as to correct the stated shortcomings in accordance with Article 145 paragraph (1) of this Law.
- (3) If the applicant corrects the shortcomings within the anticipated time limit, the Office shall establish the date of filing the application.
- (4) As date of filing shall be deemed the date when the applicant has corrected the shortcomings stated and proceeded in accordance with the notification, referred to in Article 145 paragraph 1 of this Law.
- (5) If the applicant does not correct the shortcomings within the deadline referred to in paragraph (2) of this Article, it shall be deemed that the application has been withdrawn and a conclusion will be made to stop the procedure.

Entry into the Register of Applications Article 147

- (1) The application for industrial design shall be entered into the application register for industrial designs.
- (2) The contents and the method of keeping application register for industrial design and the extract from the register shall be established by a regulation adopted by the director of the Office.

Division of multiple application Article 148

- (1) At the request of the applicant, a multiple application for industrial design may be divided into two or more applications in the course of the procedure for acknowledgement of the right to industrial design.
- (2) Division of an application for industrial design shall be allowed by adoption of the decision to acknowledge the industrial design right.
- (3) An application for industrial design created by division of the multiple application shall keep the filing date of the first application and shall also keep the priority right if there is a claim for it.
- (4) Contents of the application for division of the application for industrial design shall be established in a regulation adopted by the director of the Office.

Correct application Article 149

An application for industrial design shall be correct if:

- 1) it includes all the necessary parts and enclosures provided for in Article 145 of this Law and in a regulation adopted by the director of the Office;
- 2) it encloses a correct power of attorney, if the application is filed through representative;
- 3) a translation of the application into Macedonian language is submitted, if the application is written in a foreign language;
- 4) the prescribed application tax is paid and an evidence for the payment is submitted.

Formal examination of application Article 150

- (1) Upon the registration of the application for industrial design in the register of applications, the Office shall examine if the application is correct in accordance with Article 149 of this Law.
- (2) If the Office finds that the application for industrial design is not correct, it shall advise the applicant to correct the shortcomings within a deadline which can not be longer than 60 days, from the date of receiving the notification.
- (3) If the applicant provides an elaborated request, the deadline referred to in paragraph (2) of this Article may be extended for justified reasons for an extended period which cannot be longer than 60 days.
- (4) If the applicant does not correct the shortcomings referred to in paragraph (2) of this Article within the specified deadline, the Office shall reject the application by a decision.
- (5) When the applicant invokes to the attachments which are not included in the content of the application, the Office shall notify the applicant to submit them within the prescribed deadline.
- (6) If the applicant does not proceed according to the notification referred to in paragraph (5) of this Article, it shall be deemed that such attachments do not exist.
- (7) If the applicant corrects the application within the prescribed deadline, it shall be considered that the application is filed in a regular way.

Examination of the conditions for recognition of the right Article 151

If the application is correct according to Article 149 of this Law, the Office shall examine whether the conditions for recognition of the industrial design right are fulfilled.

Decision for refusal of the application Article 152

- (1) If the declared industrial design may not be recognized due to some of the reasons referred to in Article 132 of this Law, the Office shall adopt a decision for total or partial refusal of the application.
- (2) The Office may not take a decision to reject the application for industrial design if it has not previously informed the applicant in writing about the reasons for which the claimed right could not be recognized, i.e. it cannot recognize the right in the requested scope and if it has not advised the applicant to explain those reasons within a reasonable time limit.
- (3) The deadline referred to in paragraph (2) of this Law may, at an elaborated request by the applicant, be extended up to six months.
- (4) When explaining, the applicant may not additionally change the design.

Payment of expenses Article 153

- (1) If the application for industrial design fulfils the requirements within the meaning of Article 149 of this Law, and if the design has not been excluded from protection according to Article 132 of this Law, the Office shall advise the applicant to pay, within certain time limit which can not be longer than 30 days, for the costs made with the publication of the application data in the Official Gazette of the Office.
- (2) If the applicant does not pay the costs referred to in paragraph (1) of this Article, the Office shall adopt a decision to reject the application.

Publication of the application for industrial design Article 154

- (1) If the applicant proceeds in accordance with Article 153 paragraph (1) of this Law, the Office shall publish the application data in the Official Gazette of the Office within 90 days at the latest.
- (2) The application data which are announced in the Official Gazette of the Office shall be established by a regulation adopted by the director of the Office.

Postponement of publication of application for industrial design Article 155

- (1) The applicant for an industrial design may, at same time with submission of the application, ask postponement of the publication for a period of 12 months, counted from the date of filing the application or, if priority right has been claimed, from the date of the priority right.
- (2) If postponement of the publication for industrial design is claimed, the Office shall publish the application data in the official newsletter, in a way as established by a regulation adopted by the director of the Office.
- (3) In the case referred to in paragraph (1) of this Article, upon the expiration of the time limit for postponement of the publication for industrial design or if any other previous date that the applicant has stated in the application has expired, the Office shall advice the applicant to submit, within 30 days, photographs and graphic drawings of the design as stated in the application, in compliance with article 145 paragraph (1) item 3 and pay the costs referred to in Article 153 paragraph (1) of this Law.
- (4) If the applicant fails to proceed in accordance with the notification referred to in paragraph (3) of this Article, the application shall be rejected by a decision.
- (5) Regarding multiple application, paragraph (1) and paragraph (3) of this Article may be applied only to some of the designs included in such an application.

Opposition Article 156

- (1) Opposition to the published application for industrial design could be lodged to the Office, within 90 days, starting from the date of the publication, by:

- 1) an applicant of previously registered industrial design and holder of previously recognized industrial design right;
 - 2) holder of previously acquired industrial property right, if the subject of that right is identical or similar with the published industrial design;
 - 3) person who has copyright to a work identical or similar to the published industrial design; and
 - 4) an interested person who believes that the published industrial design is not in compliance with the requirements for innovation and individual character or it is exclusively restricted by the functional characteristics of the product according to Article 133 paragraph (1) of this Law.
- (2) The time limit for lodging an opposition as referred to in paragraph (1) of this Article shall not be extendable.
- (3) A separate objection shall be lodged for each published application for industrial design.
- (4) The content of the opposition and the method of submission shall be established in a regulation adopted by the director of the Office.

Examination of opposition Article 157

- (1) The Office shall examine whether an opposition has been lodged by a person who is authorised to lodge opposition as referred to in Article 156 paragraph (1) of this Law and whether the opposition has been lodged within the prescribed deadline.
- (2) If the requirements referred to in paragraph (1) of this Article are not fulfilled, the Office shall make a decision to reject the opposition.
- (3) If the requirements referred to in paragraph (1) of this Article are fulfilled, the Office, within a period of 15 days following the receipt, shall lodge the opposition to the applicant for industrial design and shall advise him, to explain the reasons stated in the opposition, within a period not longer than 60 days,.
- (4) If the applicant does not explain the reasons stated in the opposition within the specified period referred to in paragraph (3) of this Article, the Office shall decide on the basis of the claims in the opposition.

Deciding on opposition Article 158

- (1) If the applicant for an industrial design explains the reasons stated in the opposition and submits a reply to the opposition, the Office shall examine the basis for the opposition, taking into consideration the reasons for the opposition and the reply to the opposition.
- (2) If the Office finds that there is no ground for the opposition, it shall reject the opposition by a decision forwarded to both, the applicant and the person who lodged the opposition.
- (3) If the Office finds that the opposition is founded, it shall take a decision to reject the application and shall forward it to both, the applicant and the person who lodged the opposition.

Grant of industrial design right and entry in register Article 159

- (1) If there is no opposition lodged within a defined period or if the opposition is rejected, the Office shall notify the applicant, within 30 days following the date of the receipt of the

notification, to pay the maintenance fee for the first five years of the validity of the industrial design, the costs for the publication in the Official Gazette of the Office, and the costs for issuance of a document for industrial design.

(2) If the applicant pays the fees and costs referred to in paragraph (1) of this Article, the Office shall issue a decision for grant the right to industrial design and enter the granted right in the register for industrial designs.

(3) If the applicant does not pay within the prescribed deadline the fees and costs referred to in paragraph (1) of this Article, the Office shall reject the application by a decision.

(4) The content and the method of keeping a register on applications for industrial design and an extract from the register shall be established by a regulation adopted by the director of the Office.

Recording changes in the Registers Article 160

(1) The changes related to the applicant, the holder of the right and the right itself, are entered in the register on applications for industrial design and in the register on industrial designs.

(2) The changes entered in the Register on applications for industrial design upon publication of an application and the changes filed in the Register on industrial design shall be published in the Official Gazette of the Office.

(3) The changes which are entered, the content and the form of the application and the procedure for entering the changes shall be established by a regulation adopted by the director of the Office.

Scope of protection Article 161

(1) The scope of protection of the industrial design shall be determined by the characteristics of the design given in the presentation and the characteristics supported in the description if available.

(2) Protection arising from the industrial design right shall cover the design in the scope in which it does not make different overall impression to the notified customer.

(3) When assessing the scope of protection, the freedom the designer had in the course of creation of the design shall be taken into consideration.

Acquiring the industrial design right Article 162

(1) Industrial design right shall be acquired on the date of adopting a decision on grant of the right and with the entering in the Register.

(2) The date of entering in the Register shall be the same with the date of adoption of a decision for grant of the industrial design right.

Publication of the industrial design
Article 163

- (1) The data on the industrial design shall be published in the Official Gazette of the Office, within 90 days at the latest, from the date of entering the industrial design in the register.
- (2) The application data that are published in the Official Gazette of the Office shall be established by a regulation adopted by the director of the Office.

Industrial design certificate
Article 164

- (1) The Office shall issue a certificate to the holder of the industrial design within six months following the date of adoption of the decision of grant of the right to industrial design at the latest.
- (2) The content of the certificate on industrial design shall be established by a regulation which is adopted by the director of the Office.

Moral rights of the author of the industrial design
Article 165

- (1) The author, no matter if he is applicant or holder of the right, shall always have the right to be stated as author of the industrial design in all documents and public publications.
- (2) The moral right of the author shall not be transferable.
- (3) If the industrial design has been created by several authors, they all have equal rights, no matter of the contribution in the creation of the industrial design, thus all of them have to be stated.

Exclusive rights
Article 166

- (1) A holder of an industrial design shall have the exclusive right to use the industrial design and prevent third parties from using it without his consent.
- (2) Usage, in accordance with paragraph (1) of this Article shall cover, in particular, manufacture, supply, putting into circulation, export, import or usage of the product in which the design is contained or to which the design has been applied to, or storage of such products for certain purposes.
- (3) If the publication of an industrial design is postponed according to Article 155 of this Law, during the period of postponement of the publication, the holder shall have the right to prevent third parties from carrying out acts referred to in paragraph (2) of this Article, if such a use is a result from the copying of the industrial design.

Exception from infringement of industrial design right
Article 167

If products made according to the industrial design are used in construction or in ship equipment, air planes or land vehicles belonging to a member state of the Paris Union or WTO when such means of transportation are found, temporarily or by chance, in the territory of the Republic of

Macedonia, on conditions that the built-in product serves exclusively to the needs of these means of transportation, it shall not be considered as infringement of the exclusive rights of the holder of the industrial design.

Limiting the exclusive Rights to industrial design Article 168

The exclusive rights referred to in Article 166 of this Law shall not be applied to the usage of an industrial design for:

- 1) private and non-commercial purposes;
- 2) announcements to the public or for the purpose of education, if it is in accordance with the good business practices and if it does not harm the interests of the holder of the right and of the author;
- 3) experimental and scientific purposes.

Right based on previous usage Article 169

- (1) The holder of the right may not invoke the exclusive rights towards a third party that has used the same design of the product or made all preparations for use of the same design of a product prior to the date of filing the application to the Office or prior to the acquired priority right, if it has been requested, provided that the third party has made the design without having any information about the existence of the industrial design which at that time, was not available to the public.
- (2) A third party may not use the design referred to in paragraph (1) of this Article in a method that overcomes the limits of regular production activities.
- (3) A person who has the right on the basis of previous use may not give a license to a third party to use the design.
- (4) The right to previous usage shall not be transferable, unless the right of transfer is transferred together with the enterprise or the workshop where it has been prepared or where the use of such a design has started.

Tolerance of use of industrial design Article 170

- (1) The holder of the previously recognized industrial design shall neither has the right to claim cancellation of a later recognized industrial design on the basis of his priority right, nor to forbid use of the later recognized same or similar industrial design, if he has ignored consciously such a usage in a period of five years, unless the later recognized industrial design has been protected negligently.
- (2) The holder of a later recognized industrial design has no right to forbid the holder of the previously recognized industrial design to use it.

Drawing a right Article 171

The holder of the industrial design right shall have no right to forbid sale of products which the design has been applied to, if he himself has placed them on the domestic market or they are placed on the market with his approval, unless there has been a change in the character of the design.

Validity of the industrial design Article 172

- (1) The industrial design shall be valid for a period of five years, starting from the date of filing the application.
- (2) The validity of the industrial design may be extended several times for a period of five years, but not more than 25 years.
- (3) The holder of the industrial design shall submit a request to extend the validity during the last year of validity of the protection and shall enclose proof for the payment of the established tax and costs of the procedure for extension.
- (4) Request for extension may also be filed within six months after the expiry of the validity, by payment of additional filing fee.
- (5) The new validity of the protection shall start to be in effect on the date following the date of expiry of the previous period of validity and it shall be entered in the register and published in the official newsletter of the Office.
- (6) The form and the content of a request for extension shall be established by a regulation adopted by the director of the Office.

Cessation of the validity of the industrial design right Article 173

- (1) The industrial design right shall cease to be valid:
 - 1) if the time of validity of the industrial design referred to in Article 172 of this Law has passed;
 - 2) on the basis of a written statement by the holder stating that he waives the right to industrial design, on the day following the date the statement is submitted to the Office, and
 - 3) if the legal person which is a holder of the industrial design right has ceased to operate – starting on the date of cessation, i.e. if the natural person who is a holder of the industrial design right has died – starting with the date of his death, or if a disappeared person who is a holder of the industrial design right has been pronounced dead – starting on the date when the decision starts to be in effect, unless this right has been assigned to the legal successors of the legal person i.e. the natural person.
- (2) The cessation of the validity of the industrial design right shall be entered in the Register on industrial designs.

Third parties rights Article 174

- (1) If a license, pledge or some other right has been filed in the register for industrial design in favour of a third party, the holder of the industrial design may not resign from his rights without

prior written consent from the person under the name of which the license, pledge or some other right, have been filed to.

(2) If the holder of an industrial design does not pay the established fee within a prescribed period, and a license, pledge or some other right has been entered in the register in favour of a third party, the Office shall notify that person that the fee has not been paid and he may pay it within six month period, starting from the date of notification, and keep the registered right in such a way.

(3) In case of a dispute for securing the registered rights to third party, the court may, if necessary, secure those rights, decide to assign the industrial design right to a person under the name of which license, pledge or other right has been registered, until the claims are provided.

PART II TRADEMARK

Object of trademark protection Article 175

(1) A trademark shall protect a sign which may be represented graphically and which is capable for distinguishing goods or services of one undertaking from those of other undertakings.

(2) Trademark shall protect signs capable for distinguishing, in particular: words, letters, numerals, pictures, drawings, combinations of colors, three-dimensional forms, including shapes of goods or their packaging, as well as combinations of all of the above-mentioned signs.

(3) The words and letters referred to in paragraph (2) of this Article may be written in any language and alphabet.

Distinctiveness Article 176

(1) A sign shall be capable for distinguishing if it gives to certain goods or services comparing them with the identical or similar goods or services, a special distinctive character.

(2) While establishing whether a given sign is capable for distinguishing, all circumstances shall be taken into consideration, particularly the time and scope of its past use in trade.

Absolute grounds for refusal Article 177

(1) A trademark shall not protect a sign:

1. the publishing or use of which is contrary to the public order or morality;
2. which cannot be represented graphically;
3. which is not distinctive, i.e. capable for distinguishing goods or services in trade;
4. which indicates exclusively the kind of goods or services, their purpose, time or manner of production, geographical origin, quality, price, quantity or weight;
5. which has become usual in the every day speech or in the established trade practice for marking certain type of goods i.e. services;

6. which exclusively consists of shape defined by the kind of goods, shape of goods necessary to obtain a specific technical result or shape giving a substantial value to the goods;
7. the appearance of which may create confusion in trade and mislead the average consumer particularly as to the geographical origin, kind, quality or any other characteristic of the goods or services;
8. which contains or consists of a geographic sign which serves to signify wines or other strong alcoholic drinks, if the reported sign refers to wines or alcoholic drinks which are not from that geographical area;
9. which contains seal, official sign or hallmarks for control and guarantee of quality and imitations thereof;
10. which contains a national coat of arms or other public coat of arms, flag or emblem, name or abbreviated name of a country or an international organization, as well as imitations thereof, according to Article 6-ter of the Paris Convention, except with authorization from the competent authority of the country or organization;
11. which contains the name or abbreviation of that name, the coat of arms, flag, emblem or other official symbol of the Republic of Macedonia, as well as their imitations, except with authorization from a competent state administrative body;
12. which contains or imitates figure or name of a historical or dead eminent person from the Republic of Macedonia, except with authorization from a competent state administrative body.
13. which contains or imitates name, shape or other recognisable part of protected cultural inheritance of the Republic of Macedonia, except with authorization from a competent state administrative body;
14. which contains religious symbols or imitations thereof.

(2) The signs under paragraph (1) items 3, 4 and 5 of this Article may be protected by trademark if the applicant proves that during the long years of use, the sign acquired distinctiveness.

(3) The Ministry of Justice shall be the competent body for issuing the authorization from paragraph (1), items 11), and 12).

(4) Competent authority for issuing authorization from paragraph (1) item 13 of this Article, shall be the Administration for Protection of the Cultural Inheritance.

Relative grounds for refusal Article 178

(1) Trademark may not protect a sign:

1. which is identical with an earlier trademark filed or registered by another right-owner designating the identical kind of goods or services;
2. which is identical with or similar to an earlier trademark, filed or registered by another right-owner designating the same or similar kind of goods or services which would create confusion at the average consumer, including the possibility of association to earlier filed for or registered trademark.

(2) Trademark, earlier filed for protection shall be a reason for refusal within the meaning of paragraph (1) of this Article only if it was registered.

(3) The term "earlier filed or registered trademark" shall comprise:

1. trademark enjoying priority right under the provisions of this Law;
2. earlier internationally registered trademark with effect in the Republic of Macedonia;

3. trademarks which at the time of filing the trademark application for the sign referred to in paragraph (1) of this Article are well-known in the Republic of Macedonia within the meaning of Article 6-bis of the Paris Convention or Article 16(3) from the TRIPS Agreement.

(4) A trademark may not protect also a sign which is identical or similar to an earlier registered trademark to other party, for goods, i.e. services which are neither identical, nor similar to the goods, i.e. services the sign has been reported for, if the earlier registered trademark has reputation in the Republic of Macedonia and if the use of this sign, without justified reason, would represent an unfair competition or would do harm to the distinctive character or the reputation of the trademark.

(5) A trademark shall not protect a sign which infringes earlier acquired rights of:

1. The owner of a trademark registered in a country member of the Paris union or WTO, for which the representative in the Republic of Macedonia filed an application without the owners' consent;

2. a natural right-owner whose name and surname or appearance are identical with or similar to the published sign;

3. the owner of an earlier industrial property right, if the subject matter of such right is identical with or similar to the published sign;

4. the right-owner having copyright on the work which is identical with or similar to the published sign.

(6) A trademark shall not protect a sign which is identical with or similar to a trademark the validity of which has expired on the ground of expiring of term of protection and if the right-holder failed to file a request for renewal of validity and pay the prescribed fees in the prescribed time limit, when a trademark application was filed before the expiration of the period of nine months, counting from the expiration date of the trademark validity, unless the protection of such a sign is required by the owner in whose name the trademark has been protected, or by his successor in title.

(7) Grounds for exclusion from trademark protection under this Article may be invoked only by the applicant of the earlier application or the owner of the earlier right.

Applicant Article 179

(1) Procedure for acquiring right to trademark may be initiated by a natural or legal right-owner.

Initiation of procedure Article 180

(1) The procedure for granting of a trademark right shall be initiated by filing of a trademark application to the Office.

(2) The procedure for granting of a trade mark right may also be initiated by filing of an application according to the Madrid Agreement and the Madrid Protocol.

(3) Separate application shall be filed for each sign for which trademark protection is sought.

(4) One and the same trademark application may be used for requesting protection of several goods and services.

Content of application Article 181

(1) A trademark application shall contain the following:

Request for grant of a trademark right;

Data related to the applicant;

Appearance of the sign for which protection is requested, and

List of the goods and services for which protection is requested.

(2) Other components and supplements can be submitted together with the Application from paragraph (1).

(3) The contents and form of the Application and the other components and supplements added to the Application shall be prescribed by the regulation issued by the Director of the Office.

Establishing the filing date of an application Article 182

(1) If the application does not contain the basic elements provided for in Article 181 paragraph (1) of this Law, the Office shall notify the applicant that his application is not proper and that filing date cannot be established.

(2) If filing date of the application cannot be established, the Office shall notify the applicant to correct the deficiencies in accordance to Article 181 paragraph (1) of this Law within 30 days from the date of receipt of the notification.

(3) If the applicant removes the deficiencies in the prescribed period, the Office shall determine the filing date of the Application.

(4) Filing date shall be considered to be the date of reception of a proper application within the meaning of Article 181 paragraph (1) of this Law submitted by the applicant under the notification.

(5) If the applicant fails to correct the deficiencies within the prescribed time, the application shall **be ?**.

Changes to a trademark application which are not allowed Article 183

In the trademark application, with an established filing date, there can be no additional changes to the sign itself nor is it possible to insert supplements to the list of the goods and services.

Recorded in the Trademark Application Register Article 184

(1) The Application for a trademark shall be recorded in the Trademark Application Register.

(2) The contents and manner of maintenance of the Trademark Application Register and the excerpt from the Register shall be prescribed by the regulation issued by the Director of the Office.

Division of trademark application Article 185

- (1) The trademark application may, at request of the applicant, be divided during the trademark granting procedure into two or more applications in respect to the proposed list of goods and services.
- (2) The divided applications shall maintain the priority right of the first application.
- (3) Request for division of application shall be allowed if the applicant of the earlier application filed a request for protection of one trademark for several goods or services from the International classification of goods and services.
- (4) The request for division of application may be filed until the issuing of the decision for grant of trademark right.
- (5) For the purpose of division of an application of trademark, the Office shall take a special decision and shall be recorded in the trademark application register.
- (6) The contents of the request for a divisional application for a trademark shall be prescribed by the regulation issued by the Director of the Office.

Priority right Article 186

- (1) If the trademark application is filed in accordance with Article 181 paragraphs (1) of this Law, the applicant shall acquire priority right as from the date of filing of the application over any other applicant filing a later trademark application for identical or similar sign and identical or similar goods or services.

Union priority right Article 187

- (1) Any legal or natural right-owner who had duly filed application in any of the state member of the Paris Union or WTO shall be granted priority right in the Republic of Macedonia from the date of filing the first application if that is claimed within six months of the filing date of the first application.
- (2) The applicant who intends to use the priority right under paragraph (1) of this Article shall be obliged in the application filed in the Republic of Macedonia to give all information on the first application (state, date and number of application) and, within 90 days from the date of filing the application, to submit a copy of the first application certified by the competent authority of the state member of the Paris Union or the WTO with which the first application was filed, as well as translation of the first application in Macedonian language.

Exhibition priority right Article 188

- (1) The right-owner who exhibits goods or services marked by a specific sign at an officially recognized international exhibition or fair in the Republic of Macedonia or in any of the member states of the Paris Union or the WTO may request when filing an application that the date of

exhibition of the goods or rendering of the services be accorded as priority date, within three months from the date of the closing of the exhibition or fair.

(2) The application referred to in paragraph (1) of this Article shall be accompanied by a certificate issued by a competent authority of the state member of the Paris Union or the WTO proving that the exhibition or fair was recognized within the meaning of the Convention for International Exhibitions and indicate the type of exhibition or fair, its place, its opening and closing date and the first day of exhibiting the goods or rendering the services specified in the application.

(3) With grant of priority right of this article, the time limit under Article 187 of this Law shall not be extended.

Certificate for a priority right Article 189

(1) The Office, upon request of the applicant, shall issue a Certificate for the priority right, which shall be considered the date prescribed as a filing date of the trademark application.

(2) The contents of the request and the Certificate for the priority right shall be prescribed by the regulation issued by the Director of the Office

Order of proceeding Article 190

(1) Trademark applications shall be proceeded according to their filing date.

(2) By way of exception from the provision from paragraph (1) of this article, the applicant can immediate initiation of a procedure regarding the Application:

when there is a dispute referring to the right;

when opposition to published application of a trade mark is submitted, and the basis of the opposition is previously applied trade mark;

where, under other regulations, it is necessary to perform earlier registration of a trademark.

(3) In the cases under paragraph (2) items 1 and 3 of this Article, the applicant shall file an individual request for immediate proceeding of the application and pay the prescribed fees.

Proper trademark application Article 191

(1) The trademark application shall be deemed correct if:

1) composed in a manner to include all necessary components and supplements prescribed in article 181 from this law and the regulation issued by the Director of the Office;

2) an orderly power of attorney is attached thereto, if the application is filed through a representative; and

3) the prescribed application fee has been paid and evidence of that submitted thereto.

Formal examination of the Application Article 192

- (1) After entering the trademark application in the Application Register, the Office shall examine whether it is correct, in context of article 191 from this law.
- (2) If the application is not correct, the Office shall notify the applicant to correct the prescribed deficiencies within a period not longer than 60 days, from the day of receipt of the invitation.
- (3) On reasoned request of the applicant, the time limit referred to in paragraph (1) of this Article may, for the justified reasons, be extended by no more than 60 days.
- (4) If the applicant corrects the application within the prescribed time limit, the application shall be deemed to be proper.
- (5) If the applicant fails to correct the deficiencies referred to in paragraph (1) of this Article within the prescribed time limit, the application shall be rejected by decision.

Examination of the requirements for grant of the right Article 193

If the application is correct, in context of Article 191, from this law, the Office shall examine whether the requirements for grant of the trademark right have been fulfilled.

Decision for refusal of application Article 194

If the sign for which trademark application is filed is excluded from protection in respect to all or some of the specified goods or services on the grounds referred to in Article 177 of this Law, the Office shall issue a decision for refusal of the application.

- (2) Decision for refusal of trademark application may not be issued if the applicant has not been previously notified in writing about the grounds for the full or partial exclusion from protection and informed to make a declaration thereon in due time.
- (3) If the filed sign contain an element which is neither distinctive nor appropriate for distinctiveness of the goods, i.e. of the services in the trade and if the inclusion of that element may be cause a suspicion with regard to the scope of protection of the trademark, the Office may advise the applicant, within a reasonable time limit, to submit a written statement that he does not request exclusive rights to that element.
- (4) The term from paragraph (2) of this article, upon an explained request from the applicant, may be extended to six months.

Payment of the fees and publication of application Article 195

- (1) If the trademark application fulfills all the conditions according to Article 191 of this Law, if the sign is not excluded from protection according to Article 177 of this Law, the Office shall notify the applicant, within determined deadline, which cannot exceed 30 days from the day of receipt of the conclusion, to pay the fee for publication of the application data in the Official Gazette of the Office.

- (2) If the applicant does not pay the fees stipulated in paragraph (1) of this article, the Office shall issue a decision for rejection of the application.
- (3) If the applicant acts according to paragraph (1) of this article, the Office shall publish the data from the application in the Official Gazette of the Office within 90 days.
- (4) The application data published in the Official Gazette of the Office shall be prescribed by the regulations issued by the Director of the Office.

Third Party Intervention Article 196

- (1) Once the application is published, any legal or natural person may send to the Office written intervention explaining the reasons referred to in Article 177 paragraph (1) for which he considers that the filed sign may not be granted.
- (2) The persons referred to in paragraph (1) of this Article shall not be parties in the procedure.
- (3) The intervention referred to paragraph (1) of this Article shall be sent, by the Office, to the applicant, who may provide answers to the suggestions.

Opposition Article 197

- (1) Opposition to a published trademark application may, within 90 days from the publication date, be filed with the Office by:
 - 1) applicant of an earlier filed trademark application and owner of earlier registered trademark under Article 178 paragraphs (1) to (4) of this Law;
 - 2) the owner of the trademark registered in a country member of the Paris Union or WTO, for which the representative in the Republic of Macedonia filed an application without the owner's consent;
 - 3) natural right-owner whose name and surname or appearance are identical with or similar to the published sign;
 - 4) owner of an earlier protected industrial property right, if the subject matter of that right is identical with or similar to the published sign;
 - 5) any right-owner having copyright on the work which is identical with or similar to the published sign;
 - 6) The owner of a trademark that has expired due to the expiration of the term of protection, in the context of article 178, paragraph (6) from this law.
- (2) The time limit for filing opposition referred to in paragraph (1) of this Article shall not be extended.
- (3) A separate opposition shall be submitted for each published Trademark Application.
- (4) The contents of the opposition, as well as the manner of submission shall be prescribed by the regulation issued by the Director of the Office.

Examination of opposition Article 198

- (1) The Office shall examine whether the opposition is filed by a right-owner entitled to file an opposition within the meaning of Article 197 paragraph (1) of this Law and whether the opposition is filed in the prescribed time limit.
- (2) If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall issue a decision for rejection of the opposition.
- (3) If the requirements referred to in paragraph (1) of this Article are complied with, the Office shall notify the trademark applicant about the grounds specified in the opposition and notify him to make a declaration thereon within prescribed period that cannot be longer than 60 days.
- (4) If the applicant does not make a declaration on the grounds specified in the opposition within the time limit referred to in paragraph (3) of this Article, the Office shall decide within the boundaries of the grounds specified in the opposition.

Deciding on opposition Article 199

- (1) If the applicant makes a declaration on the grounds specified in the opposition, the Office shall examine the justification of the opposition within the boundaries of the specified grounds, taking into consideration the declaration thereon.
- (2) If the Office establishes that the opposition is unjustified, it shall be refused with decision.
- (3) The decision under paragraph (2) of this Article shall be sent to the applicant and to the right-owner who filed the opposition.
- (4) If, in the examination procedure on the opposition, the Office establishes that the opposition is justified, it shall refuse the trademark application and submit a written decision to that effect to the applicant and to the right-owner who filed the opposition.

Grant of trademark right and entry in the register of trademarks Article 200

- (1) If the reasons prescribed in article 177, paragraph (1) and article 178, paragraphs (1), (2), (3), (4), (5), and (6) from this law do not constitute a barrier for grant of the trademark right, the Office shall notify the applicant that the conditions for granting are fulfilled and notify the applicant to pay the fee for maintenance of the trademark for the first ten-year period, the expenses for publication of trademark in the Official Gazette of the Office and the expenses for issuing a trademark certificate within 30 days from receipt of the notification.
- (2) If the applicant pays the fee and expenses referred to in paragraph (1) of this Article within the prescribed time limit, the Office shall issue a decision for grant of a trademark right and shall enter the granted right in the trademark register.
- (3) If the applicant fails to pay the fee and expenses referred to in paragraph (1) of this Article, the trademark application shall be rejected by decision.
- (4) The contents and manner of maintenance of the Trademark Register, as well as the contents and the form of the excerpt from the Register shall be prescribed by the regulation issued by the Director of the Office.

Recording changes in the Registers Article 201

- (1) Changes related to the applicant, owner of the right, and the right itself shall be recorded in the Trademark Application Register, and the Trademark Register.
- (2) The changes which are entered in the Trademark Application Register after the publication of the application and the changes entered in the Trademark Register shall be published in the Official Gazette of the Office.
- (3) The changes recorded, the contents and form of the request, as well as the procedure of recording the changes shall be prescribed by the regulation issued by the Director of the Office.

Acquisition of trademark right Article 202

- (1) Trademark right shall be acquired by issuing decision for grant of the right and entry of the trademark in the trademark register.
- (2) The date of entering the trademark in the trademark register is the same as the date of issuing the decision for grant of the trademark.

Publication of trademark Article 203

- (1) The data on the trademark shall be published in the Official Gazette of the Office within 90 days from the date of entry of the trademark into register.
- (2) The data published in the Official Gazette of the Office shall be prescribed by the regulations issued by the Director of the Office.

Trademark certificate Article 204

- (1) The Office shall issue to the owner a trademark certificate no later than six months from the date of publication of the trademark in the Official Gazette of the Office.
- (2) The contents of the certificate for trademark shall be prescribed by the regulation issued by the Director of the Office.

Division of the registered trademark Article 205

- (1) At the request of the holder, the registered trademark may be divided into two or more trademarks according to the proposed list of products and services.
- (2) A request for division of a registered trademark may be submitted throughout the whole period of protection.
- (3) The divided registered trademarks shall keep all the rights from the first registered trademark.
- (4) A request for division of a registered trademark shall be allowed in case when the holder has protected one trademark for more goods and services from the international classification of products and services.

(5) As to the division of the registered trademark, the Office shall make a special decision and shall enter the divided trademark in the register on trademarks.

(6) The content of the request for division of the registered trademark shall be prescribed by the regulation issued by the Director of the Office.

Exclusive rights

Article 206

(1) The trademark-owner shall have the exclusive right to use the trademark on the market for marking his goods or services.

(2) The trademark-owner shall have the right to use the symbol ® next to his trademark.

(3) The trademark-owner has the right to prohibit use on the market by a third right-owner, without his consent, of a sign which is:

1) identical with trademark used for identical goods or services;

2) identical with or similar to trademark used for identical or similar goods or services if that similarity may create confusion at the average consumer, including the possibility of association between the sign and the trademark;

3) identical with or similar to trademark used for different goods or services if the trademark has the reputation in the Republic of Macedonia and if the use of that sign without justified reason may lead to unfair competition and damage the distinctive character or reputation of the trademark.

(4) The prohibition under paragraph (3) of this Article shall also include:

1) affixing the sign on goods and their packages;

2) rendering services or putting on the market goods under that sign, or storing goods with that intention;

3) import or export of goods under that sign;

4) use of the sign in correspondence, publishing or advertising.

Limitations to the trademark right

Article 207

(1) The trademark shall not entitle its owner to prohibit third right-owners to use in trade their name, surname, sign or trade name, address, indications on the kind, quality, quantity, purpose, value, geographical origin, date of production of the goods or rendering of the services or any other characteristic of the goods, irrespective of the fact that those indications are identical with or similar to the trademark or parts thereof, provided that they are used in compliance with the good business practices and does not lead to unfair market competition.

(2) The trademark shall not entitle its owner to prohibit third right-owners from using in trade a sign which is identical with or similar to a trademark if that is necessary for indicating the purpose of the goods, particularly the spare parts thereof, or the kind of services rendered if the sign is used in compliance with the good trade practices and does not lead to unfair competition.

Acquiescence in the use of a trademark Article 208

(1) The owner of prior trademark right shall not have the right to require cancellation of later trademark on the basis of his earlier priority right nor to prohibit use of the later trademark in relation to the goods or services for which the later trademark has been used, if he had acquiesced this use for five consecutive years, unless the later trademark was protected in bad faith.

(2) The owner of a trademark with later priority right shall not have the right to prohibit the use to the owner of earlier registered trademark.

Exhaustion of right Article 209

(1) The owner of trademark shall not have the right to prohibit use of the trademark for marking goods or services put on the domestic market by himself or with his consent, unless there have been essential changes in the goods, deterioration of their characteristics or change of the nature of the goods or services after their putting on the market.

Reproduction of trademark in publications Article 210

(1) If the reproduction of a registered trademark in dictionaries, encyclopedia or similar publications creates an impression that it is a generic name of the products or services for which the trademark was registered, the editor of the publication shall, on request of the trademark-owner, accompany the reproduction of the trademark in the first following edition of the publication by an indication that the trademark has been registered.

Term of trademark Article 211

(1) A trademark term shall be 10 years as from the date of filing the trademark application.

(2) A trademark may be renewed indefinite number of times for term of ten years, provided that the trademark applicant files with the Office a request for renewal of the trademark validity and pays the corresponding fee and procedural expenses during the last year of the ten-year term of protection or no later than nine months after the expiration of the validity.

(3) The new period of protection shall begin with the day of expiration of the previous ten-year period of protection.

(4) In case when the application for renewal of the validity of the trademark covers only part of the goods i.e. services for which the trademark has been registered, the validity of the trademark shall be renewed only for those goods, i.e. services.

(4) The contents and form of the request for renewal of the right to a trademark shall be prescribed by the regulation issued by the Director of the Office.

Use of trademark Article 212

- (1) A trademark-owner shall, in order to maintain the trademark validity, use the trademark in respect to the goods or services for which it has been granted, unless there are serious reasons for its non-use that do not depend on the trademark-owner's will.
- (2) The use of a trademark in an insignificantly modified form without changing its distinctive character and the use of a trademark on goods and equipment exclusively for the purpose of export shall also be constitute the use thereof.
- (3) The use of a trademark by another right-owner with owner's consent shall be considered to be the use by the owner himself.

Cessation of the validity of the trademark Article 213

- (1) A trademark shall cease to be valid when:
 - 1) the holder of the right without any justified reasons fails to use the trademark for marking the products, i.e., services which it refers to more than five years in continuity from the date when the trademark has been entered in the register of trademarks, i.e., from the date when the trademark has been used for the last time;
 - 2) because of inactivity of the holder of the right it has become usual name in the trade of the products, i.e., of the services for which it has been registered;
 - 3) because of the method of usage by the holder of the right or by his approval, of the goods and services for which it has been registered, and which may lead the public to confusion with regard to the type, quality or the geographical origin of those goods or services, and
 - 4) a collective trademark is used contrary to the common act or agreement on a collective trademark.
- (2) The contents of an application for cessation of validity referred to in paragraph (1) of this Article shall be established in a regulation adopted by the director of the Office.

Procedure following a request for cessation of the validity of a trademark Article 214

- (1) A procedure for proceeding with a request for cessation of the validity of a trademark referred to in Article 21 paragraph (1) of this law shall be initiated at the request of the person concerned.
- (2) A request referred to in paragraph (1) of this Article shall be submitted in writing to the Office.
- (3) The Office shall be bound, within fifteen days following the date of receipt of the request, to forward the request to the holder of the right and advise him to come out with an explanation within a determined period which can not be longer than 60 days of the date of receipt of the notification.

Decision for cessation of the right Article 215

- (1) Once the procedure referred to in Article 214 from this Law is carried out, the Office shall adopt a decision for cessation of validity of the trademark, or for refusal of the request.
- (2) A trademark shall cease to be valid starting with the date of the validity of the decision for cessation adopted by the Office.
- (3) A decision referred to in paragraph (1) of this Article shall be entered in the register of trademarks and published in the official newsletter of the Office.

Specificities of the procedure for cessation of the trademark due to not using it Article 216

- (1) In a procedure following a request for cessation of a trademark because it is not used, the owner of the right shall be bound to prove that he uses the trademark.
- (2) A decision on cessation of the trademark because it is not used, shall not be taken if the use of the trademark has started or continued after expiration of the five year period in which it has not been used, but prior to entering the request for cessation of the validity because it has not been used, unless the use has started and continued in a period of three months prior to entering of the request for cessation of the trademark, once the owner of the right has been informed that a request shall be filed for cessation of the trademark.

Cessation of the validity of a trademark due to other reasons Article 217

- (1) Despite the cases referred to in Article 213, the trademark shall cease to be valid and in the following cases:
 - 1. if the term of protection expires and the trademark-owner fails to file, within a prescribed time limit, a request for renewal of the trademark validity and pay the prescribed fee according to the article **154** of this law;
 - 2. upon a written declaration of the right-owner on waiver of the trademark, on the day following the day of filing the declaration to the Office;
 - 3. with the lapse of the legal right-owner or upon the death of the natural right-owner who is trademark-owner, on the day of lapse or death, or with the declaration of a missing trademark-owner dead, on the day of the coming into force of the declaration, unless the right has been transferred to the legal successors in title of the legal right-owner or to the heirs of the natural right-owner;
 - 4. on the basis of a court decision or act of the Office in cases provided for by this Law, from the date prescribed in that decision or act.

Third party rights Article 218

(1) If a license, pledge or any other right of a third right-owner has been entered into the trademark register, the trademark owner cannot renounce his rights without written consent from the right-owner who is signatory of the license, pledge or other right.

(2) If the trademark owner fails to pay the fee within the prescribed time limit and the license, pledge or any other right of a third right-owner has been entered into the trademark register, the Office shall notify that right-owner that the fee has not been paid, and that in order to keep his right he shall have to pay the fee within six months from the date of notification.

(3) In case of a dispute regarding transfer of the registered rights to a third party, if that is necessary for provision of those rights, the court may decide that the trademark right should be transferred to the right-owner holder of a license, pledge or other right until the fulfillment of the obligations.

Object of protection by collective mark Article 219

(1) Collective mark shall protect a sign intended for collective designation of the goods or services put on the market by an association of legal and natural right-owners.

Applicant for collective mark Article 220

(1) Applicant for collective mark may be a domestic association of legal and natural right-owners.

(2) Under this Law and in compliance with the international conventions, which have been ratified by the Republic of Macedonia, applicant for collective mark may also be a foreign legal right-owner.

Contents of application for collective mark Article 221

(1) The application for collective mark shall be accompanied by a general act or contract for collective mark.

(2) The general act or contract referred to in paragraph (1) of this Article shall contain name of the firm or of the applicant, name of the authority or right-owner authorized to represent the applicant, provisions about the appearance of the sign and the products or services to which that sign refers, provisions on who have the right to use the collective mark and the circumstances of the use, provisions on the rights and obligations of the users of the collective mark in case of infringement of the trademark right, provisions on the measures and consequences in case of infringement of the trademark right and provisions on the measures and consequences in case of non-following of the provisions from the general act or contract.

Recording of the changes in the agreement for a collective trademark Article 222

- (1) On request of the applicant or the owner of a collective mark, the Office shall record into the register any change or amendment of the agreement regulating the use of a collective mark.
- (2) The rights arising from a collective mark shall not be transferable and shall not be the subject matter of the license.

Object of protection by certification mark Article 223

- (1) Certification mark shall protect a sign which is being used by several companies under supervision of the certification mark owner and it shall protect the quality, origin, way of production and other joint characteristics of goods or services of those companies.
- (2) The provision from Article 177 paragraph (4) of this Law shall not be applied on certification marks.

Contents of application for certification mark Article 224

- (1) The application for certification mark shall be accompanied by rules for use of the certification mark containing provisions on the quality and other characteristics of the goods or services, the control measures that will be used by the applicant of the certification mark and the sanctions he/she will be applying.
- (2) The owner of the right to certification mark may not use that mark for marking products and services he/she put on the market.

International registration Article 225

- (1) The owner of the trademark, i.e. the applicant of the trademark may submit an application for international registration of a trademark in accordance with the Madrid Agreement and Madrid Protocol which the Republic of Macedonia has acceded to.
- (2) The provisions of this Law shall be applied for all issues which are not regulated by the Madrid Agreement and Madrid Protocol.
- (3) The application referred to in paragraph (1) of this Article shall be filed through the Office in a procedure established in a regulation adopted by the director of the Office.
- (4) For the purposes of the international registrations of trademarks, according to the Madrid Treaty and Madrid Protocol, the publication of the application prescribed in Article 195 of this Law shall be replaced by publication of the international registration in the official newsletter of the World Intellectual Property Organisation.
- (5) The deadline for lodging an objection against the acknowledgement of an international registered trademark for the Republic of Macedonia shall start on the first day in the month following the month of the publication in the official newsletter of the World Intellectual Property Organisation in which that trademark has been announced.

PART V GEOGRAPHICAL NAME

Subject to protection Article 226

- (1) The geographical name shall be protected by an appellation of origin of the product and a geographical indication.
- (2) The geographical name shall be indicated on the products produced by natural or legal persons in a certain geographical area.

Appellation of origin Article 227

Appellation of origin shall be the geographical name of the country, region or place indicated on the product originating from that area and having quality and particular characteristics exclusively or mostly conditioned by the geographical environment, including the natural and human factors and the production, processing and preparation which are entirely carried out in the certain limited region of origin.

Geographical indication Article 228

- (1) Geographical indication shall be the geographical name of the country, the region, or place indicated on the product having quality, reputation or other characteristics that may be essentially attributed to the geographical origin.
- (2) The geographical indication of a product may be protected provided that production and/or procedure and/or preparation of the product are carried out in a certain place of origin.
- (3) The geographical names that do not meet the requirements for protection as an appellation of origin may be protected as geographical indications.

Origin of raw materials Article 229

Except for wine and other alcoholic drinks, the product may be indicated with an appellation of origin even if raw materials for its production originate from wider area or out of the area of processing provided that:

- (1) the defined area for raw materials production is limited or if there are special conditions for raw materials production and
- (2) the traditional method of production i.e. the human factor is crucial for the quality and special characteristics of the product.

Traditional names Article 230

As geographical name will also be considered the name that does not include a geographical name of a certain country, region or place, which after long market sale has become generally known as a traditional name for the product originating from that territory, as well as the historical name of that territory referring to a definite origin of the product, that fulfils the requirements referred to in Article 227 i.e. Article 228 paragraph (2) of this Law.

Scope of protection Article 231

A geographical name may be used for marking natural products, agricultural products, industrial products, handicraft products and homemade handworks.

Exclusion from protection Article 232

A geographical indication i.e. appellation of origin may not protect the product name which:

- 1) does not fulfill the requirements under this Law;
- 2) is contrary to the law and morality ;
- 3) by its content may misleading as to the kind, origin, quality, manner of production or other properties of the product;
- 4) is equal to the name of a plant variety or animal breed, in case when it might mislead the public regarding the geographical origin;
- 5) although presents exact name of the country, region or place of product it may provokes false impression to the customer that the product originates from other country, region or place;
- 6) is not protected in the country of origin or ceased to be used in the country of origin, and
- 7) is identical or similar to the geographical name or trademark registered previously for identical or similar products, when there is probability to mislead the customer.

Prohibiting protection Article 233

(1) Geographical indication i.e. appellation of origin may not protect the name of place of origin originally used for indicating products of that place of origin, but after long market sale has become generic i.e. generally known for indicating a definite kind of products.

(2) The name of the place of origin protected by geographical indication, or an appellation of origin, may not become generic.

Homonyms Article 234

If the names of two or more places of origin of products are identical or almost identical, in writing, the protection of such names with geographical indication or appellation of origin shall be approved to all persons that meet the requirements under this Law and if these names are used

in accordance with good business practices as well as on the principle of equality of the producers at the market and truthful informing of the customer, except if it might mislead the public regarding the geographical origin.

International protection Article 235

(1) The geographical name i.e. already protected by geographical indication i.e. appellation of origin in the Republic of Macedonia, may be protected abroad on the ground of bilateral agreement for mutual protection or international agreements ratified by the Republic of Macedonia.

(2) Application for protection out of the country may be submitted only by users of geographical names registered in the register of protected geographical names of the Office.

(3) Geographical name may also be protected by a foreign natural or legal person or a group of producers by registering an authorised user of the protected geographical name in case when it results from international agreements ratified by the Republic of Macedonia or based on bilateral agreements for mutual protection if so provided in the legislation of the country of origin of that person.

Initiation of procedure Article 236

Procedure for geographical name protection i.e. for granting the right to use a protected geographical name shall be initiated by application which contains request for geographical name protection i.e. request for granting the right to use the protected geographical name and other supplements provided for by this Law.

Application by a foreign person Article 237

When foreign person file an application, with the request for protection of a geographical name i.e. the request for granting of the right of use, they shall enclose a copy of a certificate or other legal act in the official language of the country of origin, issued by the competent authority in the country of origin, as an evidence that the geographical name is protected in that country i.e. that the right of the authorised user is granted, in accordance with the national legislation in the country of origin as well as a certified translation in Macedonian language.

Uniqueness of application Article 238

One application may refer to protection and grant of the right to use only one geographical name relating to only one type of product.

Applicant Article 239

Application for protection of geographical name may be filed by:

- (1) natural or legal persons producing, on a certain geographical area, a product indicated by the name of that area, and.
- 2) a group of producers and manufacturers of the same products irrespective of the composition and form of joining;
- 3) state administrative body, local self-government unit and chambers interested in protection of geographical names in the area of their activity;
- 4) foreign natural and legal persons i.e. foreign groups of producers, only if the right of authorised user for the protected geographical name has been granted in the countries of origin and if they fulfill the requirements under this Law.

Contents of the application Article 240

- (1) An application for protection of geographical name shall contain a request for protection of geographical name with a designation requesting protection with appellation of origin or with a geographical indication.
- (2) An application for protection of geographical name with an appellation of origin or with a geographical indication, besides the request for protection of geographical name, shall contain a study of the product i.e. to be indicated with the geographical name.
- (3) The contents and form of the application referred to in paragraph (1) of this Article, the study and the other components and supplements shall be prescribed in a regulation adopted by the director of the Office.

Study and control Article 241

- (1) The study shall be prepared by an institution which fulfils the requirements provided for with a regulation adopted by the director of the Office.
- (2) The control of the special characteristics of the product may be carried out by the institution which has elaborated the study t, or on the request of one party, by other institution which fulfils the requirements provided for in a regulation adopted by the director of the Office, for which evidence is issued.
- (3) The institution which has elaborated the study within 90 days of protecting the geographical name, should constitute a Commission for controlling the quality and the special characteristics of the product which will be indicated with the geographical name.
- (4) The Commission referred to in paragraph (3) of this Article shall consist of five members who have participated in elaborating the study in paragraph (1) of this Article and/or other persons having knowledge in the field of the product concerned. At least one member of the Commission should be a producer.
- (5) The method and work of the Commission referred to in paragraph (3) of this Article shall be prescribed in a rulebook adopted by the institution.

Change of the controlling institution Article 242

- (1) If the institution which has elaborated the study within the prescribed period cannot constitute a commission for controlling the quality and the special characteristics of the product, it shall propose another relevant institution, no later than 90 days of the date of protecting the geographical name.
- (2) If the institution which has elaborated the study within the prescribed time limit fails to act in accordance with paragraph (1) of this Article, the Office shall request an opinion from professional institutions depending on the kind of product or from group of producers of the relevant product, for a proposal of a new institution for product control.
- (3) If for certain reasons, the requirements for product control from the institution which has elaborated the study or from other institution which has performed the product control, cease to have effect, the provisions of paragraph (1) and (2) of this Article shall apply.

Changes in the study Article 243

- (1) Natural or legal persons and associations of legal and natural persons that fulfill the requirements provided for in Article 239 paragraph (1) items 1 and 2 of this Law and have legal interest, may request amending of the study as a result of changes arising from the development of science and technical knowledge or because of redefining the borders of the geographical area.
- (2) The request for amending the study shall be submitted to the institution which has elaborated it or to another institution which fulfils the requirements prescribed in a regulation adopted by the director of the Office.
- (3) The request for amending the study should contain the reasons for the requested changes.
- (4) The applicant should submit the amendment to the study to the Office.
- (5) As a change of the study shall also be considered the change of the institution for product control.

Registries Article 244

- (1) The Office shall keep a Register of applications for protection of geographical names and a Register of applications for using the protected geographical names, a Register of protected geographical names and a Register of users of protected geographical names.
- (2) The contents and the method of keeping the registers referred to in paragraph (1) of this Article shall be prescribed in a regulation adopted by the director of the Office.
- (3) On a written request of the persons concerned, the Office shall issue copies of documents, certificates and extracts from the registers.

Acquisition of right Article 245

- (1) Protection of the name of the place of origin for products with geographical indication i.e. appellation of the origin shall be made by making a decision and registering the geographical

name of the product and the kind of the product the name in the Register of protected geographical names refers to.

(2) The right to use protected geographical names shall be acquired by issuing a decision for protecting the right and by registering in the Register of users of protected geographical names.

Validity of the right Article 246

(1) The protection of geographical name shall be valid indefinitely.

(2) The right of using the protected geographical name shall be valid for five years from the date of adopting the decision.

(3) The validity of the right of use may be renewed indefinite number of times for a period of five years provided that the right holder in the course of the fifth year validity submits a request to the Office for renewal of the right to use the protected geographical name.

(4) The contents and form of the request for renewal shall be prescribed in a regulation adopted by the director of the Office.

(5) The right of using the protected geographical name will be renewed if the requirements for granting that right have been fulfilled, otherwise the right shall cease to have effect on the date following the date of expiry of the fifth year of its validity.

Right of use Article 247

(1) The appellation of origin shall be a collective right and may be used exclusively by legal and natural persons and associations of legal and natural persons who:

1) produce or process a product the geographical name of which is protected by an appellation of origin;

2) carry out the whole process of production in a geographical area which is precisely defined in the study, and

3) are registered in the register of users as users of that appellation of origin.

(2) The geographical indication shall be a collective right and may be used by legal and natural persons, who:

1) produce a product with geographical name protected by a geographical indication;

2) perform production and/or processing and/or preparation of the product in a geographical area which is precisely defined in the study and

3) are registered in the register of users as users of that geographical indication.

Contents of application for usage Article 248

(1) The application for granting of the right of usage shall contain:

1) a request for granting the right to use protected geographical name;

2) an evidence for performing specific activity and

3) an evidence for performed control.

(2) The contents and form of application in paragraph (1) of this Article and the other elements and supplements shall be prescribed in a regulation adopted by the director of the Office.

Examination of applications

Article 249

- (1) If the application does not contain all the necessary elements and supplements in accordance with this Law and the regulation adopted by the director of the Office, the Office shall advise the applicant within 30 days from the date of receipt of the notification to correct the determined shortcomings.
- (2) Upon elaborated request by the applicant, for justified reasons, the time limit in paragraph (1) of this Article may be prolonged for another 30 days at the latest.
- (3) If the applicant fails to correct the application within the defined time limit or to pay the costs for correcting the application, the Office, by a decision, shall reject the application for protection of the geographical name i.e. the application for granting the right to use the protected geographical name.

Compliance with requirements

Article 250

If in compliance with this Law and the regulation adopted by the director of the Office, the Office confirms that the application is correct, the application shall be further examined in order to check if it fulfils the requirements prescribed by law for protection of geographical name, i.e. for granting the right of authorised user.

Procedure on the application and deciding

Article 251

- (1) If the Office determines that the application does not meet the requirements for protection of the geographical name i.e. for granting the right of authorised user of protected geographical name, it shall, in writing, inform the applicant of the reasons for not protecting the geographical name i.e. granting the right of authorised user and will call the applicant within 90 days from the date of receiving the notification to explain the reasons.
- (2) Upon elaborated request from the applicant, for justified reasons, the time limit in paragraph (1) of this Article may be renewed for another 90 days at the latest.
- (3) If the applicant within the prescribed time limit provides no explanation at all or provides an explanation, and the Office determines that the geographical name cannot be protected i.e. the right of authorised user of the protected geographical name cannot be granted, it shall, by a decision, reject the application for protection of geographical name i.e. the application for granting the right of authorised user of the geographical name.
- (4) If in the case referred to in paragraph (3) of this Article there is an application for protection of geographical name with appellation of origin which fulfils the requirements to be protected by geographical indication, the Office shall inform the applicant and, with his consent, shall protect the geographical name by a geographical indication.

Granting decision Article 252

- (1) If the application for protection of geographical name fulfils the requirements provided for in this Law, the Office shall make a decision for protection of geographical name and shall register it in the register of protected geographical names.
- (2) If the application for granting the right of authorised user of the geographical name fulfils the requirements provided for in this Law, the Office shall advise the applicant, within 30 days to pay the fee for granting the right of authorised user of geographical name for the first five years, the costs for publishing of the information for the granted right to use the protected geographical name, as well as for issuing certificate and to submit an evidence for the services performed.
- (3) If the applicant does not submit evidence for the payments, the Office by a decision shall reject the application for granting the right of authorised user of the protected geographical name.

Entry into registers Article 253

If the applicant submits evidence for the payments in Article 252, paragraph (2) of this Law, the Office shall make a decision for granting the right of authorised user and shall register it in the register of users of protected geographical names and in the register for protected geographical names.

Publication of the protected geographical name Article 254

- (1) The publishing of a protected geographical name in the official newsletter of the Office shall be made ex officio.
- (2) The data about the protected geographical name published in the official newsletter shall be prescribed in a regulation adopted by the director of the Office.

Publishing of information for authorised user Article 255

- (1) After the payment for the costs of publishing by the holder of the right for authorised user, the Office shall publish the information for granting the right of authorised user in the newsletter.
- (2) The data for the granted right of an authorised user published in the official newsletter shall be prescribed in a regulation adopted by the director of the Office.

Certificate Article 256

- (1) The Office shall issue the authorised user of protected geographical name a certificate for granted right of authorised user within six months from the date taking the decision.
- (2) The content of the certificate referred to in paragraph (1) of this Article shall be prescribed in a regulation adopted by the director of the Office.

Rights of the user Article 257

- (1) The user of protected geographical name shall have the right to use it for indicating exclusively that kind of product which has been registered into the Register of protected geographical names of the Office.
- (2) The right of use shall also refer to the usage of the protected geographical name on the packing, advertising materials, business identification documents and other business documentation, as well as import and export of products indicated by a geographical name.
- (3) Authorised users of protected geographical name shall have the exclusive right to indicate their products by, Appellation of origin controlled” if authorised for using an appellation of origin or “Geographical indication controlled,” if authorised for using geographical indication.

Non-assignment Article 258

- (1) The right to use protected geographical name may not be assigned, derogated or given in pawn by an agreement.
- (2) If the protected geographical name is a subject of previously applied or registered trademark, such trademark may not be assigned, derogated or given in pawn.

Prohibition Article 259

- (1) The users of the geographical names may request prohibition of:
 - (1) direct or indirect unauthorised use of protected geographical name for equal or similar products for acquiring proprietary benefit;
 - 2) marking the products not originating from the place of origin indicated by the protected geographical name even when real origin is indicated, its translation used or when used associated with additional expressions, like ”style”, “type”, “by method”, “as produced in”, “imitation”, etc.
 - 3) any kind of use of the protected geographical name which harms the reputation or misuses the reputation of the protected geographical name;
 - 4) any kind of use of false information that might mislead the consumer regarding the geographical origin, quality or properties of the product, and is put on the packing, business identification documents or other documents, which makes wrong impression for the real origin, and
 - 5) each other application which might mislead the consumer regarding the geographical origin of the product.
- (2) If the protected geographical name besides the geographical term contains a generic term, the application of that generic term on appropriate products shall not be subject to the ban referred to in paragraph (1), item 1 and 2 of this Article.

Free use Article 260

- (1) The authorised users of protected geographical names may not request prohibition due to infringement of the right when the geographical name is used for notification and education of the public in a way which is not harmful to their interests.
- (2) The use of geographical names for the purposes of paragraph (1) of this Article shall be made without compensation.

Changes in the register Article 261

- (1) On the written request of natural and legal persons and their associations which meet the requirements provided for in Article 242, item 1 of this Law, the Office shall register the changes in the register for protected geographical names, resulting from the amendments of the study..
- (2) On a written request of the applicant or the authorised user of protected geographical name, the Office shall register, in the appropriate register, all changes in accordance with the granted right of authorised user which resulted after submitting the application or after granting of the right, provided that these are in compliance with the real situation.
- (3) If the request refers to significant changes in the scope of production, the evidence referred to in Article 241, paragraph (2) and (3) of this Law shall also be submitted with the request, with no more than six months validity.
- (4) If the changes refer to information about a new control institution, the Office may register these officially.
- (5) The changes registered in the Register of protected geographical names and the Register of authorised users shall be published in the official newsletter of the Office.
- (6) The contents and form of the request for registering the changes shall be prescribed in a regulation adopted by the director of the Office.

Conditions for revocation of the right to use Article 262

The decision for granting the right of using the protected geographical name may be revoked if it is determined that the requirements for granting the right to use the protected geographical name ceased to have effect as provided for in this law. In the procedure, on request for revoking the decision for granting of the right for using protected geographical name, the authorised user of the protected geographical name shall be bound to prove that there are requirements for granting of the right.

Request for revoking the decision Article 263

- (1) The decision for granting the right of using the protected geographical name may be revoked ex officio, or on the request of an interested entity or association in accordance with Article 239, paragraph (1), item 2 as well as on a proposal from the public prosecutor.

- (2) The request for revoking a decision in paragraph (1) of this Article shall be submitted in writing to the Office.
- (3) The applicant shall be bound to attach to the request referred to in paragraph (2) of this Article the necessary evidences.
- (4) The Office shall within fifteen days from the receipt of the request, to forward it to the holder of the right to use, and to invite him to declare himself thereon within thirty days from the date of receiving the notification.
- (5) The contents of the request for revoking the decision referred to in paragraph (1) of this Article shall be prescribed in a regulation adopted by the director of the Office.

Continuing the procedure for revoking the decision Article 264

- (1) If the submitter of the request for revoking the decision for granting the right to use a protected geographical name during the procedure renounces the request, the Office may continue the procedure ex officio.
- (2) The right to use protected geographical name shall cease to have effect for the person registered as an authorised user in the appropriate registers the day following the date of the effective decision for revoking that right.

PART VI PROLONGATION OF THE PROCEDURE AND RETURNING TO THE PREVIOUS STATE

Prolongation of the procedure Article 265

- (1) If the applicant has failed to perform some activity in the procedure of the Office within the set time limit and so may lose a definite right from the application or acknowledged right, he may submit a request for prolongation of the procedure.
- (2) The Office shall allow prolongation of the procedure if the applicant:
 - 1) submits a request for prolongation of the procedure, performs the missed activities and attaches all submissions within the prescribed time limit; and
 - 2) pays all fees and costs in the procedure in accordance with Article 24 of this Law;
- (3) For the request for prolongation of the procedure, an appropriate administration fee shall be paid.

Time limit to submit request for prolongation of procedure Article 266

- (1) A request for prolongation of the procedure may be submitted within two months from the date when the submitter has learned about the consequences in Article 265 of this Law.
- (2) After the expiry of six months from the date of omission, prolongation of the procedure may not be requested.

(3) If missed activities are not performed within the time limit referred to in paragraph (1) of this Article or fees and costs of the procedure in Article 24 of this Law are not paid, the Office shall make a conclusion for stopping the procedure.

When prolongation of procedure cannot be requested Article 267

Request for prolongation of procedure may be submitted if the following time limits are missed:

- 1) in Articles 265 and 266 of this Law;
- 2) for submitting a request in Article 52, paragraph (2) of this Law;
- 3) for submitting a proposal in Articles 268 and 269 of this Law;
- 4) for all procedures within the Office in which more parties participate.

Returning to the previous state Article 268

(1) The applicant or the holder of rights shall be allowed returning to the previous state, if in spite of the due attention, he has missed the time limit determined in this Law to perform some activity in the procedure within the Office for which would lose some right, if:

- 1) he submits a proposal for returning to the previous state and performs all missed activities within the set time limit,
- 2) he indicates the circumstances that prevented him to perform the missed activity within the defined time limit;
- 3) he pays the fees and costs in accordance with Article 24 of this Law.

(2) For the request for returning to the previous state, an appropriate administration fee shall be paid.

Time limit to submit proposal for returning to previous state Article 269

(1) The proposal for returning to the previous state shall be submitted within three months starting from the date when the reason for the omission ceased, and if the submitter found out the omission later, then from the date when he has learned about it.

(2) On the expiration of one year from the date of omission, returning to a previous state may not be requested.

(3) If time limit omission refers to payment of fees referred to in Article 24, paragraph (3) of this Law, that time limit shall be taken into account within time limit in paragraph (3) of this Article.

When returning to previous state may not be requested Article 270

(1) Returning to a previous state may not be requested due to omission of time limits for the following activities:

- 1) submitting a proposal as referred to in Articles 268 and 269, paragraph(1) of this Law;
- 2) submitting a request for prolongation of the procedure referred to in Articles 265 and 266 of this Law;

- 3) submission of one of the requests referred to in Article 52 of this Law;
 - 4) submitting an objection referred to in Articles 156 and 197 of this Law;
 - 5) submitting a request for prolongation of time limits laid down by this Law;
 - 6) submitting of translation referred to in Articles 18 paragraph 4, 122 paragraph 2 and 3 of this Law;
 - 7) for all procedures within the Office in which more parties participate.
- (2) Each person, using in good faith or making serious preparations for using the invention which is subject of the patent application or a patent, in the period between losing the right referred to in Article 265 paragraph (1) of this Law and publishing the decision information for returning to a previous state of the appropriate register, may without compensation for damages, continue with such use for the objectives of his work and the needs related to that work.

PART VII ASSIGNMENT OF THE INDUSTRIAL PROPERTY RIGHTS

Assignment agreement Article 271

- (1) The industrial property right applicant and the holder of the right, by agreement in its entirety or partly, may assign his right under the stipulations provided for in this Law or other regulations.
- (2) The assignment agreement of the right must be composed in writing and the signatures of the contracting parties certified by notary public.
- (3) The agreement referred to in paragraph (2) of this Article on request of one contracting party shall be registered in an appropriate register kept in the Office;
- (4) The agreement referred to in paragraph (2) of this Article which is not composed in writing and not certified by notary public shall not provide legal effect.
- (5) The agreement on assignment of right not registered in the appropriate register of the Office shall not provide legal effect against third parties.

License agreement Article 272

- (1) The applicant of an industrial property right and the holder of the right may, by licence agreement, assign that right under the stipulations provided for in this Law or other regulations.
- (2) The licence agreement must be composed in writing.
- (3) If more persons have submitted a patent application or if the patent holders are more entities, the consent of all these persons shall be necessary for concluding the licence agreement
- (4) If there is no consent for concluding a licence agreement referred to in paragraph (3) of this Article, the rules of property shall apply for assigning the right to usage.
- (5) The licence agreement which is not composed in writing shall not provide legal effect.
- (6) The licence agreement on request of one of the contracting parties shall be registered in an appropriate register kept in the Office.
- (7) The licence agreement not registered in the appropriate register of the Office shall not provide effect against third parties.

Void license agreement Article 273

Each provision of the licence agreement that sets limitations to the licence user which do not result from the right being subject of the agreement or which is not necessary for keeping that right, or if it is contrary to the regulations for limiting the competition shall be void.

Application of the Law on Obligations Article 274

For the agreements referred to in Articles 271 and 272 of this Law, despite the provisions of this Law, the Law on Obligations shall apply.

PART VIII ANNOUNCEMENT OF THE DECISION TO RECOGNISE INDUSTRIAL PROPERTY RIGHTS AS VOID

Article 275

The Decision for recognising the industrial property rights shall be announced void if found that there were no conditions provided for in Article 25, paragraph (3), Article 27, paragraph (3), Article 30, Article 74, Article 132, Article 133, Article 177, Article 178, Article 232 and Article 233, paragraph(1) of this Law, for recognising this right.

Proposal procedure Article 276

- (1) The decision for recognising the right may be announced void permanently during the time of protection ex officio or if proposed by the party concerned.
- (2) By way of derogation from paragraph (1) of this Article, the proposal for announcing void decision for recognising the right of trademark may not be submitted by a holder of the earlier registered trademark, if during five subsequent years prior to submitting the proposal he was aware of the utilisation of the later trademark.
- (3) The proposal for announcing a decision as void shall be submitted to the Office in writing.
- (4) The submitter shall be bound to submit all the evidence required to the proposal of paragraph (2) of this Article.
- (5) The Office shall be bound within 15 days upon receipt of the proposal to submit the proposal to the holder of the right and invite him to provide an opinion within 60 days from the date of receiving the notice at the latest.

Decision upon proposal Article 277

The decision announcing as void the decision for recognising the industrial property right shall be registered in the appropriate Register and published in the official newsletter of the Office.

Proposal cancellation Article 278

The Office may continue the procedure ex officio if the submitter of the proposal during the procedure renounces his proposal to announce void the decision for recognising the right.

PART IX REPRESENTATION

Individuals who may represent Article 279

(1) In the actions to protect the industrial property rights, representation of parties with the Office may be made by natural and legal persons registered in the Register maintained by the Office as follows:

1) Natural person who:

- is a citizen of the Republic of Macedonia;
- has registered to perform representation in the field of industrial property;
- has graduated at Law School, one of the technical faculties and Faculty of Pharmacy;
- has passed the specialised exam in accordance with the provision of this Law; and
- has knowledge of at least one of the official languages of the organisations in this area inhere Republic of Macedonia is a member state;

2) a lawyer registered in the Bar Association of the Republic of Macedonia who fulfils the conditions of item 1 of this paragraph and lawyers' association or lawyers' office registered in the Bar Association of the Republic of Macedonia that has employed an individual who fulfils the conditions of item 1 of this paragraph;

3) Legal person:

- that has a registered office in the Republic of Macedonia;
- that is registered for representation in the area of industrial property protection;
- has employed at least one individual who fulfils the conditions of item 1 of this paragraph.

(2) The representation of paragraph (1) of this Article may be made by representative coming from another country under conditions of reciprocity, provided that:

- he is a representative in his own country;
- has speaks Macedonian.

Specialised exam Article 280

(1) The specialised exam referred to in Article 279 paragraph (1) item 1 indent 1 of this Law shall check the knowledge of the candidates in the field of industrial property;

(2) The specialised exam shall be passed in the Office.

(3) The specialised exam shall be held at least once a year.

(4) The specialised exam shall be passed in writing and verbally.

- (5) Individuals who passed the specialised exam for representatives shall be registered in the Office.
- (6) The content and programme of the specialised exam, the content of the application form for passing the specialised exam, the procedure for carrying out the specialised exam and the correction exam, as well as the content of the records of people who passed the exam shall be set by a regulation approved by the director of the Office.

Examination Board Article 281

- (1) The technical exam shall be passed in front of an Examination Board consisting of: the President, four members, their deputies and a secretary.
- (2) The President, the members, the deputies and the secretary of the Examination Board shall be appointed and dismissed by a decision by the Director of the Board and their mandate shall be for three years, and following the date of expiry of this period, the members may be reappointed for another three year mandate.
- (3) The Decision for appointing members and deputies of the Examination Board shall also define the subjects that they will carry their lectures and the exam for.
- (4) The President and the members of the Examination Board may only be individuals that have scientific and technical knowledge in the field.
- (5) The President, the members and the secretary of the Examination Board shall be paid compensation for their work in the Examination Board and the amount shall be defined by the director of the Office and should cover the actual working costs of the Examination Board on the basis of number of applicants attending the lectures i.e. passing the exam, number of lectures, number of exams carried out both in writing and verbally.

Acquiring the right to perform representation activities Article 282

The right to perform representation activities before the Office shall be acquired on the date of registration in the Register of Representatives.

Registration in the Register Article 283

- (1) The procedure for registration in the Register of Representatives shall be taken by submitting a request for registration in the Register of Representatives.
- (2) Enclosed to the request for registration in the Representatives Register they shall submit supporting documentation for fulfilling the conditions with regard to registration referred to in Article 279 paragraph (2) and (3) of this Law.
- (3) Documentation evidencing the legal ground for fulfilling the conditions for registration in the Register of Representatives shall be communicated in original or verified copy, fully or only partially clearly showing that the legal ground has been fulfilled.
- (4) The content and form of the request for registration in the Register of Representatives, the procedure with regard to registration in the Register of Representatives and the supporting

documentation of paragraph (2) of this Article, shall be laid down by a regulation by the director of the Office.

Renewal of registration in Register Article 284

- (1) The registration in the Register of Representatives shall be renewed prior to the expiry date of one year from the date of registration i.e. from the registration renewal date in the Register.
- (2) The contents, the form as well as the procedure upon the request for renewal of registration in the Register of Representatives shall be laid down by a regulation by director of the Office.

Administrative fees and costs of the representation procedure Article 285

- (1) Administrative fees shall be paid for registration in the Register of Representatives, for renewal of registration in the Register of Representatives, at the re-registration in the Register, for the changes in the Register and for issuing certificates.
- (2) Costs shall be paid for carrying out exam for representatives, for the correction exam and for the publishing in the official newsletter of the Office.
- (3) The amount of the administrative fees or costs shall be stipulated by the Law on Administrative Fees and the Tariff of the Office.

Register of Representatives Article 286

- (1) The Office shall maintain the Register of Representatives.
- (2) The content of the Register of Representatives shall be laid down by a regulation by the director

Deleting from the Register Article 287

- (1) A Representative shall be deleted from the Register of Representatives:
 - 1) If registration renewal in the Register of Representatives is not requested within the time period set in the Article 284 of this Law;
 - 2) If he submits a request for deleting from the Register;
 - 3) If by court decision he is forbidden to perform representation activities;
 - 4) If he fails to submit evidence for fulfilling the conditions for registration renewal in the Register;
 - 5) Natural person shall be deleted from the Register of Representatives in case of death and if losing his business capacity;
 - 6) If the citizenship of the Republic of Macedonia is lost;
 - 7) Legal person shall be deleted from the Register of Representatives through the cessation of the legal person;
 - 8) If he has no registered office in the territory of Republic of Macedonia any more;

- (2) If the conditions for deleting from the Register of Representatives referred to in paragraph (1) this Article are fulfilled, the Office shall adopt a decision for deletion from the Register of Representatives.
- (3) In the office newsletter the information for deleting the representatives from the Register of Representatives shall be published ex officio.

Re-registration in the Register of Representatives Article 288

A representative who was once deleted from the Register of Representatives may again submit a request for registration and during each re-registration in the Register of Representatives shall get new reference number and shall submit the same evidence as for the registration in the Register

Registration of changes in the Register of Representatives Article 289

- (1) In the Register of Representatives all later changes of the address of the physical entity, or registered office of the legal person, changes in the List of Employees meeting the conditions for representation with legal persons, cessation of representation business and other amendments with natural and legal persons shall be registered.
- (2) The contents, the form as well as the procedure upon the request for entering changes in the Register of Representatives shall be laid down by a regulation adopted by the director of the Office.

Publication of information in the official newsletter Article 290

- (1) In the Office's official newsletter, following the payment of appropriate fees and costs, the following information shall be published:
- 1) the registration in the Register of Representatives;
 - 2) the registration of changes in the Register of Representatives;
 - 3) the deletion from the Register of Representatives.
- 2) Extract from the Register of Representatives shall be published once per year, in the first number of the Office's newsletter ex officio.

PART X JUDICIAL PROTECTION INFRINGEMENT OF RIGHTS

Achievement of protection of right Article 291

- (1) The person whose right acquired with this Law is infringed, shall be entitled to protection of the right by submitting a lawsuit to the Court which is competent to settle disputes regarding industrial property rights.

(2) Infringement of the registered and recognised rights laid down with this Law shall be deemed any unauthorised use, availability, restriction, imitation, association, rights harassment and the like contrary to the provisions of this Law.

(3) Imitation, within the meaning of paragraph (2) of this Law shall be deemed if the average consumer of goods or services, regardless of the type of products, may notice the difference only if he pays special attention, or if the trademark is for the translation or transcript i.e. transliteration.

Person authorised for protection Article 292

Lawsuit for achieving the protection of right referred to in Article 291, paragraph (1) of this Law may be submitted by:

- the submitter of the application for protection of right;
- the holder of the right;
- the licensee of the exclusive license, in scope in which he acquired the right to use, on the basis of a legal matter or law;
- the authorised user of geographical indication i.e. indication of the origin of the product; and
- the authorised user of a group and certified trademark.

Solidarity of the parties Article 293

When any right defined by this Law is infringed, each of the holders of that right may in respect of any third party demand protection of the right as he was a single holder. When a person violating the right fulfils the requirements of one of the holders of the same right, its obligation towards the other holders of the right shall cease as well. In case of ongoing legal proceeding, the holders of the same right shall be deemed as the only co-participants in the litigation.

Content of the lawsuit Article 294

(1) The person whose right shall be infringed may, with a lawsuit demand from the court:

- 1) to determine if there is violation of the right;
- 2) to ban the actions set in the lawsuit that are violating the right;
- 3) to claim reimbursement occurred by violation of rights intentionally or by negligence;
- 4) to confiscate or destroy the products produced or in circulation by violation of the right and assets used for their production;
- 5) the defendant to provide information about the identity of third parties involved in production and distribution of goods or services violating the rights, as well as about their distribution channels;
- 6) to submit the documentation and the data of the person violating the right;
- 7) civil punishment;
- 8) publication of the verdict on the expense of the defendant; and
- 9) Other requirements.

Time limit for lodging lawsuit Article 295

Lawsuit for violation of rights laid down by this Law may be lodged within three years from the date when the plaintiff become aware of the violation and the perpetrator, however not later than five years from the date of the violation.

Urgency of procedure Article 296

- (1) The procedure on the lawsuit for violation of the rights, the denial of rights, interim measures and other security measures laid down with this Law, shall be urgent.
- (2) The regulations for litigation i.e. for securing the claims shall apply on the procedures for protection of rights.

Termination of the proceeding Article 297

- (1) The court may terminate the procedure due to violation of the right of filed patent, industrial design, trademark and use of geographical indication i.e. appellation of product origin, until a decision for recognising the appropriate right is adopted by the Office.
- (2) The plaintiff shall be bound to submit appropriate written evidence in accordance with Article 62, paragraph (6) of this Law and it should be attached to the lawsuit concerning the violation of the patent right.
- (3) The court may set out the time limit for providing the evidence referred to in paragraph (2) of this Law.
- (4) If the evidence referred to in paragraph (3) of this Law is not submitted within the time period defined by the court, the lawsuit shall be rejected.
- (5) Paragraphs (2), (3) and (4) of this Article shall be applied on the published European application forms in EPO for the use of the invention during the period from the publication of the European application form to the time of recognition of the European patent, as well as of the European patent registered in the Register of the Office, starting on the date the EPO published the recognition in accordance with EPC.

Determination and cessation of the violation Article 298

- (1) Against individuals that have, in unauthorised manner, taken actions violating the rights acquired pursuant to this Law, it shall be demanded by a lawsuit to determine the violation, to cease the violation and to ban further violations of that type or similar ones.
- (2) When specific actions cause serious threat for violation of the rights acquired pursuant to this Law; it shall be demanded by a lawsuit to cease these actions and ban the violation of the right.
- (3) The lawsuit referred to in paragraphs (1) and (2) of this Law may be lodged against the persons that when performing their business activity provide services used by entities that violate the rights i.e. that seriously threat to violate the rights.

Reimbursement of damages, regular compensation and benefit gained groundless Article 299

- (1) The person who shall violate the industrial property rights regulated by this law shall be responsible for the loss according to the general rules for reimbursement of damages of the Law on Obligations.
- (2) In the lawsuit, payment of reimbursement may be requested, to the amount that, depending on the circumstances, may be demanded from the License Agreement if there is any.
- (3) The person who without legal basis, court decision or law, in an unauthorised manner undertakes certain actions that violate the right acquired on the basis of this Law and gained with a specific benefit, may by a lawsuit be demanded to recover or reimburse that benefit, in accordance with the general rules for groundless gaining of the Law on Obligations.
- (4) The requirements referred to in paragraphs (1), (2), and (3) of this Article shall not be exclusive. In case when the requirements referred to in paragraphs (1), (2), and (3) are cumulatively set, the court shall proceed in accordance with the general rules of the Law on Obligations.

Confiscation and destruction of objects Article 300

- (1) It may be demanded by a lawsuit to withdraw from the market, to confiscate or to destroy the products produced or supplied by violating the rights acquired on the basis of this Law, as well as the means mainly used for such products.
- (2) The court shall decide the measures referred to in paragraph (1) of this Article to be borne by the defendant, unless there are special reasons for not making such a decision.
- (3) In case of defining the measure referred to in paragraph (1) of this Article, the court shall take care that the measure is proportional to the degree of the committed violation.

Alternative measures Article 301

- (1) The competent court, on the request of the defendant, may determine payment of cash compensation to the damaged party as an alternative measure, instead of applying the measures for withdrawal from the commercial channels and finally removal from the commercial channels and measures for destruction, payment of money claims to the damaged party.
- (2) The court may define the measure referred to in paragraph (1) of this Article if the person was acting unintentionally and without negligence, and if the implementation of the relevant measures would have caused him disproportional damage and if the damaged party is satisfied with the cash compensation.

Delivery of information Article 302

- (1) In the procedure for violation of the right, the plaintiff may demand information about the origin and distribution channels of the movement of goods and services the violation is made by.

(2) The lawsuit or interim measure referred to in paragraph (1) of this Article may be submitted against:

- 1) the person sued in the procedure for violation of the right of this Law;
- 2) the persons who while performing business activities possess goods or provide services suspected to violate the right of this Law;
- 3) the persons who while performing business activities provide services used in the actions of other entities suspected to violate the right of this Law; and
- 4) the persons who by any of the persons referred to in paragraph (2), item 1, 2 and 3 of this Article are specified as participants in the production or distribution of goods or providing services suspected to violate the right of this Law.

(3) The request referred to in paragraph (1) of this Article may be submitted as a first request within lawsuit with several lawsuit requests, if the person the lawsuit has been lodged against, is in the main request as well.

(4) The request for information about the origin of goods and distribution channels of the goods and services referred to in paragraph (1) of this Article may cover particularly:

- 1) information about the names and addresses of the manufacturers and distributors, suppliers and other previous holders of goods or service providers, as well as retail and wholesale vendors this goods is intended for; and
- 2) information about the quantity of the manufactured, processed, delivered, received or ordered goods or service, as well as the prices achieved.

(5) The person to whom the request for information is delivered may reject to provide the data for the same reasons for which according to the rules of the Law on Civil Procedure a testimonial may be rejected. If rejecting to provide information without any justified reason, the person shall be responsible for the damage in accordance with the Law on Obligations.

(6) The provisions of this Article shall have no impact on the implementation of the provisions of the regulations on the manner of using confidential information in the civil and criminal proceedings, the regulations regulating the responsibilities for misuse of rights to obtain information and of the regulations regulating the processing and protection of personal information.

(7) The provisions of this Article shall not apply to Article 314 of this Law regulating the provision of evidence.

Civil punishment Article 303

(1) When violating the rights acquired on the basis of this Law, if intentionally or with ultimate negligence, the holder of the right may ask for payment of the regular compensation increased to 200%, irrespective if due to the violation he has suffered property loss to this amount.

(2) When deciding upon the request for paying the punishment of paragraph (1) of this Article, and estimation of its amount, the Court shall take into consideration all the circumstances of the case especially the level of guilt of the defendant, the amount, the regular reimbursement as well as the preventive aim of the punishment.

(3) If the property loss is higher than the punishment, the holder of the right shall be entitled to demand the difference up to full reimbursement.

Publication of the verdict
Article 304

The plaintiff may request legally effective verdict by which even partially shall accept the lawsuit to be published in the media at the defendant's expense. The court, within the frames of the lawsuit request, shall decide in which medium the verdict will be published as well as whether to publish the verdict fully or partially. In case the court decides to announce only part of the verdict, then at least the purview shall be published and, if necessary, the part of the verdict showing clearly the type of the violation and the person that made the violation of the right.

Publication of the patent holder i.e. the industrial design
Article 305

The inventor or the author, his successor or other legal successor may by lawsuit to the authorised court request the court during the whole time of the patent i.e. the industrial design to pronounce him as the holder of the patent i.e. the industrial design, if the patent i.e. the industrial design is issued under the name of a person who is not the inventor or author, his successor or other legal successor.

Dispute for recognition of the inventor i.e. the author
Article 306

- (1) The inventor of the patent or the author of the industrial design may by lawsuit to the authorised court request to be specified in the application and all the other documents.
- (2) Following the death of the inventor or the author referred to in paragraph (1) of this Article, the right for lawsuit shall be assigned to their successors.

Time limit to lodge lawsuit
Article 307

The lawsuit referred to in Article 306 of this Law may be lodged from the date of filing the application form as well as during the whole time of validity of the patent i.e. the industrial design.

Disputing the trademark right
Article 308

- (1) The legal or natural person may, through a lawsuit, ask the court to establish whether the sign used in circulation for marking the goods or services is identical or similar to the trademark used by other legal or natural person for marking their goods or services of the same or similar kind and that this sign was well known within the meaning of Article 6 bis of the Paris Convention as a sign of the goods or services of the plaintiff before the defendant submits the trademark application.
- (2) A plaintiff may claim the court to pronounce him a holder of trademark.

(3) The lawsuit referred to in paragraph (1) of this Article shall not be accepted by the court if the defendant or the holder of the trademark proves that before the submission of the application he had used the disputable sign for the same or similar kind of goods or services for the same or longer period than the plaintiff.

(4) The lawsuit referred to in paragraph (1) of this Article may not be lodged after the expiry of five years from the date of registration of the trademark in the trademark register.

Other cases of disputing the trademark right Article 309

The person who during the time of filing the application for recognition of the right to trademark or company i.e. name identical to the trademark of another person, may dispute this trademark for the same or similar kind of goods or services unless the holder of the trademark who was aware at the time the application was submitted, had the same company or name.

Registration in the Register Article 310

(1) Within 90 days of the date of submitting of the legally effective verdict accepting the lawsuit, the plaintiff may request to be registered in the relevant Register as a holder of appropriate right and to be issued the appropriate document by the Office.

(2) If the person whose lawsuit has been accepted within the time limit referred to in paragraph (1) of this Article, does not submit a request to be registered in the relevant Register as holder of the recognised right, the recognised right shall be deleted from the relevant Register.

Rights of third parties Article 311

The rights the third party has acquired from the former holder of the rights shall be valid for the new holder of the rights as well if they were registered in the relevant Register or were duly reported for registration prior to the commencement of the dispute.

Application of the provisions for violation of the rights Article 312

During the procedures for disputing the rights, the provisions for violation of the rights and measures for security of this Law shall be applied appropriately.

Interim measures Article 313

(1) The person who may lodge a lawsuit for violation of the rights laid down with this Law, if he provides evidence that will prove that his right has been violated or will be violated, the court upon his proposal, may determine interim measures to secure his requests as follows:

- ban all actions of violation and their continuation;

- confiscate, remove from circulation and keep samples, means, equipment and related documents; and
- adopt other similar measures.

(2) Upon the plaintiff's request, in case evidence is provided for proving that his right is violated or shall be violated while performing business activities for to the purpose of gaining financial benefit and such violation may cause irreparable harm, in addition to the interim measures referred to in paragraph (1) of this Article, the court may set as a guarantee the confiscation of movable and immovable assets owned by the defendant and assets that is not directly related to the violation, as well as a ban for availability of finances on the accounts within the financial institutions and availability of other property.

(3) For the purpose of defining and implementing the measures referred to in paragraph (2) of this Article, the court may request, from the possible violator or from the other persons, a provision of economic data or access to other necessary information and documentation. The court shall be authorised to secure keeping the confidentiality of this information as well as to ban their misuse.

(4) The interim measure referred to in paragraph (1) of this Article may also be pronounced without notifying the possible violator if the one proposing the guarantee proves that other interim measure will not be effective or that there is a risk to make irreparable harm.

(5) The interim measure of paragraph (2) of this Article may be pronounced without notifying the possible violator if the one proposing the guarantee proves that other interim measure will not be effective or that that is necessary taking into consideration the serious circumstances of the violation.

(6) If the interim measure is pronounced without notifying the possible violator, the court shall forward the decision for interim measure to the possible violator immediately following its implementation.

(7) The Court shall determine the time period of this measure within the decision for interim measure. In case the measure is determined prior to the submitting of the lawsuit, the time limit within which the one proposing the guarantee must submit a lawsuit for proving the justification of these measures may not be longer than 20 days following the date of submitting the decision to the one proposing it.

(8) Unless otherwise specified by this Law, the regulations for provision of claims shall be applied for the procedures defining interim measures.

Measures to provide evidence Article 314

(1) If requested by the person whose right is violated or there is justified doubt that his right will be violated, the court may lay down a measure for providing evidence.

(2) The measure of paragraph (1) of this Article may be pronounced by the court especially regarding:

- preparation of detailed description of the goods proving that it has violated specific right with or without taking a sample;
- confiscation of the goods which is believed that violates a specific right;
- confiscation of materials and means used for preparation and distribution of goods believed that violate a specific right, as well as related documentation.

(3) The measure of this Article may also be pronounced without notifying the opposing party unless the person whose right has been violated or there is justified suspicion that will be violated, provides evidence proving that the evidence for that violation may be destroyed and may not be provided or that irreparable harm may occur. If the measure is pronounced without notifying the opposing party, the court shall decide to forward the measure to it immediately following the adoption.

(4) The court shall determine the time period of this measure within the decision for interim measure. In case the measure is determined prior to the submitting of the lawsuit, the time limit within which the one proposing the guarantee must submit a lawsuit for proving the justification of these measures, shall not be longer than 20 days following the date of submitting of the decision to the one proposing it.

(5) Unless otherwise specified by this Law, the regulations for provision of claims shall be applied for the procedures defining interim measures.

Collecting evidence during the proceedings Article 315

(1) When the party involved in the legal procedure invokes to evidence and claims that that evidence is with the opposing party or under its control, the court shall invite the opposing party to provide such evidence specifying the time limit for submitting it.

(2) In case the holder of the right of this Law as plaintiff in the lawsuit claims that violation of the right occurred for the purpose of financial benefit, as well as if the legal procedure invokes to the banking, financial or similar commercial documentation, documents and similar evidence and claims that they are with the opposing party or under its control, the court shall invite this party to provide the evidence and shall specify the time limit for providing it.

(3) Where the party invited to provide evidence denies that they have the evidence or that it is under their control, the court may bring evidence for laying down the facts.

(4) In respect of the right of the party to reject submitting the evidence required, according to the regulations of the legal procedure, the right for refusal of testimony shall be applied.

(5) The court according its opinion shall estimate how significant is that that the party will not proceed according to the court decision instructing to provide evidence, or contrary to the opinion of the court, denies that evidence is in their possession.

PART XI SUPERVISION

Article 316

The Ministry of Economy shall supervise the implementation of the provisions of this Law and the bylaws adopted pursuant to this Law.

Article 317

Inspection supervision related to the implementation of the provisions of this Law on the circulation and use of protected industrial property rights, shall be performed by the State Market

Inspectorate ex officio (hereinafter referred to as the “Inspectorate”) upon the request of the holder of the right.

Article 318

(1) If the inspectorate finds that the industrial property rights have been violated, he shall bring a decision to order a withdrawal of the products, equipment, means or related documentation from circulation, or shall define appropriate measures for preventing further violation and shall define the time limit for their withdrawal from circulation, especially in case of:

- 1) unauthorised use of protected invention;
- 2) unauthorised use or imitation of protected industrial design;
- 3) unauthorised use or imitation of protected trademark;
- 4) unauthorised use of sign ® for trademark which is not registered;
- 5) unauthorised use or imitation of well known trademark and
- 6) unauthorised use or imitation of protected geographic name.

(2) If the legal or natural person does not proceed as ordered in paragraph (1) of this Article, the Inspectorate shall make a decision for interim ban of performing the activities in duration of 30 days for a legal person, 15 days for a natural person, it shall seal the premises where the business is performed, and shall confiscate the products, equipment, means and related documentation.

(3) The inspector shall be liable to immediately deliver the confiscated products, equipment, means and related documentation to the competent court.

(4) The items that are temporarily confiscated as a result of the violation referred to in this Article, after the validity of the verdict, shall be destroyed in accordance with the Law on Execution of Sanctions.

(5) If the inspector finds that with the committed violation an unlawful property benefit is gained, he shall be bound in the request for initiating the misdemeanour procedure to state the amount of this benefit and to request that amount to be confiscated from the perpetrator.

Article 319

(1) If the inspector reasonably suspects that the goods in circulation violates the industrial property right referred to in Article 318, paragraph (1), prior to submitting a request by the holder of the right, he shall make a report for the goods and shall withdraw it from the market.

(2) Regarding the measure referred to in paragraph (1) of this Article, the inspector shall immediately inform the holder of the right so that he can submit a request for taking actions in accordance with Article 320 of this Law.

(3) The inspector may request from the holder of the right to provide all the information which are necessary for confirming the reasons for suspicion.

(4) If within three working days of the notification, the holder of the right does not submit a request for taking actions in accordance with Article 320 of this Law, the goods shall be placed on the market.

Article 320

- (1) The holder of the right may submit a request in writing to the Inspectorate for taking actions for protecting the industrial property rights referred to in Article 318 of this Law.
- (2) The holder of the right shall be bound to attach the following to the request referred to in paragraph (1) of this Article and to submit it to the Inspectorate:
 - 1) evidence that the relevant industrial property right of is protected;
 - 2) statement that he will be fully responsible towards the persons involved in the procedure for the purpose of action or omission by the holder of the right or if established that the goods in question does not violate the industrial property right;
 - 3) technical description of the goods (precise and detailed);
 - 4) value of the original goods in the Republic of Macedonia;
 - 5) the location of goods;
 - 6) details for the importer of the goods and
 - 7) manufacturing country or countries.

PART XII MISDEMEANOUR PROCEDURE

Article 321

- (1) A fine in the amount of EUR 4,000 to 8,000 in denar counter-value shall be pronounced by the court to the legal person for a violation if:
 - 1) he is not authorised to represent foreign legal and natural person (Article 22);
 - 2) he is not authorised to use a registered or protected invention (Article 291, paragraph (3));
 - 3) he is not authorised to used or imitate a registered or protected industrial design (Article 291, paragraph (3));
 - 4) he is not authorised to used or imitated a registered or protected trademark (Article 29, paragraphs (3) and (4));
 - 5) he is not authorised to or imitate well-known trademark (Article 291, paragraph (3));
- (2) Apart from the fine referred to in paragraph (1) of this Article, the legal person shall be pronounced a sanction – ban to perform the activity from one to three years.
- (3) The fine in the amount of EUR 1,000 to 1,500 in denar counter-value shall be pronounced to the person in charge in the legal person for the violation referred to in paragraph (1) of this Article.
- (4) Apart from the fine referred to in paragraph (3) of this Article, the person in charge in the legal person shall be pronounced a sanction - ban to do his profession, occupation or duty for a period from one to five years, or permanent ban to perform the activity.
- (5) Fine in the amount of EUR 700 to 1,200 in denar counter-value shall be pronounced to the natural person for the violation referred to in paragraph (1) of this Article.
- (6) Apart from the fine referred to in paragraph (5) of this Article, the natural person shall be pronounced a sanction - ban to do his profession, occupation or duty for a period from one to three years.

(7) For all the violations referred to in Article 318 of this Law and paragraph (1) of this Law, the legal person, the person in charge in the legal person and the natural person shall be pronounced special sanction for confiscation of items.

(8) If found that the violations referred to in paragraph (1) of this Article are done by an organised group of people, composed of at least three persons, the competent court may pronounce fine in a triple amount.

(9) When the violations referred to in paragraph (1) of this Article are repeated, the authorised court may pronounce a fine in a quintuple amount.

(10) For the violations referred to in paragraph (1) of this Law that cause major property damage, proportional to the amount of the damage made or the acquired benefit, the competent court may pronounce a fine in the amount of the damage multiplied by ten.

Article 322

(1) A fine in the amount of EUR 700 to 1,000 in denar counter-value shall be pronounced to the legal person for violation in case of:

1) unauthorised use of the sign ® for trademark which is not registered;

2) unauthorised use or imitation of a protected geographic indication (Article 291, paragraphs (3) and (4)) and

3) they failed to provide the documents and information regarding the violation on the request of the holder of the right (Article 297, paragraph (2) and Article 314).

(2) Fine in the amount of EUR 350 to 700 in denar counter-value shall be pronounced to the person in charge in the legal person for the violations referred to in paragraph (1) of this Article.

(3) A fine in the amount of EUR 350 to 700 in denar counter-value shall be pronounced to the natural person for the violations referred to in paragraph (1) of this Article.

PART XIII TRANSITIONAL AND FINAL PROVISIONS

Adoption of bylaws Article 323

(1) The bylaws stipulated with this Law shall be adopted within six months from the date this Law enters into force.

(2) Until the date the bylaws referred to in paragraph (1) of this Article enter into force, the current bylaws shall apply.

Pending procedures Article 324

(1) In the procedures for recognition of industrial property rights for applications submitted before this Law enters into force, the provisions of this Law shall apply, with the exception of the applications for which the Office has taken specific actions before this Law enters into force.

(2) The provisions of the Extension Agreement shall be applied to the European applications submitted prior to the implementation of the Law on the Ratification of the European Patent Convention.

(3) The provisions of the Articles 119 to 126 and Article 297, paragraph (5) shall be applied to the European applications submitted after 1 January 2009.

(4) The provisions of Article 74 of this Law for extending the time of validity of patents with certificate for additional protection shall apply on the applications filed after 1 January 2009.

(5) The procedures for legal protection, misdemeanour procedure and inspection supervision by the State Market Inspectorate, which are not completed until the date this Law enters into force, shall be completed in accordance with the regulations which were in effect until the date this Law enters into force.

(6) The Commission of the Government of the Republic of Macedonia for deciding upon administrative procedure at a second instance in the field of industrial property shall decide regarding the complaints lodged against the decisions of the Office by the date this Law enters into force.

Termination of validity Article 325

The day this Law enters into force, the Law on Industrial Property (Official Gazette of the Republic of Macedonia No. 47/2002, 42/2003, 09/2004, 39/2006, 79/2007) shall cease to be valid.

Entry into Force Article 326

This Law shall enter into force on the eight day from the date of its publication in the Official Gazette of the Republic of Macedonia.
