

THE PATENT LAW

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Unofficial consolidated version

I INTRODUCTORY PROVISIONS

1. Subject Matter of Regulation and Definitions

Subject Matter of Regulation

Article 1

This Law shall regulate the legal protection of inventions.
The invention shall be protected by patent or petty patent.

Definitions

Article 2

For the purposes of this Law certain terms have the following meanings:

- 1) applicant means the person whom the records of the competent authority show, as the person who is applying for the patent or petty patent pursuant to the applicable law;
- 2) application means an application for a protection of an invention, and any reference to an application shall be considered as referring to the patent application, petty patent application, the application for the patent of addition or divisional application;
- 3) competent authority means the administrative authority of the Republic of Serbia which is competent for intellectual property rights;
- 4) person means a natural and/or legal person;
- 5) representative means an authorized person who can take actions in proceedings before the competent authority;
- 6) Register means the collection of data kept and maintained by the competent authority, relating to the applications filed with competent authority, granted patents with certificates of supplementary protection, granted petty patents and representatives of foreign natural and legal person having no seat or residence on the territory of the Republic of Serbia;
- 7) entry into Register means any act of including data into the Register of the competent authority;
- 8) right holder means the person whom the Register of the competent authority shows as the owner of the patent, petty patent, patent of addition and certificate of supplementary protection;
- 9) the procedure before the competent authority means any action in proceedings before the competent authority with respect to the application, request for Supplementary Protection Certificate, patent, petty patent, Supplementary Protection Certificate or request for entry of the European patent into the Register of Patents;
- 10) international application means the application filed in compliance with the Patent Cooperation Treaty;
- 11) designated office means the national Office of the State designated by the applicant under Chapter I of the Patent Cooperation Treaty;

12) elected office means the national Office of the State which is elected by the applicant under Chapter II of the Patent Cooperation Treaty;

13) receiving office means the national office or regional organization where the international application is filed;

14) European Patent Convention means the Convention on the Grant of European Patents signed in Munich on 5 October 1973, as amended by the act revising Article 63 on 17 December 1991 and by the Revision Act adopted in Munich on 29 November 2000;

15) European patent application is an application for a European patent filed under the European Patent Convention, as well as an international application filed under the Patent Cooperation Treaty, for which the European Patent Office acts as a designed or elected office and in which the Republic of Serbia is designated;

16) European patent is the patent granted by the European Patent Office in compliance with the European Patent Convention and based on the European patent application in which the Republic of Serbia is designated;

17) national patent or petty patent application is patent or petty patent application filed according to this Law with the competent authority;

18) national patent or petty patent is a patent or petty patent granted under the national patent or petty patent application;

19) certificate means the Supplementary Protection Certificate granted for medicinal products intended for humans or animals or plant protection products;

20) medicinal product means any substance or combination of substances intended for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals;

21) basic patent means a patent found in the request for the grant of certificates chosen by the holder of right and protecting a product from Article 113, paragraph 2 of this Law, preparation from item 25 of this Article, procedure for obtaining a product or utilization of a product.

22) plant protection product is active substance or preparation containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

(1) protect plants or plant products against all harmful organisms or prevent the effect of such organisms,

(2) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);

(3) protection of plant products during storage, which is applied before or after harvest or picking except preservatives;

(4) destruction of undesirable plants;

(5) destruction of parts of plants, checking or preventing undesirable growth of plants;

23) substance is chemical element and its compounds, as they occur naturally or by manufacture, including any impurity resulting from the manufacturing process;

24) active substance is substance or micro-organism, including viruses, having general or specific influence against harmful organisms, on plants, parts of plants or plant products;

25) preparation means mixture or solution composed of two or more substances including at least one intended for use as plant protection product;

26) plants means live plants and live parts of plants, including fresh fruits and seeds;

27) plant products means unprocessed products of plant origin or those having undergone only simple preparation, such as milling, drying or pressing, but excluding plants from item 26) of this Article;

28) harmful organisms means any species, strain or biotype belonging to the animal kingdom, and also viruses, bacteria and mycoplasmas and other pathogen agents harmful for plants or plant products;

29) data on the applicant filing the application, patent holder, applicant and requester, holder of right, licensee, pledger or pledgee are: personal name and address for natural person or a business title and a seat for legal persons.

30) Data on the representative are: personal name and address of the representatives office for natural person or a business name and a seat for legal persons as well as the data if the representative offers the service in compliance with the law regulating electronic administration.

31) maker means the person, established in the Republic of Serbia, on whose behalf the making of a product from article 113, paragraph 2 of this Law, or a medicinal product containing that product, for the purpose of export to third countries or for the purpose of storing, is carried out

Data collection, processing and protection of personal data

Article 2a

The competent authority having the purpose to collect and process the personal data acts in accordance with the law regulating the protection of personal data.

Access to information of public importance

Article 2b

Right of access to information of public importance contained in the patent application, Registers from Article 70 of this Law, published patent application specifications, granted patents, petty patents, Supplementary Protection Certificates and other information at the disposal of the competent authority, shall be realized in accordance with the law regulating free access to information of public importance.

2. Right to the Protection of an Invention

Entitlement to Protection

Article 3

The right to protection of the invention belongs to the inventor or his successor in title, or in cases prescribed by this Law, to employer or his successor in title.

If an invention is the result of the joint effort of a number of inventors, they have a joint right to protection. A person rendering technical assistance to an inventor shall not be considered to be an inventor.

If two or more persons have filed an application for a protection of the joint invention, it shall be considered, unless otherwise stipulated by them, that their ideal parts are equal.

Appropriate provisions of the law regulating obligations and proprietary right shall apply to those issues concerning the mutual legal relations between two or more titular's of rights on the joint invention, that are not provided for by this Law.

If two or more persons have made an invention independently of each other, the right to protection of invention therefore shall belong to the person whose patent or petty patent application has the earliest date of filing.

Persons employed by the competent authority have no right to protection of their inventions neither while they are employed by the competent authority, nor one year after the termination of such employment.

Entitlement of Foreigners to Protection of Invention

Article 4

Foreign natural and legal person who has no seat or residence in the Republic of Serbia, shall, in relation to the protection of invention in the Republic of Serbia, enjoy the same rights as domestic natural and legal person, where such treatment derives from international treaties binding for the Republic of Serbia.

Representation

Article 5

In proceedings before the competent authority, a foreign natural or legal person who has no seat or residence in the Republic of Serbia must be represented by a representative listed in the Register of Representatives kept by the competent authority or domestic attorney.

Notwithstanding the provisions of paragraph 1 of this Article, a foreign natural or legal person may act individually for the following actions:

- 1) file an application and perform other actions for the purposes of the accordance of the filing date of application;
- 2) receive notification by the competent authority referred to in procedure under item 1 of this paragraph;
- 3) pay fees and procedural costs.

In the case of undertaking actions referred to in paragraph 2 of this Article a foreign natural or legal person must appoint a representative for correspondence who has address on the territory of The Republic of Serbia.

If a foreign natural or legal person does not appoint a representative or representative for correspondence in accordance with the provisions of paragraph 3 of this Article, the competent authority shall invite him in writing to appoint a representative or representative for correspondence and call his attention to the legal consequences of failure to proceed as requested within three months from the receipt of the invitation.

If a foreign natural or legal person fails to comply with invitation of the competent authority referred to in paragraph 4 of this Article, the competent authority shall render a conclusion rejecting his submission and providing for the delivery by public notice on the notice board of the competent authority.

Notwithstanding the provisions of paragraph 1 of this Article, the fee for the maintenance of the rights arising from the application and granted right may be paid by any person on behalf of the applicant or right holder.

Rights of the Inventor

Article 6

The inventor shall have the right to be designated as such in the application for a protection of an invention, specifications, Registers, certificates and publications related to his invention, in the accordance with the provisions of this Law (hereinafter: Moral Rights).

The inventor shall have the right to enjoy economic benefits from the invention for which he has filed an application or for which the patent or petty patent has been granted (hereinafter: Pecuniary Rights).

The rights of an inventor who created an invention within the course of employment and the rights of the employer in whose facilities the invention has been made, shall be regulated by this Law, by general acts and by contract concluded between the employer and employee or between their representatives.

II PATENTABILITY

Patentable inventions

Article 7

Patent is a right granted for an invention in any field of technology, which is new, involves an inventive step and is susceptible of industrial utilization.

In accordance with paragraph 1 of this Article, patent shall be granted for an invention for a product consisting of or containing biological material, or the process by the use of which biological material is produced, processed or used, including:

- 1) biological material isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature;
- 2) plants or animals, if the technical feasibility of the invention is not confined to a particular plant sorts or animal variety;
- 3) a microbiological or other technical process or a product obtained by means of such a process.

Within the meaning of this Law, biological material shall mean any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

The following, in particular, shall not be regarded as inventions, within the meaning of this Law:

- 1) discoveries, scientific theories and mathematical methods;
- 2) esthetic creations;
- 3) schemes, rules and methods for performing mental acts, playing games or doing business;
- 4) computer programs, and
- 5) presentation of information.

Subject matter or activities referred to in paragraph 4 of this Article shall be excluded from patentability only to the extent in which the application for a patent relates to the subject matter or activity as such.

Human Body and its Elements

Article 8

Human body, at the various stadia of its formation and development, and the simple discovery of one of its elements, including sequences or partial sequences of gene, shall not be regarded as invention that can be protected by a patent.

An element isolated from the human body or produced by means of a technical process, including the sequences or partial sequences of genes, may be patentable, even where the structure of that element is identical to that of a natural element.

The industrial application of a sequence or partial sequence of genes must be disclosed in the patent application on the day of its filing.

Exceptions to Patentability

Article 9

Patent or petty patent shall not be granted to protect:

1) inventions whose commercial use would be contrary to public order or morality providing that the use shall not be considered contrary to public order or morality only because it is prohibited by law or any other regulation, particularly in respect of:

- (1) processes for cloning human beings;
- (2) processes for modifying the germ line genetic identity of human beings;
- (3) uses of human embryos for industrial or commercial purposes;
- (4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;

2) inventions concerning methods for treatment by surgery or diagnostic methods or therapy practiced directly on the human or animal body, providing that this provision shall not apply to products or substances and compositions for use in any of these methods;

3) plant or animal variety or essentially biological process for the production of plant or animal, and also plants and animals exclusively obtained by means of the essentially biological process, providing that this provision shall not apply to microbiological processes or the products obtained by such processes.

Plant variety referred to in paragraph 1, item 3) of this Article means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant breeders' rights are fully met, can be:

- 1) defined by the expression of the characteristics that results from a given genotype or combination of genotype,
- 2) distinguished from any other plant grouping by the expression of at least one of the mentioned characteristics,
- 3) considered as a unit with regard to its suitability for being propagated unchanged.

Essentially biological process referred to in paragraph 1, item 3) of this Article for the production of plants or animals is a process consisting entirely of natural phenomena such as crossing or selection.

Microbiological process referred to in paragraph 1, item 3) of this Article means any process involving or performed upon or resulting in microbiological material.

III CONDITIONS FOR THE PROTECTION OF AN INVENTION

Novelty of Invention

Article 10

An invention shall be new if it does not form part of the state of the art.

Within the meaning of this Law, the state of the art shall comprise:

1) everything made available to the public by means of written or oral description, by use or in any other way, prior to the date of the filing of an application for the protection of an invention;

2) the content of all applications in the Republic of Serbia as filed, with the filing date preceding the date referred to in the item 1) of this paragraph and published on or after that date, in the manner prescribed by this Law.

The provisions of paragraphs 1 and 2 of this Article shall not exclude the possibility for patent protection of substances or compositions included in the state of the art, for use in a method of treatment by surgery or diagnostic method or therapy under Article 9. paragraph 1. item 2) of this Law, provided their utilization for these purposes is not comprised in the state of the art.

The provisions of paragraphs 1 and 2 of this Article shall also not exclude the possibility for patent protection for substances or compositions, referred to in paragraph 3 of this Article, for any specific utilisation in a method of treatment by surgical or diagnostic procedure or therapy under Article 9 paragraph 1 item (2) of this Law, providing such utilization for these purposes is not comprised in the state of the art.

Non-prejudicial Disclosure of Invention

Article 11

An invention which has already been part of the state of the art for a period of up to six months before the filing of the application shall also be deemed to be new, if its disclosure was due to or was a consequence of:

1) evident abuse in relation to the applicant or his legal predecessor;

2) the invention being displayed by the applicant or his legal predecessor at an official, or officially recognized exhibition, falling within the terms of the Convention on International Exhibitions, signed in Paris on 22 November 1928, and last revised on 30 November 1972, providing that the applicant states, when filing the application, that the invention was exhibited and that he provides an appropriate certificate to support this statement within a period of four months from the filing date of the application.

The certificate that an exhibition or a fair in the Republic of Serbia was of an officially recognized international character shall be issued by the Chamber of Commerce of the Republic of Serbia.

Inventive Step of the Invention

Article 12.

An invention shall be considered to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

In examining whether an invention involves an inventive step, the content of applications referred to in Article 10, paragraph 2, item 2) of this Law shall not be considered.

Industrial Application

Article 13.

An invention shall be considered to be susceptible to industrial application if its subject matter can be made or used in any kind of industry, including agriculture.

IV CONTENT, ACQUISITION AND SCOPE OF RIGHT

Content of Right

Article 14

The owner of a patent or petty patent shall have the exclusive right to:

- 1) use the protected invention in production;
- 2) place on the market products made by the protected invention;
- 3) dispose of the patent or petty patent.

In exercising his exclusive right to the commercial use of protected invention, the owner of a patent or petty patent shall have the right to prevent any third party not having his consent from:

- 1) making, offering for sale, placing on the market or using the product made by means of the protected invention or from importing or storing the product for mentioned purposes;
- 2) using the patented process;
- 3) offering the patented process for sale;
- 4) producing, offering for sale, placing on the market, using, importing or storing for such purposes a product directly obtained by the patented process;
- 5) offering for sale or supplying products that constitute essential elements of an invention to parties unauthorized to use such invention, if the person offering or supplier knows or must have known based on factual circumstances that such product is intended for use in an invention owned by someone else.

Content of Right in Patents in Field of Biotechnology

Article 15

If the patent refers to biological material possessing specific characteristics which are the result of a biotechnological invention, the rights laid down in Article 14, paragraph 2 of this Law, shall extend to any biological material derived from that biological material through

propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

If the patent concerns a product containing or consisting of genetic information, the rights laid down in Article 14, paragraph 2 of this Law shall extend to all other material in which the product is incorporated, provided it contains genetic information that performs its function, except the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene in which the product is incorporated, provided it contains genetic information that performs its function.

If the patent concerns a process that enables production of biological material possessing specific characteristics as a result of the biotechnological invention, the rights laid down in Article 14, paragraph 2 of this Law shall also extend to biological material directly obtained through the process and to any other biological material derived from the directly obtained biological material through propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

Within the meaning of this Law, biotechnological inventions are inventions which concern a product consisting of or containing biological material or a process by means of which a biological material is produced, processed or used.

Biological Material Obtained from the Propagation or Multiplication

Article 16

The protection from Article 15 of this Law shall not refer to biological material obtained from the propagation or multiplication of biological material placed on the market by the owner of the patent or with his consent, where the propagation or multiplication necessarily results from the implementation for which the biological material has been marketed, providing that the material obtained is not subsequently used for other propagation or multiplication.

Acquisition of Right

Article 17

A patent or petty patent shall be obtained by the publication of the mention of its grant in the Official Gazette issued by the competent authority (hereinafter: Official Gazette) and shall have effect as of the filing date of the application.

Rights from the Published Patent Application

Article 18

The applicant shall be conferred provisional rights, the content of which shall be identical to those of a patent after publication of a patent application, and which shall be valid from the date of publication of the application to the date of publication of mention of the grant of a patent.

In the case that a patent is not granted, the rights arising from the application shall be deemed not to have existed.

Scope of Protection of Provisional Rights

Article 19

The scope of protection conferred by an application in the period up to the grant of a patent shall be determined by the content of the claims in the application published in accordance with this Law.

If a patent is granted with claims that have been amended during the procedure, the amended claims shall determine the scope of protection conferred by the application, provided they do not go beyond the protection referred to in paragraph 1 of this Article.

Scope of protection conferred by a patent or petty patent

Article 20

The scope of protection conferred by a patent or petty patent shall be determined by the content of the claims, whereby the description and drawing shall be used to interpret the claims.

If the subject matter of a patent is a process, the rights conferred by the patent shall extend to the product directly obtained by such process.

V LIMITATION OF RIGHTS

Exceptions to Exclusive Rights

Article 21

The exclusive rights of a right holder referred to in Articles 14 and 15 of this Law shall not apply to:

- 1) the use of invention or the use of products made on the grounds of the invention for personal, non-commercial purposes;
- 2) research and development activities relating to the subject matter of protected invention, including activities that are necessary for obtaining an authorization from the competent authority for placing on the market a product which is a drug intended for use on humans or animals, or a medicinal product or plant protection products defined by the law regulating plant protection products;
- 3) the direct, individual preparation of a drug in a pharmacy based on a single prescription, and to the placement of such drug on the market.

The provisions of paragraph 1 shall apply only if they do not conflict with normal exploitation of the patent or petty patent, and do not unreasonably prejudice the legitimate interests of right holders, taking into account the legitimate interests of third parties.

Exhaustion of Rights of the Right Holder

Article 22

If a protected product is placed on the market on the territory of the Republic of Serbia by the right holder or with his consent, the person coming into possession of such product may use and dispose of it freely.

The Right of Prior User

Article 23

A patent or petty patent shall have no effect against a person acting in good faith who has, before the date of priority, already started exploiting protected invention in production on the territory of the Republic of Serbia, or has made all necessary preparations to initiate such use.

The person referred to in paragraph 1 of this Article shall be entitled to continue exploiting the invention exclusively for production purposes, in his own plant or in the plant of another person for his own needs.

The person referred to in paragraph 1 of this Article cannot assign his right for the exploitation of the invention to another person, except together with the enterprise or part of the enterprise in which the preparation for use or the use of the invention has taken place.

Limitation of Rights to Facilitate International Traffic

Article 24

A patent or petty patent shall have no effect against a person who uses devices made on the basis of a protected invention where such devices constitute an element in the structure or equipment of a vessel, aircraft or land vehicle or which serve exclusively for the operation of such vessel, aircraft or land vehicle belonging to a Member State to the Paris Union or member of the World Trade Organization (hereinafter: WTO) when it enters the territory of The Republic of Serbia temporarily or accidentally.

Limitation of Rights Concerning Biological Material

Article 25

By acquiring protected plant propagating material from the owner of a patent or with his consent, a farmer shall obtain authorization to use the product of said propagating material for further propagation or multiplication on his own farm, under conditions prescribed by the law on the protection of, plant breeders' rights.

By acquiring protected animal reproductive material or breeding stock from the owner of a patent or with his consent, a farmer shall obtain authorization for use protected livestock or for reproductive material for the purpose of his own agricultural activities, but not for sale within the framework or for the purpose of a commercial reproduction activity.

Compulsory License

Article 26

If the right holder refuses to license the right of commercial use of a protected invention to other persons or sets unreasonable conditions for such licensing, the government authority competent in the field in which the invention shall be employed may, at the request of an interested party after considering the merits of each individual case, grant a compulsory license, in the following cases:

- 1) if the right holder himself or a person authorized by him does not use the protected invention or uses it insufficiently in the Republic of Serbia;
- 2) if the commercial use of an invention that has been subsequently protected in the name of another person is not possible, without the use of the protected invention in whole or in part;
- 3) when it is necessary to remedy a practice determined after judicial or administrative process to be anti-competitive.

The request for the grant of a compulsory license cannot be filed before the expiration of a period of four years from the date of filing of the patent application or before the expiration of a period of three years from the grant of the patent or petty patent, whichever period expires last.

Before making a request under the paragraph 1 of this Article the interested person shall be required to prove that he has made efforts to obtain authorization for the use of the protected invention from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.

The interested person, referred to in paragraph 1, item 1) of this Article, may only be a person who proves that he has the appropriate technological capacity and production facilities for the commercial use of the protected invention.

The interested person referred to in paragraph 1, item 2) of this Article may only be the right holder of the second invention, under the following conditions:

- 1) that the second invention involves a technical advancement of special economic significance in relation to the first protected invention and that
- 2) the owner of the first invention is entitled, on reasonable terms, to a cross-license to use the second invention.

Authorization for the use of the earlier protected invention shall be non-assignable except with the assignment of the second patent.

A compulsory license cannot be granted if the patent owner provides legitimate reasons to justify non-exploitation or insufficiency of exploitation of the protected invention.

Provisions of paragraphs 2. and 3. of this Article shall not apply to compulsory license granted when the public emergency endangers the survival of the state or its citizens or in cases of public non-commercial use.

Holder of patent shall be promptly informed about the procedure on granting compulsory license referred to in paragraph 8. of this Article.

In the case of semi-conductor technology, a compulsory license may be granted only with the aim of public non-commercial use or when it is necessary to remedy a practice determined after judicial or administrative process to be anti-competitive.

Remuneration for the Compulsory License to the Right Holder

Article 27

The holder of compulsory license shall be required to pay to the right holder a mutually agreed remuneration. In the absence of an agreement on the amount and method of payment of such remuneration, the competent court shall decide, taking into account the merits of each individual case and the economic value of the compulsory license.

Scope and Duration of Compulsory License

Article 28

The scope and duration of a compulsory license shall be limited to the purpose for which it has been granted.

A compulsory license shall not be exclusive.

A compulsory license may be assigned only with the manufacturing plant that exploits the invention for which the license has been granted.

A compulsory license shall predominantly be granted for the supply of the domestic market.

A compulsory license may be terminated if and when circumstances that have led to its grant cease to exist and are unlikely to recur.

On reasoned request, the government authority competent in the field in which the invention shall be employed shall re-examine the further existence of circumstances referred to in paragraph 5 of this Article.

Cross Compulsory License Granted to Plant Breeders and Patent Holder relating to Biotechnological Invention

Article 29

Where a plant breeder cannot obtain or exploit a protected plant breeders' rights without infringing prior patent, he may file the request for the grant of a compulsory license to the government authority competent for the Agriculture for the use of the invention protected by the patent inasmuch as the license is necessary for the exploitation of the plant variety to be protected.

If such a license is granted, the owner of the patent shall be entitled to a compulsory cross-license to use the plant variety protected, on reasonable terms.

Where the owner of a patent concerning a biotechnological invention cannot exploit it without infringing a prior protected plant breeders' rights, he may file the request for the grant of a compulsory license to the government authority competent for the Agriculture, that cannot be exclusive, for the use of the plant variety protected.

If compulsory license is granted, the holder of the plant breeders right is entitled to a compulsory cross-license to use the protected invention on reasonable terms.

Compulsory license from paragraph 1 and 3 shall not be exclusive.

A requester for the compulsory license referred to in paragraphs 1 and 3 of this Article must demonstrate that:

1) he has unsuccessfully made efforts to obtain a contractual license;

2) the plant variety or the invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.

The compulsory license referred to in paragraphs 1 and 3 of this Article may only be assigned with the manufacturing plant that exploits the invention for which the license has been granted.

For compulsory license referred to in paragraph 1 and 3 of this Article, the licensee shall pay appropriate royalty.

Compulsory Licenses for Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems

Article 30

Government authority responsible for Health, may grant a compulsory license in relation to patents and Supplementary Protection Certificates concerning the manufacture and sale of pharmaceutical products, when such products are intended for export to importing countries having public health problems to any person who submits a request in accordance with the provisions of this Law. In deciding to grant compulsory license the Government authority responsible for Health will take particularly into account the need for execution of decisions of the WTO Council on 30 August 2003 on the implementation of item (6) of the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health on 14 November 2001 (hereinafter: the Decision).

Pharmaceutical product specified in paragraph 1 of this Article means any product of the pharmaceutical industry including medicinal products for human use, implying any substance or combination of substances presented as having properties for treating or preventing disease in human beings and any substance or combination of substances which may be used to human beings, for the purpose of restoring, correcting or adjusting physiological functions by exerting a pharmacological, immunological or metabolic action, or for making a medical diagnosis, including active ingredients and diagnostic kits *ex vivo*.

Importing country referred to in paragraph 1 of this Article is any country to which the pharmaceutical product is to be exported. The following are eligible importing countries:

- 1) any least-developed country appearing as such in the United Nations list;
- 2) any member of the WTO, other than the least-developed country members referred to in item (1) of this paragraph, that has made a notification to the Council for TRIPS of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way;
- 3) any country that is not a member of the WTO, but is listed in the OECD Development Assistance Committee's list (hereinafter the OECD) of low-income countries with a gross national product per capita of less than amount established by the OECD Development Assistance Committee, and has made a notification to the Government of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way.

Any WTO member that has made a declaration that it will not use the system as the importing WTO member is not an eligible importing country.

Importing countries that are not WTO members, and that are the least developed countries and developing countries and that meet the requirements referred to in paragraph 3 of this Article must fulfil following additional conditions:

1) the importing country is obliged to make the notification pursuant to the Decision directly to the Government;

2) the importing country is obliged, to state in the notification that it will use the system to address public health problems and not as an instrument to pursue industrial or commercial policy objectives and that it will adopt the measures referred to in paragraph 4 of the Decision;

Government authority responsible for Health, may at the request of the right holder, or at its own initiative, terminate a compulsory license if the importing country has failed to honour its obligations referred to in paragraph 5 item 2) of this Article.

The request referred to in paragraph 1 of this Article must include, in particular:

1) information about the requirements for the grant of compulsory licenses in other states for the same product with details of the quantities and importing countries concerned;

2) data on the applicant for the grant of compulsory license and of any representative whom he has appointed to act for him;

3) the non-proprietary name of the pharmaceutical product or products which the person who has filed the request for the grant of compulsory license intends to manufacture and sell for export under the compulsory license;

4) the amount of pharmaceutical product which the applicant intends to produce under the compulsory license;

5) the importing country or countries;

6) evidence of prior negotiation with the right-holder pursuant to paragraph 11 of this Article;

7) evidence of specific request from authorized representatives of the importing country or countries or a non-governmental organization acting with the formal authorization of one or more importing countries or UN bodies or other international health organizations acting with the formal authority of one or more importing countries.

Government authority responsible for Health, shall notify the right holder without delay of the requirement for the issue of compulsory license and before the grant of compulsory license shall give the right-holder an opportunity to comment on the request and to provide the competent authority with relevant information regarding the request.

When deciding on the request for the grant of compulsory license government authority responsible for Health, shall verify that:

1) each importing country cited in the request which is a WTO member has made a notification to the WTO pursuant to the Decision, or each importing country cited in the request which is not a WTO member has made a notification to the Government pursuant to this Article in respect of each of the products covered by the request. The foregoing is without prejudice to the flexibility that least developed countries have under the Decision of the Council of TRIPS of 27 June 2002;

2) the quantity of product cited in the request does not exceed that notified to the WTO by an importing country which is a WTO member, or to the Government by an importing country which is not a WTO member;

3) taking into account other compulsory licenses granted in other countries, the total amount of product authorized to be produced for any importing country does not significantly exceed the amount notified by that country to the WTO, in the case of importing countries which

are WTO members, or to the Government body, in the case of importing countries which are not WTO members.

The person who has filed the request for the grant of compulsory license is obliged to specify the data prescribed in paragraph 9 of this Article in the request for the grant of compulsory license.

Compulsory license may only be granted if the requester provides the evidence that he has made efforts to obtain authorization from the right holder and that such efforts have not been successful within a period of thirty days before submitting the request.

The provision referred to in paragraph 11, of this Article shall not apply in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

Compulsory License Conditions for Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems

Article 31

A compulsory license may only be granted as a non-exclusive, its scope and duration must be indicated in the decision and they are related solely to the purpose for which a compulsory license was granted. The amount of products manufactured under the license shall not exceed what is necessary to meet the needs of the importing country or countries cited in the request, taking into account the amount of products manufactured under other compulsory licenses granted elsewhere.

A compulsory license may be assigned only with the manufacturing plant that exploits the invention for which the license has been granted.

The decision on the grant of a compulsory license shall contain the actions to which the person who has filed the request for the grant of compulsory license is entitled and which are necessary for the purpose of manufacturing the product in question for export and distribution in the country or countries cited in the request. No product made or imported under the compulsory license shall be offered for sale or put on the market in any country other than that cited in the application, except where an importing country avails itself of the possibilities under item 6(i) of the Decision to export to fellow members of a regional trade agreement that share the health problem in question.

The decision on the grant of a compulsory license shall require:

1) that the products made under the compulsory license must be clearly identified, through specific labelling or marking, as being produced under compulsory license, must be distinguished from those made by the rights-holder through special packaging and/or special colouring or shaping, providing that such distinction is feasible and does not have a significant impact on price,

2) the packaging and any associated text must bear an indication that the product is subject to a compulsory license, giving the name of the authority that has granted the compulsory license and any identifying reference number, and specifying clearly that the product is exclusively for export to and distribution in the importing country or countries concerned,

3) details of the product characteristics shall be made available to the customs authorities of the Republic of Serbia.

The decision on the grant of a compulsory license shall require that the licensee shall post on a website before shipment to the importing country, the following information, about which the licensee shall notify the Government authority responsible for Health, in particular:

- 1) the quantities being supplied under the compulsory license and the importing countries to which they are supplied;
- 2) the distinguishing features of the product or products concerned.

If the product covered by the compulsory license granted in the Republic of Serbia is protected by patent or petty patent in the importing countries cited in the request, the product shall only be exported if those countries have issued a compulsory license for the import, sale and/or distribution of the product.

The decision on the grant of a compulsory license shall require that licensee shall pay the remuneration to the right holder that is to be determined as follows:

- 1) in the cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use, the remuneration shall be a maximum of 4 % of the total price to be paid by the importing country or on its behalf;
- 2) in all other cases, the remuneration shall be determined taking into account the economic value of the use authorized under the license to the importing country or countries concerned, as well as humanitarian and non-commercial circumstances relating to the issue of the license.

After the decision to grant a compulsory license becomes final, the authority to which the Government authority responsible for Health delegates competence may, on the proposal for the preservation of evidence submitted by the right holder, have access to books and records kept by the licensee, for the sole purpose of checking whether all obligations cited in the decision to grant compulsory license, and in particular those relating to the final destination of the products, have been met.

The business books and records from paragraph 8 of this Article, shall include proof of exportation of the product, through a declaration of exportation certified by the customs authority, as well as evidence of import.

The license conditions are without prejudice to the method of distribution in the importing country.

Refusal of the Request to Grant Compulsory License

Article 32

The Government authority responsible for Health shall refuse the request to grant compulsory license if the request does not contain the elements necessary for making the decision referred to in Article 30 of this Law or if the conditions to grant the license prescribed by Article 31 of this Law are not met.

Notification

Article 33

The Government authority responsible for Health shall notify the Council of TRIPS of its final decisions to grant compulsory license for patents relating to the manufacture of

pharmaceutical products for export to countries with public health problems, of the specific conditions attached to it, as well as on its modification and termination.

The information provided shall include the following details of the license:

- 1) the name and address of the licensee;
- 2) the product concerned;
- 3) the quantity to be supplied;
- 4) the importing country;
- 5) the duration of the license;
- 6) the website referred to in Article 31 paragraph 5 of this Law.

Prohibition of Importation

Article 34

The import of products manufactured under a compulsory license granted under the paragraph 30 of this Law for the purposes of release for free circulation, re-export, placing under suspensive procedures or placing in a free zone or free warehouse shall be prohibited in the Republic of Serbia.

Paragraph 1 of this Article shall not apply in the case of re-export to the importing country cited in the request and identified in the packaging and documentation associated with the product, or placing under a transit or customs warehouse procedure or in a free zone or free warehouse for the purpose of re-export to that importing country.

Action by Customs Authorities

Article 35

If there are sufficient grounds for suspecting that products manufactured under a compulsory license granted pursuant to this Law are being imported into the Republic of Serbia contrary to Article 34 paragraph 1 of this Law, the Customs authorities shall suspend the release of, or detain the products concerned for the time necessary to obtain a decision of the Government authority responsible for Health on the character of the imported products, not exceeding ten working days. If special circumstances apply, the Customs authority may extend the period of the detention by a maximum of ten working days.

The right holder and the manufacturer or exporter of the products concerned shall be informed without delay of the detention of the products referred to in paragraph 1 of this Article and shall be given ample opportunity to supply the Customs authority with information and evidence on the relevant products.

If it is confirmed in the period of the detention, violation of the compulsory license contrary to the prohibition of the Article 34 paragraph 1 of this Law, the Customs authority shall ensure that the products are seized and disposed of in accordance with the Customs regulations.

The procedure of detention or seizure of the goods shall be carried out at the expense of the importer in accordance with the Customs regulations and the costs of the procedure of

detention or seizure are covered jointly with the importer and any other person who attempted illicit importation.

If the products detained by the Customs authorities are subsequently found not to violate the prohibition referred to in Article 34 paragraph 1 of this Law and if the customs regulations have been complied with, the Customs authority shall release the products on the territory of the Republic of Serbia.

The Customs authority shall inform the Government body responsible for Health of any decisions on seizure or destruction of products in accordance with this Article.

Exceptions to the Prohibition of Importation

Article 36

Articles 34 and 35 of this Law, shall not apply to import of small quantities of goods contained in travellers' personal luggage for personal and non-commercial use within the limits laid down in respect of relief from the Customs duty.

Cancellation or Modification of the Compulsory License

Article 37

Right holder or licensee may request from the Government authority responsible for Health to cancel the compulsory license if it finds that the opposing party does not comply with the decision on the grant of compulsory license. In a decision on the cancellation of compulsory license, the Government authority responsible for Health shall, in consultation with the right holder, set a period in which the licensee shall at its expense, redirect all the products that are in his possession to the country having needs as referred to in Article 30 paragraph 9 of this Law or otherwise dispose of them with the consultation with the holder of right.

If the importing country submits a notification that the quantity of pharmaceutical products has become insufficient to meet its needs, the licensee may require modification of conditions of the license permitting the manufacture and export of additional quantities of the product to the extent necessary to meet the needs of the importing country concerned.

Procedure on request referred to in paragraph 2 of this Article is urgent.

If additional quantity of products does not exceed 25%, of originally approved amount of pharmaceutical products the provisions of Article 30 paragraph 9 of this Law shall not apply, when deciding on the request referred to in paragraph 2 of this Article.

Legal Protection

Article 38

The Government authority referred to in Articles 26, 29 and 30 of this Law shall pass the decision on the grant of compulsory license, refusal of the request to grant compulsory license, amendment and cancellation of compulsory license.

Decisions of the Government authority referred to in paragraph 1 of this Article on the grant of compulsory license, refusal of the request to grant compulsory license, amendment and

cancellation of compulsory license may be appealed with the Government within 15 days from the receipt of the decision.

The decision of the Government is final and administrative dispute may be instituted against that decision concerning the appeal within 30 days from the date of the receipt of the Government's decision.

VI TERM AND CESSATION OF RIGHT

1. Term and Maintenance of Right

Term of Right

Article 39

The term of a patent shall be 20 years from the filing date of the application.

The term of a petty patent shall be 10 years from the filing date of the application.

The term of a patent of addition cannot exceed that of the basic patent.

If patent of addition becomes basic patent, its term shall not exceed the remaining term of the initial basic patent.

Maintenance of Right

Article 40

Prescribed fees shall be paid for the maintenance of rights arising from the application and granted right.

The fee for the maintenance of rights arising from the application and the granted right may be paid by any person on behalf of the applicant or right holder.

The fees under paragraph 1 of this Article shall be paid in respect of the third year and each subsequent year, calculated from the date of filing of the application.

The fees under paragraph 1 of this Article for the divisional application must be paid for the current and each subsequent year from the date of filing of the original application.

If the applicant or the right holder fails to pay the fee referred to in paragraph 1 of this Article, the fee may be validly paid within an additional time limit of six months, provided a prescribed additional fee is paid at the same time. The proof of payment of these fees must be submitted to the competent authority.

2. Cessation of Right

Non-Payment of Fee

Article 41

If the applicant or the right holder fails to pay the prescribed fee for the maintenance of rights and to submit the proof of payment of these fees, within the time limit referred to in the Article 40, such rights shall cease on the day following the due date referred to in Article 40 paragraph 3 of this Law.

In the case referred to in paragraph 1 of this Article, the competent authority shall pass a decision on annulment of rights which is final and may be subject to administrative dispute before the competent court.

Abandonment of the Application and Waiver of Right

Article 42

If an applicant files a declaration in writing with the competent authority abandoning his application, such right shall cease on the day following the filing of the declaration.

If any right belonging to a third party has been entered into the Register, the applicant cannot abandon his right without prior written consent from the party in whose name license, pledge or any other right has been entered.

In the case from paragraphs 1 and 2 of this Article, the competent authority shall render conclusion to suspend the procedure.

If a right holder files a declaration in writing with the competent authority abandoning his right, such right shall cease on the day following the filing of the declaration.

If any right belonging to a third party on the patent or petty patent has been entered into the Register, the owner of the patent or petty patent cannot abandon his right without prior written consent from the party in whose name license, pledge or any other right has been entered.

In the case from paragraphs 4 and 5 of this Article, the competent authority shall adopt decision which is final and may be subject to administrative dispute before the competent court.

Death or Dissolution of a Right Holder or applicant

Article 43

A right shall cease to exist on the day of the death of a natural person or on the day of the dissolution of a legal person who is the owner of the patent or petty patent, unless it has been transferred to heirs or legal successors in title.

In the case from paragraph 1 of this Article, the competent authority shall render decision on termination of rights which is final and may be subject to administrative dispute before the competent court.

If, in the course of the procedure for the grant of patent, the applicant dies or ceases to exist, the competent authority passes a decision to halt the procedure till the legal followers of the applicant have entered into the procedure.

VII TRANSFER OF RIGHTS

Assignment

Article 44

The right to file an application, rights arising from the application, right on patent or petty patent may be assigned, in whole or in part, as the consequence of an assignment contract, a change of status of the applicant or right holder, as well as inheritance, court or administrative decision.

The assignment of rights under paragraph 1 of this Article shall be entered into the appropriate Register of the competent authority upon the request of the right holder, applicant or assignee.

The entry of the assignment referred to paragraph 1 of this Article into the appropriate Register of the competent authority, shall produce legal effect in relation to third parties.

The entry of the assignment referred to in paragraph 1 of this Article into the appropriate Register of the competent authority shall be subject to a special decision.

Issues related to the contract on transfer of rights, that is not regulated by this Law, shall be subject to provisions of the Law regulating obligations.

Content of the Assignment Contract

Article 45

The applicant or right holder may transfer rights arising from the application, right on patent or petty patent by the assignment contract under Article 44 paragraph 1 of this Law.

The assignment contract under paragraph 1 of this Article shall be drawn up in writing and it shall contain: the date of signing the agreement, name and surname or business name, domicile or residence or seat of the contractual parties, the patent or petty patent registration number, the number of the application, as well as the amount of remuneration, if agreed.

License

Article 46

The rights arising from the application, right on patent or petty patent may be with or without restrictions transferable by the license contract.

If two or more persons are right holders referred to in paragraph 1 of this Article on the same invention, the consent of all of them is necessary for concluding contractual license, unless otherwise stipulated by them.

The license contract under paragraph 1 of this Article shall be in writing and shall contain: the date of signing the agreement, name and surname or business name, domicile or residence or seat of the contractual parties, the patent or petty patent registration number, the number of the application, the term of validity of the license and the scope of the license.

The license contract under paragraph 1 of this Article shall be entered into the appropriate Register with the competent authority at the request of the right holder, applicant or licensee.

The entry of the license contract under paragraph 1 of this Article into the appropriate Register of the competent authority shall produce effect in relation to third parties.

The entry of the license agreement under paragraph 1 of this Article into the appropriate Register of the competent authority shall be subject to a special decision.

Any issue related to the license contract that is not regulated by this Law shall be subject to provisions of the law regulating obligations.

Right of Pledge

Article 47

The patent, petty patent or right arising from the application may be the subject of a pledge on the basis of a pledge contract, court decision and decision by other state authority.

The pledge contract under paragraph 1 of this Article shall be drawn up in writing and shall contain in particular: the date of signing, name and surname or business name, domicile or residence or the seat of the pledgee and pledger, as well as the debtor, if they are not the same person, the patent or the number of the application or the registration number of the granted right, and data about the claim secured by possessory lien.

The pledge under paragraph 1 of this Article shall be entered into the appropriate Register of the competent authority upon the request of the right holder, applicant or pledgee.

The following data shall be entered into the Register of the competent authority, and in particular: data on the pledger and debtor, when they are not the same person, as well as data on the lien creditor, the patent or petty patent registration number, the number of the patent or petty patent application; data on the claim secured by possessory lien including a designation of the basic and the maximum amount.

In the Register of the competent authority any changes of the data referred to in paragraph 4 of this Article shall also be entered.

The entry of the pledge under paragraph 1 of this Article into the appropriate Register of the competent authority shall be subject to a special decision.

The pledgee shall acquire possessory lien upon entry into the appropriate Register of the competent authority.

Any issue that is not regulated by this Law shall be the subject of provisions of the law regulating non-possessory lien, ownership rights and obligations.

The competent authority shall prescribe the particulars of the type of data under paragraph 4 of this Article to be entered into the Register of the competent authority.

Procedure for the Entry of Assignment, License and Pledge into the Register

Article 48

The procedure for the entry of an assignment, license and pledge into the Register shall be initiated by written request.

The request under paragraph 1 of this Article shall include in particular: the patent or petty patent registration number or the patent or petty patent application number, data on the right holder or applicant, a designation specifying that registration is sought of the assignment of the patent or petty patent, or the rights arising from the application or a designation of the rights whose registration is sought.

The request under paragraph 1 of this Article shall be filed with the following:

- 1) evidence of legal ground for the requested entry;
- 2) power of attorney if the procedure for the registration of the assignment, license or pledge is initiated through the representative;

3) proof of payment of the fee for the decision rendered on the request for the registration of the assignment, license or pledge.

The entry of the assignment of several patents or petty patents or applications into the Register may be requested on the basis of a single request referred to in paragraph 1 of this Article, provided that the earlier right holder and the new right holder are the same in respect of every patent or petty patent or application and that the registration numbers or application numbers are designated in the request.

The entry of a license or a pledge in respect of several patents or petty patents or applications into the Register may be requested on the basis of a single request referred to in paragraph 1 of this Article, providing that the right holder, the licensee or pledgee are the same in respect of each patent or petty patent or application, and that the registration numbers or application numbers are designated in the request.

The competent authority shall prescribe in details the particulars of the request under paragraph 1 of this Article, and shall determine the attachments to be filed with the request, and prescribe their content.

Examination of the Compliance with the Formal Requirements of the Request for Entry of Assignment, License and Pledge into the Register

Article 49

A request for the entry into the Register of an assignment, license or pledge shall be admissible if it contains the data referred to in Article 48 of this Law.

If the request for the entry into the Register of the assignment, license and pledge is not admissible, the competent authority shall invite the requester in writing to remedy the deficiencies within the two month from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the Register of an assignment, license or pledge and upon payment of the prescribed fee, the competent authority shall extend the time limit referred to in paragraph 2 of this Article, for a time period considered to be justified, but not exceeding two months.

If the person who has filed the request for entry into the Register fails to proceed as requested within the set time limit, the competent authority shall pass a decision rejecting the request.

Deciding on the Request for Entry of Assignment, License and Pledge into the Register

Article 50

If the request for the entry into the Register of an assignment, license or pledge is admissible pursuant the Article 49 of this Law, the competent authority shall examine whether the legal title on which the request is based on, complies with the requirements prescribed by the Law for the entry of an assignment, license or pledge into the Register.

If there is no legal basis to decide on the request for the entry of an assignment, license and pledge into the Register or if the data arising from the request do not match the data in the Registers, the competent authority shall notify in writing the requester about the reasons due to

which the entry into the Register cannot be granted and shall invite him to submit his observations regarding the reasons, within two months from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the Register of an assignment, license or pledge and upon payment of the prescribed fee, the competent authority shall extend the time limit referred to in paragraph 2 of this Article, for a time limit considered to be justified, but not exceeding two months.

The competent authority shall render a decision refusing a request for the entry of an assignment, license or pledge into the Register, if the requester fails to submit his observations, within the set time limit, regarding the reasons for which the entry into the Register cannot be approved, or if he submits his observations but the competent authority still considers that registration cannot be approved.

VIII INVENTIONS OF IMPORTANCE FOR DEFENCE AND SECURITY OF THE REPUBLIC OF SERBIA

Secret Application

Article 51

An application filled by a national of the Republic of Serbia which is found to be important for the defence or security of the Republic of Serbia is considered to be secret application.

Application under paragraph 1 of this Article shall be filed with the authority competent in national defence.

Procedure in Respect of the Application

Article 52

If the competent authority estimates in its examination of a patent or petty patent application that it falls under the category to be important for the defence or security of the Republic of Serbia it shall forward application to the authority competent for national defence, and such application shall retain the filing date accorded to it by the competent authority.

If the authority competent for national defence finds in its examination of an application filed that is not secret, it shall forward the application to the competent authority within three months from the reception of the application referred to in paragraph 1 of this Article.

If an application has ceased to be secret, authority competent for national defence shall forward such application to the competent authority without delay. Such application shall retain the filing date accorded to it by the competent authority.

Expert Opinion

Article 53

In the examination of an application containing secret invention, the authority competent in national defence may request an expert opinion from the competent authority on whether the secret invention claimed in the application fulfils legal requirements for protection of patent or petty patent.

The competent authority shall prescribe the particulars of expert opinion under paragraph 1 of this Article.

Secret invention

Article 54

A secret invention shall not be published.

A national of the Republic of Serbia may claim protection for a secret invention abroad only with approval of the authority competent for national defence.

Any issue related to the method, procedure and protection measures concerning secret invention before the authority competent for national defence shall be subject to law regulating national defence of the Republic of Serbia.

Procedure Following the Grant of Right

Article 55

If the authority competent for national defence establishes, upon the grant of a patent or petty patent for a secret invention, that the invention has ceased to be secret, it shall forward the file concerning the invention to the competent authority, which shall enter the patent or petty patent into the appropriate Register, publish the data on the granted right and issue a corresponding certificate to the right holder, in accordance with the provisions of this Law.

Right to Use

Article 56

The authority competent in national defence or in internal affairs shall have the exclusive right to use and dispose of a secret invention.

Any issue related to inventor's right to the remuneration for the protected secret invention shall be subject to legislation regulating national defence of the Republic of Serbia.

IX INVENTIONS MADE IN THE COURSE OF EMPLOYMENT

Concept of the invention from the working relationship and the concept of the employee

Article 57

Invention from the working relationship is:

- 1) the invention which the employee creates performing tasks established by an employing contract concluded between the employee and the employer or which have been created in compliance with the separate act of the employer regulating tasks of the research and development;
- 2) Invention created during the duration of the working contract or in the period of one year from the date of the termination of the contract, if that invention has been created in connection with the activities of the employer or the use of the material and technical facilities, information and other working conditions secured by the employer, or created as the result of the professional training that the employer secured for the employee.

The employer is the natural person performing the work for the employee on the basis of the working contract.

Employer's Right to Protection of Invention Made in the Course of Employment

Article 58

The right to the protection of an invention pursuant to Article 57, shall belong to the employer, unless otherwise provided by contract between the inventor and employer.

If an invention made in the course of employment has been protected in the name of the employer, the inventor shall have moral rights related to the invention and shall be entitled to remuneration.

Article 59

Deleted

Remuneration to the Employee

Article 60

Criteria for determining the amount of remuneration and the method and time of payment shall be established by a general act or a labour agreement between the employer and the employee or by a special agreement concluded between the employer and employee with regard to the specific invention.

In the case that there is no act from paragraph 1 of this article determining the compensation to the employee, the compensation is determined in every individual case taking into consideration:

- 1) the economic and other contributions coming out of the utilization of the invention by the employer or the third parties, with the agreement of the employee;
- 2) contribution of the employer in the creation of the invention; in particular facilities that have been placed at the disposal of the employee;
- 3) individual contribution of every inventor, in the case when the invention has been created by more employees.

the competent court, at the request of the employer or the employee, decides on the amount and manner of payment of compensation in the case when there is no agreement between the employer and the employee with regard to the compensation.

Acting of Employee

Article 61

Employee who comes up with an invention in the course of employment shall be required to submit a written report to the employer immediately upon the creation of the invention, informing him thereof.

The report from paragraph 1 of this article contains:

- 1) name and surname of the inventor;
- 2) complete and precise description of the invention with the special emphasis of the novel technical solution, as well as the drawing if necessary for the understanding;
- 3) best way of the utilization of the invention;
- 4) data on the business or special working task on which the employee was engaged at the moment of the creation of the invention or the concluded research contract;
- 5) manner of coming to the invention (experiments, etc.)
- 6) data on the facilities of the employer that the employee used in the process of creation of the invention;
- 7) names and creative contribution of the collaborators, if any.

Employer certifies, on the copy of the report from paragraph 1 of this article, the reception of the report with the initial date of the reception.

If the report referred to in paragraph 1 of this Article does not contain the prescribed elements, the employer shall set an appropriate time limit for the employee to remedy deficiencies thereof.

Behaviour of the employer

Article 62

In the time limit of six months from the receipt of the formally correct report from the article 61 of this law, the employer has the obligation to inform the employee in writing if he considers that the invention belongs to the group of inventions from article 57 of this law.

If the employee omits to give to the employer the report in the meaning of the article 61 of this law, time limit from paragraph 1 of this article begins from the date when the employer acquired knowledge about the invention.

Right for the protection of the invention created by the employee, which does not belong to the category of the inventions from paragraph 57 of this law belongs to the employee.

The competent court decides if the invention belongs to the category of the inventions from paragraph 57 of this law in the case when there is no agreement between the employer and the employee with regard to the invention.

Acts of Employer and Employee after the Notification
Article 63

With regard to the invention from paragraph 57 of this law, the employer has the obligation, in the information issued in compliance with article 62, paragraph 1 of this law, to inform the employee that he intends to file the application.

If the employee informs the employer, in the meaning of paragraph 1 of this article, that he will file an application, he has the obligation to file an application in the reasonable time limit.

If the employer does not wish to file an application, and he estimates that the invention does not include one of his trade secrets, he must, in the time limit from article 62, paragraph 1 of this law, inform the employee about it in writing, who has a right to protect the mentioned invention in his own name, if not otherwise agreed between the employer and the employee.

In the case from paragraphs 2 and 3 of this article, the employer and the employee have the obligation to secure all the necessary statements and documents for the filing of the application on the territory of the Republic of Serbia and/or abroad in compliance with the provisions regulating the protection of inventions.

In the case from paragraphs 2 and 3 from this article, the employer and the employee have the obligation to mutually inform one another in writing about the contents of all filings and all the actions undertaken with regard to the protection of invention on the territory of the Republic of Serbia and/or abroad.

If the employer estimates that the invention includes some of the trade secrets of the employer and decides that for those reasons he cannot file an application, he has the obligation, in the time limit from article 62, paragraph 1 of this law, to inform the employee in writing.

In the case from paragraph 6 of this article, the employee has no right to the protection of an invention, but he has a right to get the compensation from the employer.

The estimation of the amount, manner of payment and time of payment of the compensation from the paragraph 7 of this law is subject to the provisions of article 60 of this law.

At the request of the employer, the employee shall secure the technical assistance for the obtaining of protection and utilization of invention created during the employment.

Employer's Right to Obtain an Exclusive License

Article 64

With regard to the use of an invention protected in the name of the inventor, the employer is obliged to state, within a period of six months from the receipt of the admissible report on the invention under Article 61 of this Law, whether he is interested in obtaining an exclusive license from the inventor.

Until the expiry of the time limit referred to in paragraph 1 of this Article, the inventor shall not be entitled to assign the right to the invention to a third party or to license the use of the invention.

Article 65

Deleted

Obligation of keeping a business secret

Article 66

With regard to the invention which has been created in the employment relationship, employer and employee have the obligation during the communication with third persons to act in compliance with the law regulating the trade secret till the patent application or granted petty patent get published or the invention becomes accessible to the public in some other manner.

If the employer emphasizes the well-grounded interest that the invention should not become accessible to the public, the obligation of the employee to protect a business secret lasts even after the termination of the employment relationship with that employer.

X PROCEDURE FOR THE PROTECTION OF AN INVENTION

1. Common Provisions

Legal Protection of an Invention

Article 67

The legal protection of an invention shall be realized within the course of an administrative procedure conducted by the competent authority.

The decisions of the competent authority from paragraph 1 of this Article may be appealed with the government within 15 days from the receipt of the decision, unless this Law provides otherwise.

Government decision on the appeal is final and administrative dispute proceedings may be instituted against such decision within 30 days from the date of receipt of the Government's decision.

Making Application Available to the Public

Article 68

During the invention grant procedure, the competent authority shall not make an application available for inspection to any person or body, before the application has been published, except in the cases referred to in Article 52 paragraph 1 of this Law.

The competent authority shall make available for inspection applications referred to in paragraph 1 of this Article in the presence of an official on written request of the applicant or the person having his authorization.

Upon the written request of the applicant or authorised person, subject to submission of the proof of the prescribed costs, the competent authority shall make available the copies of the documents and the files of patent applications referred to in paragraph 1 of this Article.

Fees

Article 69

The administrative procedure before the competent authority shall be subject to payment of Republic administrative fees and the proof of payment is furnished to the competent authority.

Registers

Article 70

The competent authority shall keep Register of Patents and Register of Petty Patents.

The Register of Patents shall include: the patent registration number; filing date of the application; title of the invention; International Patent Classification; Priority date of the application; data on the applicant; the patent holder, the inventor or inventors statement that he does not want to be mentioned in the application, data on the representative; publication number of the application and the number of the Official Gazette; data of the supplement publication of the search report and the number of the Official Gazette; data referring to changes in the patent application or granted patent (assignment, license, pledge and etc); patent registration number, publication date of the granted patent and number of the Official Gazette; data on the Supplementary Protection Certificates as well as the information on the outcome regarding the submitted application

In addition to data referred to in paragraph 2 of this Article, for International Patent Applications, the Patent Register shall include number and date of filing of the International Patent Application and the number and date of the International Publication of an International Patent Application.

In addition to data referred to in paragraph 2 and 3 of this Article for an Extended European patent and a European Patent, the Patent Register shall include number of request and date of submitting the request for entry into the Register.

Register of Petty Patents shall include: the petty patent registration number; filing date of the application; title of the invention; International Patent Classification; priority date of the application; data on the applicant; petty patent holder of rights; the inventor or inventor statement that he does not want to be mentioned in the application; data on the representative; data on changes in the petty patent application or granted petty patent (assignment, license, pledge, etc.); petty patent registration number; publication date of the granted petty patent; and number of the Official Gazette; data on certificate examination; as well as information on the outcome of the submitted applications.

Publication in the Official Gazette

Article 71

Particulars prescribed by this Law and by regulations under this Law, shall be published in the Official Gazette issued by the competent authority.

Availability of the Documentation and Information

Article 72

The Registers referred to in Article 70 of this Law shall be open to the public and any interested parties may have access to them.

The files of published patent applications, granted patents, petty patents and Supplementary Protection Certificates may be inspected by any person upon the oral or written request, in the presence of an official.

Upon the written request of an interested party, payment of the prescribed fee and costs and submission of the proof of payment, the competent authority shall issue the copies of the documents and the corresponding attestations and certificates with respect to facts contained in the official records kept by the authority.

The competent authority is obliged to make its documentation and information on the state of the art and on rights concerning the protection of inventions available to any person.

Reestablishment of Rights

Article 73

If, in spite of having taken all due care required by given circumstances, the applicant or right holder fails to perform any procedural step within the prescribed time limit, resulting in the loss of filing date of the application, rights arising from the application or granted right as a legal consequence of such omission, the competent authority shall render decision to allow the reestablishment of such rights if the applicant or right holder, within the prescribed period:

- 1) files the request for the reestablishment of rights and completes the all omitted acts;
- 2) states the reasons that have prevented the performance of the omitted acts in due time justifying them;
- 3) submits proof of Republic administrative fees.

If the competent authority permits the reestablishment of rights the decision concerning the missing deadline shall be revoked.

The request for the reestablishment of rights shall be filed within three months from the date on which grounds for the omission ceased to exist or, if the person who requires reestablishment of rights learned about the omission subsequently, from the date on which he found out about the omission, but not later than 12 months from the date of non-observance of the time limit or, if the request relates to the non-payment of the maintenance fee not later than 12 months from the date of expiry of the additional time limit for payment referred to in Article 40, paragraph 5 of this Law.

The competent authority shall pass a decision rejecting the request for the reestablishment of rights, if such request is filed after expiration of the time limit prescribed in paragraph 2 of this Article.

If the proposal for the reinstatement of rights does not meet the requirements in terms of content or if they are not the conditions from paragraph 1, items 1) and 3) of this Article, the competent authority shall invite the applicant in writing to remedy the mistake within a reasonable time limit.

If the requester fails to comply with the conditions stipulated in paragraph 5 of this Article, the competent authority shall take the conclusion, rejecting the request for the reestablishment of rights.

The request for the reestablishment of rights cannot be filed for non-observance of time limits for the performance of the following procedural acts:

- 1) filing of the request under paragraph 1 of this Article;
- 2) filing of the request for the extension of a time limit;
- 3) filing of the request for continued processing;
- 4) all procedural steps involving several parties before the competent authority.
- 5) filing of the request for restoration of priority right and request for correction or addition of priority claim.

The competent authority shall render a conclusion rejecting the request for the reestablishment of rights if such request is filed for non-observance of time limits for the performance of the procedural acts referred to in paragraph 7 of this Article.

The competent authority cannot refuse the request referred to in paragraph 1 of this Article, fully or partially, without prior notification to the applicant specifying grounds for refusal and inviting him to file his observations in writing within a period of 2 months.

Any person acting in good faith, who has, in the course of production, started exploiting an invention which is the subject matter of a published application, or has made all necessary preparations to initiate such exploitation within the period between the loss of rights and the publication of the notification on the reestablishment of rights, shall be entitled to continue exploiting the invention for production purposes only in his own production plant or in the plant of any other person for his own needs.

The data on the reestablishment of rights shall be published in the Official Gazette of the competent authority.

Continued Processing

Article 74

If the applicant or right holder has failed to comply with a time limit set by the competent authority for an action in a procedure before the competent authority, in respect of an application or a granted right referred to in Article 107, paragraph 5 and Article 149, paragraph 9 of this Law, he may file a request for continued procedure with respect to the application or granted right, and the competent authority shall pass decision to allow the continuation of procedure, provided that applicant or right holder:

- 1) files the request for continued processing and completes the omitted acts within prescribed time limit;
- 2) submits proof of payment of the Republic administrative fee.

If the competent authority permits the continuation of procedure, it annuls the decision with regard to the missed deadline.

Request for continued procedure may be filed within three months from the receipt of the notice from the competent authority that the applicant or the right holder did not comply with the time limit set by the competent authority or the receipt of the information on the losing of right as the immediate legal consequence of the expiration of the time limit.

The request for the continuation of the procedure filed after the expiry of the time limit from paragraph 3 of this Article shall be rejected by the competent authority.

If the omitted actions have not been complied with within the time limit referred to in paragraph 3 of this Article, the competent authority shall pass the decision rejecting the request for continuation of procedure.

If the proposal for continuation of procedure does not meet the requirements in terms of content or if they are not the conditions from paragraph 1 of this Article, the competent authority shall invite the applicant, in writing to correct the mistakes within a reasonable time limit. If the requester fails to comply with the conditions referred to in paragraph 6 of this Article, the competent authority shall pass the decision rejecting the request for continuation of processing.

The request for continued procedure cannot be filed if time limit is omitted:

- 1) as referred to in paragraph 3 of this Article;
- 2) for filing of the request for restoration of priority right and request for correction or addition of claim for priority right;
- 3) for filing of the request for the restoration of right referred to in Article 73 of this Law:

- 4) for filing of another or any subsequent request for the extension of a time limit;
- 5) for all procedural steps involving several parties before the competent authority.

The competent authority shall pass a decision rejecting the request for continued procedure if such request is filed for non-observance of time limits for the performance of the procedural acts referred to in paragraph 8 of this Article.

If the competent authority has approved the request referred to in paragraph 1 of this Article, the provisions of Article 73 paragraph 10 of this Law shall apply accordingly.

Change of Name and Address of the Applicant and Right Holder

Article 75

Upon the request of a right holder or applicant, the competent authority shall pass a decision on the entry of change of the name and address of the right holder or applicant into the appropriate Register of the competent authority, as well as other changes.

The request of the entry the change referred to in paragraph 1 of this Article into the Register shall include, in particular: the patent or petty patent registration number, the application number, data on the right holder or the applicant, and designation of the kind of change.

On the basis of a single request, under paragraph 1 of this Article, for the entry of the change of name and address of the applicant and right holder, into the Register, this change may be requested in respect of several patents or petty patents or several applications, provided the registration numbers or application numbers have been designated in the request.

If the request for the entry of change of name and address of the right holder and applicant into the Register does not include the prescribed data, the competent authority shall invite in writing the person who required the registration to remedy the deficiencies within two months from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the Register, upon payment of the Republic administrative fee and submission of the proof of payment of these fees, the competent authority shall extend the time limit referred to in paragraph 4 of this Article, for a time period considered to be justified, but not exceeding two months.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall pass a decision rejecting the request.

If the applicant or right holder who is a national of the Republic of Serbia changes the address so that it is not in the territory of the Republic of Serbia, in the request for the entry of change of address into the Register, he shall appoint a representative for correspondence with address on the territory of the Republic of Serbia.

If a national of the Republic of Serbia does not appoint representative for correspondence in accordance with the provisions of paragraph 7 of this Article, the competent authority shall notify him in writing to appoint a representative for correspondence and warn him about legal consequences of failure to comply with such requirement referred to in notification, within three months from the date of receiving the notification.

If national of the Republic of Serbia does not comply with the notification of the authority in paragraph 8 of this Article, the competent authority shall specify delivery by the public notice on the notice board by the competent authority.

The right to submit the request for the change of names and addresses of the inventors belongs to the applicant, holder of right and inventor.

Correction of Errors in the Submissions and Formal Documents

Article 76

Language errors, typing errors, as well as any other similar deficiencies in the submissions and formal documents can be corrected on the basis of a written request of the applicant or right holder or ex officio.

2. Initiation of the Procedure for the Protection of an Invention

Filing of an Application

Article 77

The procedure for the protection of an invention shall be initiated by the filing of an application with the competent authority.

Application for the protection of an invention shall be filed in the Serbian language.

The application for the protection of an invention can also be filed in the foreign language, providing that the applicant files its translation in the Serbian language.

If the applicant fails to submit a translation of the application referred to in paragraph 3 of this Article the competent authority shall invite the applicant to submit the translation within two months from the date of receipt of the invitation.

If the applicant fails to submit the translation of the application within time limit referred to in paragraph 4 of this Article the competent authority shall pass decision rejecting the application.

Applications for the protection of inventions abroad shall also be filed with the competent authority, if it is thus stipulated by international agreements.

Legal protection of inventions in the Republic of Serbia shall also be granted in respect of applications filed abroad, if it is thus stipulated by international agreements. An application filed

in this manner shall have the same effects as a national application, unless otherwise stipulated by appropriate international agreements.

The competent authority shall prescribe the particulars concerning the filing of the application for the protection of invention.

Unity of invention

Article 78

Protection only for one invention may be required with a single application.

A single patent application may be filed for a number of inventions only if the inventions are mutually so linked as to form a single general inventive concept.

Content of the Application for the Protection of an Invention

Article 79

An application for protection of an invention shall contain:

- 1) request for the grant of right;
- 2) description of the invention;
- 3) one or more patent claims for the protection of an invention;
- 4) drawing referred to in the description and/or claims;
- 5) an abstract.

Request for the Grant of Right

Article 80

A request for the grant of right shall contain an explicit indication that a patent or petty patent is being sought, data concerning the applicant, data concerning the inventor or a statement to the effect that the inventor does not wish to be mentioned in the application, and the title of the invention which shall clearly and concisely state the technical designation of the invention and shall exclude all fictional or commercial names, trademarks, the names of codes, abbreviations for common products etc, request for information concerning the priority date, application number and the country where the application has been filed, which serves as the basis of priority, details of exhibition at the international exhibition if the invention was exhibited, number of the basic application, in case of submitted divisional application, number of the first application or the first patent, in case of submitted patent of addition, information relating to other elements of the application (page number of the description of the invention, the number of claims and the page number of drawings), signature of the applicant.

The competent authority shall not investigate whether the applicant is entitled to file the application for the protection of an invention.

If the applicant is not the inventor or is not the sole inventor, he shall be required to cite the names of all the inventors in the application and to file a statement indicating the ground of right to file the application.

If the inventor does not wish his name mentioned in the request for the grant of right, Registers and in other documents stipulated by this Law, the applicant shall be required to furnish the competent authority with the inventor's written statement to that effect.

During the grant procedure and during the entire term of the patent or petty patent, the inventor may withdraw his statement that he does not wish his name mentioned in the application, Registers and other documents stipulated by this Law.

The competent authority shall define more closely the attachments to be filed with request for the grant of right.

Prohibited Content in the Application

Article 81

The application cannot contain:

- 1) content or drawings contrary to law or moral;
- 2) statements that diminish the products or procedures of any third party or quality and importance of the application or patent, or petty patent of that person, provided that the comparison with the state of the art, as such, is not considered diminishing;
- 3) statements that are obviously not important or necessary.

If the application has content referred to in paragraph 1 of this Article, the competent authority shall omit them during publication.

Description of the Invention

Article 82

An invention shall be described in a manner that is clear and complete enough for the invention to be carried out by a person skilled in the art.

Where an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in a patent application in such a manner as to enable the invention to be reproduced by a person skilled in the art, the description shall be considered inadequate for the purposes of paragraph 1 of this Article unless:

- 1) the biological material has been deposited no later than the date on which the patent application was filed with the recognized depository institution;
- 2) the application as filed contains such relevant information on the characteristics of the biological material deposited on the filing date of the application as is available to the applicant;
- 3) the patent application states the name and address of the depository institution and the accession number under which the biological material has been deposited and the date of the depositing,

The information on the deposit referred to in paragraph 2, item 3) of this Article may be submitted subsequently till the completion of the technical preparations for the publication of the patent application or till the date of the filling of the request for early publication.

Competent depository institution referred to in paragraph 2 of this Article shall mean an institution designated in accordance with the provisions the Budapest Treaty on the International

Recognition of the Deposits of Microorganisms for the Purpose of Patenting. (Official Gazette SFRY, International Treaties no 3/93)

The competent authority prescribes the particulars and manner of description of the invention, conditions for issuing samples of defined biological material, re-depositing of biological materials, and the way of furnishing depositing of sequences disclosed in the description of the invention.

Patent Claims

Article 83

Patent claims, which shall be clear, concise and fully supported by the description of the invention, define the subject matter for which protection is sought.

The competent authority shall closely prescribe the particulars of the form and content of patent claims referred to in paragraph 1 of this Article.

Abstract

Article 84

An abstract shall briefly set out the essential content of the invention which shall serve exclusively to provide technical information and may not be used for any other purpose, in particular for interpreting the scope of the protection sought or applying of Article 10, paragraph 2, item 2).

The competent authority is authorized to change the abstract, if it deems necessary.

The competent authority shall prescribe the content of the abstract.

Drawing

Article 85

The drawing is the collection of all the drawings.

The competent authority shall prescribe the image and characteristics of the drawing.

Content of the Application for the Protection of an Invention Required for the Accordance of Filing Date

Article 86

In order to be accorded a filing date, an application filed with the competent authority shall contain on such a date:

- 1) an indication that a grant of right is being sought;
- 2) the name and surname or business name and address of the applicant;

3) a description of the invention or reference to a previously filed application.

The competent authority shall prescribe the particulars of the manner of referring to a previously filed application.

3. Special Types of Applications

Divisional Patent Application

Article 87

If an application which has been accorded a filing date referring to more inventions which are not mutually so linked as to form a single general inventive concept (the original application), the applicant may at his own initiative or upon request of the competent authority, extract from it one or more inventions and for each of them file separate application (divisional application).

Divisional application may be filed until the termination of the proceedings concerning the original application.

The subject matter of the divisional application may not extend beyond the content of the original application, as filed and then it shall retain the filing date of the original application and, where appropriate, shall enjoy the priority right.

The filing fee and search report based on the subject of the invention shall be paid for each divisional application within one month of its filing and the proof of payment shall be submitted to the competent authority.

If the proof of payment referred to in paragraph 4 of this Article fail to be submitted to the competent authority in a time the competent authority shall pass decision rejecting the application.

Application for Patents of Addition

Article 88

If an applicant or owner of any patent supplements or perfects the invention which is subject matter of the original application or of the basic patent, he may file an application for a patent of addition to cover the supplements or additions, that application shall not retain the filing date of the basic application.

An application for a patent of addition may be filed only upon the basic application or patent.

Waiver of the basic patent application shall lead to the termination of procedure concerning the application for the patent of addition. If the procedure concerning the basic application is terminated for any other reason, the applicant shall be entitled to file a request with the competent authority for the conversion of the application for the patent of addition into a basic application, within a period of three months from the date on which the decision to termination of procedure has become final.

If the applicant does not submit in the proposed time request that the application for the patent of addition should become basic patent, competent authority shall suspend the procedure referring to the application for the patent of addition.

A patent of addition may be obtained on the basis of the additional application, but may not be granted before the grant of the basic patent.

If the basic patent ceases to exist or if the decision on its grant is revoked, the patent owner shall be entitled to file a request for the conversion of the patent of addition into a basic patent with the competent authority, within a period of three months from the date of cessation of the patent or from the date on which the appropriate decision became final.

If the applicant does not file the request in the proposed time limit, request that the patent of addition should become basic patent, should be suspended by the competent authority in the procedure referring to the application for the patent of addition.

In the case when there is more than one application for the patent of addition or there are more patents of addition, only one shall be converted into a basic application or patent, while the rest, as additional, shall be attached to the basic application or patent, at the request of the applicant or patent owner within the time limit specified in paragraph 6 of this Article.

4. Priority

Requirements for the Grant of Priority Right

Article 89

Any person who has duly filed an application for any form of protection of an invention in any Member State of the Paris Union for the Protection of Industrial Property or in any Member State of the World Trade Organization, or his successor in title, shall be granted priority in the Republic of Serbia from the date of filing of the first application, provided that he files a claim to that effect with the competent authority with the filing of an application for the protection of that invention, and that the application for the same invention is filed with the competent authority within twelve months from the filing date of the first application.

A “duly filed” application referred to in paragraph 1) of this Article shall be considered to be an application that has been accorded a filing date under the national legislation of Member State of the Paris Union or member of the WTO, or under international agreements concluded between such states, regardless of the eventual legal outcome of the application.

Any subsequent application in respect of the same subject-matter as a previous first application, filed in the same State, shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing of the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without being the basis of some right, and has not served as a basis for claiming a right of priority.

In the case referred to in paragraph 3 of this Article, on the basis of the first application request for the grant of priority right cannot be demanded.

Priority Claim

Article 90

An applicant who has filed an application for a protection of an invention and who intends to take advantage of the priority of a previous application in the Republic of Serbia shall file with the competent authority:

1) request for the priority right containing essential data concerning the first application claiming priority (application number and filing date, a Member State of the Paris Union or WTO in or for which the application was filed) not later than up to the expiration of two months from the date of filing the application in the Republic of Serbia;

2) a copy of the first application certified by the competent authority of the Member State of the Paris Union or WTO in which or for which it was filed, not later than up to the expiration of the period of three months from the filing of the application in the Republic of Serbia or 16 months from the earliest priority date claimed, whichever period expires first.

When the first application is not in the Serbian language, and when it is relevant for the determination of patentability of the subject matter of an invention, the competent authority shall invite the applicant to furnish a translation of the first application into the Serbian language within two months from the date of the receipt of the invitation.

The competent authority shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the attachments to be filed with the request, and their content.

Multiple Priority Claim

Article 91

The applicant may, subject to the requirements referred to in Article 89 of this Law, claim multiple priorities on the basis of several earlier applications filed in one or more Member States of the Paris Union, Member States of the WTO, or international organization where such an application has been filed.

Where multiple priorities have been claimed, time limits which run from the date of priority, pursuant to this Law, shall run from the earliest date of multiple priority.

Request for the Restoration of the Priority Right

Article 92

If a patent application claiming priority of the first application is filed on the date, which is later than the date on which the priority period referred to in Article 89 paragraph 1 of this Law expired, the applicant may file a request for the restoration of the priority right.

The request referred to in paragraph 1 of this Article may be filed within two months from the date of expiration of the priority period, and before technical preparations for publication of the subsequent application have been completed.

The competent authority shall pass a decision to adopt a request for the restoration of the priority right, provided that the applicant:

1) states the reasons and files the evidence in support of the reasons for the failure to comply with the priority period in spite of due care taken as required, due to the circumstances having occurred;

2) pays the prescribed fees and submits of the proof of payment to the competent authority.

The competent authority shall pass a decision rejecting the request for restoration of the priority right, if such request is filed after expiration of the time limit prescribed in paragraph 2 of this Article.

If the requester does not submit proof of payment of prescribed fees mentioned in paragraph 3 item 2) of this Article, the competent authority shall invite him in writing to submit such proofs within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of prescribed fees within set time limit mentioned in paragraph 5 of this Article, the competent authority shall pass a decision rejecting the request.

The competent authority cannot refuse the request referred to in paragraph 1 of this Article, fully or partially, without prior notification to the applicant specifying grounds for refusal and inviting him to file his observations within a period of 2 months.

If the requester fails to submit his observations thereof within time limit under paragraph 7 of this Article or if he submits his observations, but competent authority considers that priority right cannot be restored, the competent authority shall pass the decision that such request shall be refused fully or partially.

The competent authority shall prescribe the particulars of the content of the request, requirements and procedure under paragraph 1 of this Article, and shall determine the attachments to be filed with the request and their content.

Request for the Correction or Addition of a Request for the Grant of the Priority Right

Article 93

An applicant may file a request for the correction or addition of a request for the grant of a priority claim within a time limit of sixteen months from the priority date or, if the correction or addition would cause a change in the priority date, sixteen months from the priority date as so changed, whichever sixteen-month period expires first, provided that such a request is filed within four months from the filing date of the patent application.

In addition to the request referred to in paragraph 1 of this Article, the applicant shall pay the prescribed fee and submit of the proof of payment.

The competent authority shall pass a decision rejecting the request for correction or addition of the priority right, if such request is filed after expiration of the time limit prescribed in paragraph 1 of this Article.

If the requester does not submit proof of payment of the prescribed fees referred to in paragraph 2 of this Article, the competent authority shall invite him in writing to submit such proof within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of the prescribed fees within time limit under paragraph 4 of this Article, the competent authority shall pass a decision rejecting the request.

Prior to refusing a request for the correction or addition of a request for the priority right, the competent authority shall inform the applicant of the reasons why it intends to refuse the request in whole or in part, and shall invite him to file observations on such reasons within two months from the date of receipt of the invitation.

If the requester fails to submit his observations thereof within time limit under paragraph 6 of this Article or if he submits his observations but competent authority considers that priority right cannot be corrected or added to, the competent authority shall take the decision that such request shall be refused fully or partially.

If the priority date is changed due to the correction or addition of the priority claim, the time limits shall be counted from the priority date as changed.

The competent authority shall prescribe the particulars of the content of the request, requirements and procedure under paragraph 1 of this Article, and shall determine the attachments to be filed with the request and their content.

Exceptions to Filing the Request for the Correction or Addition of a Request for the Grant of Priority Right

Article 94

The request referred to in Article 93 paragraph 1 shall not be filed:

- 1) after the applicant has filed a request for early publication, unless such a request for publication has been withdrawn before technical preparations for the publication of the application have been completed;
- 2) if the request for urgent procedure has been made.

Features of the Invention for which Priority is Requested

Article 95

A request for one or more priorities can only refer to those elements of the invention that have been clearly disclosed in any part of the application or applications for which priority is requested.

If certain features of the invention for which priority is requested do not appear among the patent claims formulated in the previous application, the condition for the grant of priority right implies that such features can be established from all the constituent parts of the application.

Effect of Priority Right

Article 96

The right of priority shall produce effect which means that the priority shall be counted as the date of filing of the patent application for the purposes of Article 10, paragraph 2, and Article 3 paragraph 5 of this Law.

5. Examination procedure

Accordance of the Date of Filing

Article 97

Upon receipt of an application, the competent authority shall examine whether it meets the requirements laid down in Article 86 of this Law for accordance of its date of filing.

If the competent authority establishes, in a filing date according procedure, that parts of the description or drawings referred to in the description or the claims appear to be missing, the competent authority shall invite the applicant to file the missing parts within two months.

If the applicant files part of the description or missing drawings in the time limit of two months from the filing date of the patent or in the time limit from paragraph 2 of this Article in the case when the competent authority invited the applicant to furnish part of the description or drawing, the competent authority shall accept as the date of filing of the patent application the date when the applicant has submitted the missing part of the description or the drawing.

If the applicant furnishes part of the description or drawing that has been missing within the time limit from paragraph 2 of this Article and if he had requested the grant of priority right while filing the patent application, the granted filing date of patent application remains the date when conditions have been fulfilled from the Article 86 of this Law providing that part of the missing description or drawing has been completely contained in the previous patent application.

If the applicant fails to comply with the invitation from competent authority, within a period specified in paragraph 2 of this Article, it shall be deemed that the applicant has not referred at all to the missing part of the description or the drawings.

If the applicant corrects the deficiencies within the time limit mentioned in paragraph 2 of this Article, the competent authority shall pass the decision that the date of receipt of the required corrections shall be accorded as the filing date of the patent application.

An application which has been accorded a filing date shall be entered in the Register of Patents or in the Register of Petty Patents.

If the applicant fails to act upon the invitation referred to in paragraph 2 of this Article within the prescribed time period, the competent authority shall pass a decision rejecting the application.

Issuing Priority Documents

Article 98

At the request of the applicant, the competent authority shall issue a priority document.

The request for issuing a priority document shall contain, in particular: particulars of the requester, number of the application for which the issuing of priority document is requested and proof of fee payment for the issuing of priority document.

Priority document shall contain, in particular: particulars of the applicant, number of the application and certification that the enclosed documents are identical to the original.

Examination as to Formal Requirements

Article 99

Once the application has been accorded a date of filing, the competent authority shall examine whether:

- 1) the filing fee for the application has been paid and the proof of payment has been submitted;
- 2) a valid authorization for the representative or a statement on the appointment of a common representative has been filed, as appropriate;
- 3) the application contains designation of the inventor or a statement to the effect that he does not wish to be mentioned in the application;
- 4) a claim for a grant of priority, satisfying all formal requirements, has been filed;
- 5) a statement indicating the origin of the right for filing the application has been submitted;
- 6) the application has been filed pursuant to Article 5 of this Law in the case when the applicant is a foreign national;
- 7) the content of the application satisfies all requirements prescribed by Article 79 of this Law;
- 8) the form of the application document has been respected;
- 9) the drawing has been made subject to the provisions of Article 85 of this Law;
- 10) the abstract has been made subject to the provisions of Article 84 of this Law;

If the examination under paragraph 1 of this Article shows that the application does not comply with the provisions of that paragraph, the competent authority shall set out the reasons thereof in a communication to the applicant, inviting him to correct the deficiencies within a time limit no less than two months nor more than three months.

On a reasoned request filed by the applicant, the competent authority may extend the time limit under paragraph 2 of this Article, for a time period considered to be justified, but not exceeding three months.

If the applicant fails to remedy the mistakes referred to in paragraph 2 of this Article, with the exception of a statement on the appointment of a common representative, the competent authority shall pass a decision rejecting the application.

The competent authority shall prescribe the particulars regarding the form of the application documents under paragraph 1 item 8) of this Article.

Search Report

Article 100

If a patent application fulfils the requirements laid down in paragraph 1 of the Article 99 of this Law, the competent authority shall invite the applicant to file the request for search report based on the subject of the invention (hereafter: search report) and to pay the fee for drawing up the search report within one month from the date of the receipt of the invitation.

An applicant may file request for search report before receipt of the invitation referred to in paragraph 1 of this Article.

The competent authority shall, upon the receipt of the request and the proof of fee payment for drawing up the search report, draw up a search report in respect of the patent application on the basis of the patent claims, with due regard to the description and drawings and shall forward it to the applicant.

If the competent authority establishes that the patent application does not comply with the provisions of this Law so that it is impossible to carry out a complete search report on the basis of all or some of the subject-matter claimed, it shall either issue a reasoned declaration to that effect or, as far as is practicable, draw up a search report for only one part of the application or partial search report.

The partial report shall be drawn up even when the patent application does not comply with the requirement of unity of invention.

The declaration or the partial report referred to in paragraph 4 shall be considered, for the purposes of subsequent proceedings, as the search report.

The competent authority shall publish the search report together with the patent application. If the search report is not published at the same time as the application, it shall be published separately.

If the applicant has not, within the applicable time limit, filed the request and the proof of paying the fee for establishing the search report required under paragraph 1 of this Article, the competent authority shall pass a decision rejecting the application.

The request under paragraph 1 of this Article can not be withdrawn.

The competent authority shall prescribe the particulars of the content of the search report.

Amendments to Pending Patent Application

Article 101

An application which has been accorded a filing date cannot eventually be amended by means of changing or extending the subject matter for which protection is being sought.

Amendments of data contained in the application may be performed until the passing of decision concerning the patent application.

Before receiving of the search report, the applicant may not amend the description, patent claims and drawing of an application and after receipt of the search report, the applicant may, of his own volition, amend the description, patent claims and drawing.

The amended patent claims may not refer to the elements of the patent application for which no search report has been elaborated and which are not related to the invention or group of inventions constituting a single inventive concept, for which protection was initially sought.

Along with the filing of amended parts of patent application, the applicant also submits statements on which parts of the application have been amended and which parts of the patent application that was initially filed, make the grounds for the performed amendments.

If the applicant has not submitted to the competent authority the statements referred to in paragraph 5 of this Article, the competent authority may invite him to submit those statements within one month from the date of the receipt of the invitation.

Publication of Patent Application

Article 102

The patent application shall be published in the Official Gazette as soon as possible:

- 1) after the expiry of a period of eighteen months from the filing date or, if priority has been claimed, from the expiry of the date of priority, or
- 2) at the request of the applicant, patent application can be published earlier.

An application shall not be published if the applicant withdraws the patent application or if the patent application is rejected before the completion of technical preparations for its publication.

The competent authority shall prescribe when technical preparations for the publication of the application are considered complete and the particulars of the content of the publication of a patent application are completed.

For every number of the Official Gazette, the competent authority publishes on its Internet page when technical preparations for the publication of the patent application are considered completed.

Request for Substantive Examination of an Application

Article 103

The request for the substantive examination of the patent application shall be filed by the applicant within a period of six months from the date of the publication of the search report in the Official Gazette.

In the case of failure to observe the time limit under paragraph 1 of this Article, the applicant may file the request for substantive examination within an extended period of 30 days from the date of the receipt of a notification of the expiry of the time limit.

The request from paragraph 1 of this Article shall not be deemed to be filed until the substantive examination fee has been paid and the proof of payment has been submitted.

The request referred to in paragraph 1 of this Article may not be withdrawn.

If no request under paragraph 1 of this Article has been made in due time, the competent authority shall pass decision rejecting the application.

Substantive Examination

Article 104

In the course of the substantive examination of an application, the competent authority shall examine whether the subject matter of the application:

- 1) constitutes an invention within the meaning of Articles 7 and 8 of this Law;
- 2) constitutes an invention for which, within the terms of Article 9 of this Law, patent protection shall not be granted;
- 3) constitutes an invention that is, in accordance with Article 78 of this Law, relating to unity of invention;
- 4) is disclosed in a manner sufficiently clear and complete pursuant to Article 82 of this Law and satisfies all requirements under Article 83 and 85 of this Law;

5) constitutes a technical solution of a specific problem, is new in the meaning of Articles 10 and 11 of this Law, involves an inventive step as set out by Article 12 of this Law and is susceptible to industrial application as laid down in Article 13 of this Law;

6) complies with the requirements set out in this Law as to the priority right.

The substantive examination of a patent application shall be conducted within the limits set by the content of the patent claims.

The utility of the invention shall not be examined during the substantive examination procedure.

An applicant, who has filed an application for the same invention also in another state, may furnish the competent authority with a translation of the examination report issued in that state.

If the competent authority establishes that the subject matter of an application does not meet the requirements under paragraph 1 of this Article, it shall inform the applicant about the results of the examination and invite him, as many times as considered necessary, to rectify any deficiencies identified, or to comment on the reasons why patent can not be granted within a time limit no less than two months nor more than three months.

Notification on results of the examination, under paragraph 5 of this Article, shall especially contain a reasoned statement covering all the grounds against the grant of the patent.

After receipt of the examination report, under paragraph 5 of this Article, the applicant may, of his own volition, amend only once the description, claims and drawings, provided that the amendment is filed at the same time as the reply to the examination report. No further amendment may be made without the consent of the competent authority.

On a reasoned request from the applicant, the competent authority shall extend the time limit under paragraph 5 of this Article for a time period considered to be justified, but not exceeding three months.

The competent authority may grant only one patent if two or more applications have been filed for the same invention with the same filing date, or priority date, by the same applicants or their legal successor.

Urgent Procedure

Article 105

An application may be examined in an urgent procedure in the event of judicial proceedings or if inspection surveillance or customs procedures have been initiated upon the request of the court or the competent market inspection authority or the customs authority.

In the event of litigation for infringement of a published application, the applicant may file the request for examination of a patent application in an urgent procedure and with it applicant shall submit:

1) request for substantive examination of patent application with proof of payment of fees for substantive examination, if the request has not previously been submitted and

2) evidence that the court proceedings for infringement of a published application has been terminated until the finality of the decision of the competent authority on the application.

Observations by Third Parties

Article 106

In proceedings before the competent authority, following the publication of the patent application, any third party may present observations concerning the patentability of the invention to which the application relates.

Person referred to in paragraph 1 of this Article shall file the observations in writing and give the reasons covering all the grounds against the grant of the patent and such observations may be taken into consideration by the competent authority.

The person referred to in paragraph 1 of this Article shall not be considered to be a party in the proceedings.

Decision to Grant a Patent

Article 107

If the competent authority establishes in the substantive examination of the application that all requirements for the grant of a patent prescribed by this Law have been satisfied, it shall communicate to the applicant a draft of the final wording of the patent claims for adoption and shall invite the applicant to give his approval within a period of 30 days.

If the applicant fails to submit a written statement that he approves of the wording and the number of claims, within the prescribed time limit under paragraph 1 of this Article, the competent authority shall take a decision to grant a patent on the basis of the final wording of the claims as communicated for approval.

If the applicant states that he does not approve of the wording of the claims under paragraph 1 of this Article, he shall be required to state the reasons for his disapproval and to file an amended wording of the claims.

If the competent authority accepts the reasons or the amended wording of the claims, referred to in paragraph 3 of this Article, it shall take the decision to grant the patent, and if it does not, it shall notify the applicant, stating its grounds thereof, and shall take a decision to grant the patent according to the final wording of the patent claims communicated for approval.

The decision to grant a patent shall be taken by the competent authority provided that the proofs of payment for certificate for the granted right, costs of publication for granted right and costs for patent specification have been submitted.

If the applicant fails to pay the fees and costs under paragraph 5 of this Article within the set time limit and to submit the proof of payment, the competent authority shall pass decision rejecting the application.

Decision to Refuse Request for the Grant of Patent

Article 108

If the competent authority establishes, on the basis of the substantive examination conducted under Article 104 of this Law, that not all requirements for the grant of a patent have

been satisfied or that the defects identified have not been remedied, the competent authority shall take a decision to refuse the grant of a patent.

Entry of the Granted Right into the Register

Article 109

The competent authority shall enter the prescribed data on granted right in the appropriate Register.

Certificate of the Granted Right

Article 110

After the entry of the prescribed data on granted right, referred to in Article 109 of this Law in the appropriate Register, the patent owner or the petty patent owner shall be issued a certificate for the granted right, which shall contain, in particular: the patent or petty patent registration number; data on the patent owner or the petty patent owner; data on the inventor; the title of the invention and date of issuing of the certificate.

Certificate of the granted right shall be issued upon the payment of the prescribed fee.

The competent authority shall prescribe the particulars of the content of the certificate for the granted right under paragraph 1 of this Article.

Publication of Grant

Article 111

Granted right entered in the appropriate Register shall be published in the Official Gazette.

The decision to grant a patent or a petty patent shall have effect from the date of publication of the grant.

The Official Gazette shall publish the following data, in particular: the patent or petty patent registration number, the date of filing of the application, the date of publication of a patent application, data on the right holder, data on the inventor and the title of the invention.

The granted right shall be published upon the payment of the prescribed costs.

The competent authority shall prescribe the particulars referred to in paragraph 3 of this Article, which shall be published in the Official Gazette.

Patent Specification

Article 112

After the publication of the granted right in the Official Gazette, the competent authority shall issue the specification, which shall particularly contain: the patent or petty patent

registration number, the date of publication of the mention of the grant of a patent, data on the right holder, data on the inventor and the title of the invention.

The patent specification shall be issued upon the payment of the prescribed costs.

The competent authority shall prescribe the particulars of the patent specification referred to in paragraph 1 of this Article.

Article 112a

The competent authority shall closely regulate the manner of search of the state of the art and the sequence of acts of the official person in the procedure of the formal and substantive examination of the patent application.

XI SUPPLEMENTARY PROTECTION CERTIFICATE

Scope of Implementation

Article 113

Any product protected by a patent and subject to authorization from the competent authority prior to being placed on the market on the territory of the Republic of Serbia, as a medicinal product for human or animal use or a plant protection product, may under the terms and conditions provided for in this Law be subject of protection by a Certificate.

In respect of the protection by Certificate, the product is the active substance or combination of substances or active substances of medicinal products or active substance referred to in Article 2 Paragraph 1 item 27) or a combination of active substances of plant protection products.

Subject Matter of the Protection and the Legal Effect

Article 114

Within the limits of the protection conferred by the basic patent, the protection conferred by a Certificate shall extend only to the product covered by the authorization to place on the market the corresponding medicinal product for human or animal use and for any use of the product as a medicinal product that has been authorized before the expiry of the certificate.

Within the limits of the protection conferred by the basic patent, the protection conferred by the certificate shall extend only to the product covered by the authorization to place the corresponding plant protection product on the market and for any use of the product as a plant protection product that has been authorized before the expiry of the certificate.

Subject to paragraph 1 and 2 of this Article, the Certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

Exception from the protection by a certificate

Article 114a

By way of derogation from Article 114. paragraph 1 of this law, the protection by certificate shall not confer protection against certain acts which would otherwise require the consent of the holder of the certificate if the following conditions are met:

1) the acts comprise:

(1) the making of a product from Article 113. paragraf 2 of this Law or a medicinal product containing that product, for the purpose of export; or

(2) any related act that is strictly necessary for the making from point (1) of this paragraf or for the actual export of that product;

(3) the making, no earlier than six months before the expiry of the certificate, product from Article 113. paragraf 2 of this Law or a medicinal product containing that product, for the purpose of storing it in the Republic of Serbia in order to place that product, or a medicinal product containing that product, on the market of Republic of Serbia after the expiry of the corresponding certificate; or

(4) any related act that is strictly necessary for the making, referred to in point 1) (3) of this Article, or for the actual storing, provided that such related act is carried out no earlier than six months before the expiry of the certificate.

2) The maker, through appropriate and documented means, notifies the competent authority and informs the certificate holder, of the information prescribed by article 114b of this Law no later than three months before the start date of the making in the Republic of Serbia, or no later than three months before the first related act, prior to that making, that would otherwise, except the cases regulated by articles 114a – 114c of this Law, be prohibited by the protection conferred by a certificate, whichever is the earlier;

3) if the information listed in article 114b of this Law changes, the maker notifies the competent authority and informs the certificate holder, before those changes take effect;

4) in the case of product from Article 113. paragraf 2 of this Law or a medicinal product containing that product, made for the purpose of export, the maker ensures that a logo, is affixed to the outer packaging of the product from point 1) (1) of this paragraf and, where feasible, to its inner (immediate) packaging.

Exception from paragraph 1 of this article does not refer to the act or activity which is necessary for the import of product from article 113, paragraph 2 of this Law or the medicinal product containing that product for the territory of the Republic of Serbia only for the purpose of prepacking for the repeated import or for storage.

Competent authority shall prescribe form of a logo referred in paragraph 1. point 4) of this Article.

Information about production

Article 114b

The information to be provided by the maker for the purposes of Article 114a paragraph 1 point 2) shall be as follows:

1) the name and address of the maker;

2) an indication of whether the making is for the purpose of export, for the purpose of storing, or for the purpose of both export and storing;

3) designation that the making and the storing is to take place, and the first related act, if any, prior to that making is to take place in the Republic of Serbia;

4) the number of the certificate granted by the competent authority;

5) for medicinal products to be exported, the reference number of the marketing authorisation, or the equivalent of such authorisation, in each third country of export, as soon as it is publicly available.

If the producer furnishes information from paragraph 1, point 5 of this Article in relation to some of the states of export, the exemption from article 114a of this Law is implemented with regard to that state.

Information from article 114a paragraph 1, points 2) and 3) of this Law, which are forwarded to the holder of certificate, are used exclusively for the purpose of checking whether all the conditions are fulfilled for the exemption of protection by a certificate which are prescribed by this Law and for the initiation of the court procedure in the case of the lack of harmonization.

The competent authority prescribes the form of information about the production, from paragraph 1 of this Article.

Informing

Article 114v

The maker informs in writing that any person in a contractual relationship with the maker who performs acts falling under Article 114a paragraph 1. point 1) of this law about the following:

1) that the acts are legal in compliance with the article 114a of this law;

2) that the placing on the market, import or re-import of products from article 113, paragraph 2 of this law or the medical products containing that product from article 114a, paragraph 1, item 1), point (1) or the marketing of the product from article 113, paragraph 2 of this law or medical products containing that product from from article 114a, paragraph 1, item 1), point (3) represents the infringe of certificate from article 114a, paragraph 1. where, and for as long as, that certificate applies.

Entitlement to a Certificate

Article 115

A Certificate shall be granted to the owner of the basic patent covering the product or to his successor in title.

The owner of two or more patents covering the same product may be granted only one certificate for that product. Where there are two or more requests for a certificate filed by different persons who are owners of different patents covering the same product, the same certificate for the product may be granted to each of these persons individually.

Conditions for Obtaining a Certificate

Article 116

At the request of the patent owner, a Certificate shall be granted if the following conditions are fulfilled on the filing date of the request:

- 1) the product is protected by a basic patent in force;
- 2) an authorisation to place the product on the market as a medicinal product for human or animal use, or a plant protection product, has been granted in accordance with special regulations,
- 3) the medicinal product for human or animal use or plant protection product has not already been the subject of a certificate;
- 4) the authorisation referred to in item 2) of this Article, is the first authorisation to place the product on the market as a medicinal product for human or animal use, or a plant protection product on the territory of the Republic of Serbia.
- 5) the first authorization is granted after 1 January 2005.

Time Limit for the Filing of a Request for the Certificate

Article 117

The application for the Certificate shall be filed with the competent authority within 6 months from the date of the grant of the authorization, referred to in Article 116 item 2) of this Law.

If the authorization has been granted before the grant of the basic patent, a request for the grant of Certificate shall be filed, within six months from the date on which the patent is granted.

The Request for Certificate

Article 118

The request for the grant of the Certificate, shall contain:

- 1) the data on requester: the name, surname and address for natural person, or name and seat for legal person;
 - 2) the data on the representative, if any;
 - 3) the number of the basic patent and the title of the invention;
 - 4) the number and date of the first authorisation to place the product on the market issued by the competent authority to place the product on the market on the territory of the Republic of Serbia. In addition to the request for the grant of the Certificate the following shall be filled:
 - 1) the authorization to place the product on the market, issued by the competent authority for placing the products on the market on the territory of the Republic of Serbia, as well as summary of the product characteristics;
 - 2) the proof of payment of the Republic administrative fee.
- Data on request for the grant of the Certificate shall be entered into the Register of Patents kept by the competent authority.

Procedure Following the Request for the Grant of Certificate

Article 119

The competent authority shall carry out examination procedure upon the request for grant of Certificate and shall establish that:

- 1) the request is filed within a period prescribed by Article 117 of this Law;
- 2) the request is filed in the required form and contains all the indications prescribed by Article 118, paragraph 1, and 2 of this Law;
- 3) the basic patent was in force at the time of filing of the request for the Certificate and the applicant is at the same time the holder of the basic patent.

If the request for the Certificate does not contain the elements prescribed by paragraph 1 of this Article, the competent authority shall invite the applicant to correct the mistakes indicated in the invitation or to comment on them, within a period of 30 days from the receipt of the invitation.

If the requester fails to correct found mistakes or fails to comment on them, within the prescribed time limit, the competent authority shall pass a decision rejecting the application for the grant of Certificate.

If the requirements referred to in paragraph 1 of this Article are fulfilled or if the applicant corrects the mistakes within the period referred to in paragraph 2 of this Article, authorities shall accord a filing date of the request for the grant of Certificate, the very date when the Certificate has been submitted to the competent authority.

After grant of the filing date of the application, the competent authority shall not allow changes of the request for the grant of the Certificate concerning the basic patent.

If the request for the grant of the certificates meets requirements from paragraph 1 of this Article, the competent authority determines whether on the day of the application all conditions for the grant of certificates prescribed by the Law are fulfilled.

If the competent authority establishes that all conditions for the grant of certificates prescribed by this Law are not fulfilled it shall inform the applicant about the results of examination and invite him to correct any mistakes identified or to comment on the reasons why the Certificate cannot be granted within a time limit no less than two months from the date of receiving the notification.

On a reasoned request from the applicant, the competent authority shall extend the time limit under paragraph 2 of this Article for a time period considered to be justified, but not exceeding three months providing the proof of the payment of the Republic administrative fee has been furnished.

If the applicant fails to respond to notices in due time concerning the results of examination, from paragraph 2 of this Article, the competent authority shall pass the decision rejecting the request for the grant of Certificate.

If the competent authority establishes that all requirements for the grant of a Certificate have not been satisfied, the competent authority shall pass the decision on the refusal to grant the Certificate.

Decision on the Grant of the Certificate

Article 120

If the requirements for the grant of a Certificate prescribed by this Law are fulfilled and if proof of payment of the expenses of the publication fee has been furnished, the competent authority shall pass decision on the grant of the Certificate determining its duration.

If the basic patent has expired, the competent authority shall pass a decision from paragraph 1 of this Article providing all due fees for the maintenance of the certificate, including those whose additional time limit for the payment has lapsed, have been paid.

If the applicant has not paid all fees prescribed in paragraph 1 and 2 of this Article, within the prescribed time limit and if proof of payment of the expenses of the publication fee has been furnished, the competent authority shall pass a decision rejecting the request.

Publication

Article 121

The competent authority shall publish in the Official Gazette the data from the request for the grant of Certificate, prescribed in Article 118, paragraph 1 of this Law, data on the Certificate, the data on the refusal or rejection of the Certificate and the data concerning the expiration of Certificate.

The competent authority shall, without delay, publish on its website information on production referred to in Article 114a, paragraph 1, item 2) and 3) of this law

Entry into the Register

Article 122

Data on the procedure for the grant of the Certificate, and the duration of the protection of the granted Certificate shall be entered into the Register of Patents kept by the competent authority.

The competent authority shall closely prescribe the particulars from paragraph 1 of this Article which shall be entered into the Register.

Duration of Protection

Article 123

The Certificate shall take effect at the end of the lawful term of the basic patent. Duration of protection for granted Certificate is equal to the period which elapsed between the date on which the application for a basic patent was applied for and the date of the first authorisation to place the product on the market, reduced by a period of five years.

The duration of the Certificate referred into paragraph 1 may not exceed five years from the date on which it takes effect.

For the purpose of calculating the duration of the Certificate from paragraph 1 of this Article, account shall be taken of a first provisional marketing authorization only if it is directly followed by a final authorization concerning the same product.

Extension of Certificate
Article 123a

Duration of certificates for medicinal product under Article 123, paragraph 1 and 2 of this Law can be extended for six months, if all needed tests prescribed after the approved paediatrician research plan are completed in the countries of the European Union, providing that authorization to put the product on the market was issued in all member states of the European Union in accordance with the special regulations.

Maintenance of the Certificate

Article 124

For maintenance of the Certificate a prescribed annual fee shall be paid, calculating from the effective date of the Certificate.

Cessation of the Certificate

Article 125

The Certificate shall lapse:

- 1) on expiry of its term referred into Article 123 of this Law;
- 2) on its waiver by the Certificate holder, such right shall cease on the day following the filing of the declaration;
- 3) the following day from the day of the Certificate expiry prescribed in Article 124 of this Law, on failure to pay on time the annual fee for its maintenance, referred to in Article 124 of this Law, and the proof of payment has not been submitted,
- 4) if the product for which the Certificate was granted may no longer be placed on the market as a result of the termination of the authorization, for whatever reason.

The competent authority shall decide on the lapse of the Certificate either ex officio or at the request of any person in the case from paragraph 1, item 4 of this Article.

In the case of lapse of the certificate, the competent authority shall pass a decision.

The decision prescribed in paragraph 1, item 2 and 3 of this Article is final and may be subject to administrative dispute.

Application of the Provisions

Article 126

The provisions of this Law prescribed for patents shall be applicable for the Certificate, unless the Law provides otherwise.

Revocation of the Decision on Grant of the Supplementary Protection Certificate

Article 127

The decision on grant of the Supplementary Protection Certificate shall be revoked:

- 1) if Certificate was granted contrary to the conditions set out by this Law;
- 2) if the basic patent ceases to be valid within the terms of Articles 41, 42 and 43 of this Law;
- 3) if the basic patent is revoked or limited to the extent that the product for which the Certificate was granted is no longer protected by the claims of the corresponding basic patent or, after the basic patent has expired, grounds for revocation, which would have justified such revocation, exist.

Procedural provisions of this Law applicable to the application for the revocation of a decision to grant a patent shall accordingly apply to the revocation of a Supplementary Protection Certificate.

If the basic patent has been revoked in total or in part, the competent authority may ex officio revoke the Certificate.

XII REVOCATION

1. Revocation of Decision to Grant a Patent or a Petty Patent

Grounds for Revocation

Article 128

The competent authority may revoke at any time the decision to grant a patent or petty patent, in whole or in part, at the request of any person, if it establishes that:

- 1) the subject matter of protection is not an invention, within the meaning of Articles 7 and 8 of this Law;
- 2) the invention falls under the category of inventions excluded from protection as defined in Article 9 of this Law;
- 3) the invention was not new within the meaning of Articles 10 and 11 on the date of the filing of the patent application or on the date of priority, or did not involve an inventive step pursuant to Article 12 or was not industrially applicable in accordance with Article 13 of this Law;
- 4) the invention is not disclosed in a manner sufficiently clear and complete, as defined in Article 82 of this Law;
- 5) the scope of granted rights exceeds the scope that could be supported by the description of the invention as disclosed on the filing date or priority date of the application, or if protection was granted for a divisional application, the subject matter of which extends beyond the basic application as filed.

Request for Revocation of a Decision to Grant a Patent or Petty Patent

Article 129

The procedure for the revocation of a decision to grant a patent or a petty patent shall be instituted with the filing of a written request with the competent authority.

The request under paragraph 1 of this Article shall include in particular: data on the requester; data on the right holder; indication that the revocation of a decision to grant is requested; the reference number of a decision and the patent or petty patent registration number; the reasons for which revocation is requested, the appropriate evidences and the proof of prescribed fee payment.

Procedure upon Request for the Revocation of a Decision to Grant a Patent or a Petty Patent

Article 130

The request for the revocation of a decision to grant a patent or a petty patent shall be admissible if it includes data under Article 129 of this Law.

Where the request for the revocation of a decision to grant a patent or a petty patent is not admissible, the competent authority shall invite the requester in writing to remedy deficiencies within 30 days from the date of receipt of such communication, stating the reasons thereof.

Upon a reasoned request by the requester, and upon his payment of the Republic administrative fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

If the requester fails to proceed in accordance with the invitation within the set time limit, the competent authority shall pass a decision on rejecting the request.

The competent authority shall forward the admissible request and filed evidences to the right holder and invite him to submit his reply within 30 days from the date of receipt of the invitation.

During the revocation proceedings, the competent authority shall invite the parties, as many times as is necessary, to file their observations on the submissions of the opposite party within the time limit specified in paragraph 5 of this Article.

During the revocation procedure, the competent authority shall conduct a hearing only if it assesses it to be necessary for the establishment of facts relevant for the passing of a decision about the request.

If the competent authority establishes on the basis of the procedure for the revocation of the decision to grant a patent or a petty patent that all requirements for revocation referred to in Article 128 of this Law are fulfilled and that the patent or petty patent cannot be maintained as amended, the competent authority shall take a decision to revoke the patent or petty patent in total.

If the competent authority establishes on the basis of the procedure for the revocation of the decision to grant a patent or a petty patent that the requirements for revocation referred to in

Article 128 of this Law are not fulfilled, the competent authority shall pass a decision to refuse request for revocation of a decision to grant a patent or petty patent.

If the competent authority establishes that there are grounds that the patent or petty patent maintain as amended, it may invite the right holder to submit the patent claims as amended, within the time limit referred to in paragraph 5 of this Article. If the patent holder submits the patent claims as amended, the competent authority shall forward it to the requester and invite him to submit reasoned objection within the limit prescribed in paragraph 5 of this Article.

If patent holder does not submit the patent claims as amended, or the competent authority did not invite him to submit patent claims as amended, competent authority shall notify the parties to the procedure on the text of the patent claims with which it intends to maintain a patent or petty patent in force as amended and shall invite them to submit reasoned observations within the time limit prescribed in paragraph 5 of this Article.

If the parties approve of the text in which the competent authority intends to maintain the patent or petty patent in force as amended or if they fail to file the reasoned comments within the time limit referred to in paragraph 11 of this Article, the competent authority shall take the decision to revoke the decision on the grant of the patent or petty patent in part, by which patent or petty patent is maintained in force as amended according to patent claims which are communicated to the parties for approval.

If the right holder states that he does not approve the wording of the claims under paragraph 11 of this Article, he shall be required to state the reasons for his disapproval and to file with the competent authority an amended wording of the claims.

At the reasoned request of the right holder or requester, the competent authority shall extend the time limit prescribed in paragraph 5 of this Article, providing that administrative fee has been paid.

If the competent authority accepts the amended wording of the claims, it shall take the decision to revoke the patent or petty patent in part, by which patent or petty patent is maintained in force as amended, according to patent claims which are submitted by the right holder.

If the competent authority does not accept the amended wording of the claims, it shall take the decision to revoke the patent or petty patent in part, by which patent or petty patent is maintained in force as amended, according to patent claims which are communicated to the parties for approval.

The decision to revoke the patent or petty patent in part shall be passed by the competent authority provided that the administrative fee for publication of the prescribed data referred to in the decision to revoke patent or petty patent in part and the fee for amended specification for the patent have been paid.

Where the right holder fails to pay the fees and costs under paragraph 17 of this Article and to submit the proof of payment within the set time limit, the patent or petty patent shall be revoked in whole and the competent authority shall pass a decision to that effect which is final and may be subject to administrative dispute.

Decision to revoke the patent or petty patent in part or in total shall neither produce any effect on court decisions relating to establishing infringement of rights, which were legally binding at the moment of the passing of the above decision, nor on assignment and licensing agreements that have been entered into it, and to the extent that, such agreements have been executed, providing the plaintiff or patent or petty patent holder have acted in good faith.

Publication and Issuing Patent Specification as Amended

Article 131

The competent authority shall publish particulars on the revoked patent or petty patent in the Official Gazette within three months from the date on which the decision becomes final.

If the patent or petty patent is maintained as amended in compliance with the Article 130 of this Law, the competent authority shall publish the amended patent specification, as soon as possible, after the mention of the decision taken in the revocation procedure has been published.

The provisions of the Article 112 of this Law shall apply in accordance with the publication of new specification for the patent or petty patent which is maintained as amended.

The competent authority shall prescribe the particulars referred to in paragraph 1 of this Article.

XIII PROTECTION OF RIGHTS UNDER CIVIL LAW

1. Infringement Action

Infringement of Rights and Right of Action against Infringement of Rights

Article 132

The infringement of rights arising from the published patent application, patent or petty patent shall be any unauthorized action referred to in Article 14 and Article 15 of this Law.

The action for the infringement of rights or existence of serious threat that the rights are about to be infringed may be submitted to the court by the applicant, right holder or licensee.

The applicant or the licensee shall be entitled to initiate legal suit against the infringement of rights after the publication of the patent application.

The licensee shall be entitled to initiate legal suit against the infringement of rights in the competent court in the extent entitled by the Law or the licensing contract providing for the utilization of the invention, unless the contract provides otherwise.

If more than one person are the holders of right or right holders on the published patent application for the same invention, each of them is entitled to require in their own name and on their own account the protection of rights under the Civil Law.

If more than one person are right holders or right holders of the published patent application on the same invention each of them is entitled to require in their own name and on their account the protection of rights under Civil Law.

Infringement Claims

Article 133

An action against the infringement may contain particularly a claim for:

1) establishment of the existence of an infringement of right or serious threat that the rights are about to be infringed;

- 2) prohibition of acts infringing the right or acts representing serious threat that the rights are about to be infringed as well as the prohibition of the continuation of such or similar acts under the threat of payment of appropriate fine to the plaintiff;
- 3) compensation for damages caused by infringement;
- 4) publication of the court decision at the expense of the defendant;
- 5) seizure or definitive removal from the channels of commerce or destruction or alteration of infringing products, without compensation of any sort;
- 6) prohibition of alienation, seizure or destruction of material or Articles (equipment, tools) predominantly used in the creation of infringing products, without compensation of any sort.

An action against the infringement of rights may be issued against any person whose services are used to infringe the rights (intermediary).

The court shall, within the infringement claims under paragraph 1 item 4) of this Article, decide in which media of public communication the court decision will be published. If the court decides to publish the court decision in part it will determine, within the infringement claims, to publish the sentence and if necessary that part of the court decision which shows the nature of the infringement and the responsible person who committed the infringement.

In considering the claims referred to in paragraph 1 items 5) and 6) of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the action claims, as well as the interests of third parties.

The applicant shall be entitled to damages from the date of the publication.

Any issue related to the damage compensation caused by infringement of right that is not regulated by this Law shall be subject to appropriate provision of the law regulating obligations.

Compensation for the Damage

Article 134

The injured party shall have a right to compensation for the material damage and moral prejudice.

When the Court sets the damage, the Court shall take into consideration all circumstances of the particular case, such as negative economic consequences, including lost profits, which the injured party has suffered and any unfair profits made by the infringer.

Instead of setting the damage referred to in paragraph 1 of this Article, the court may, in appropriate cases, adjudge to the injured party the compensation as a lump sum which could not be lower than the license remuneration for particular use of the protected subject matter.

The infringer who did not knowingly, or with reasonable grounds to know, injured the rights shall be under obligation to recover the profits to the injured party.

Provisional Measures

Article 134

At the request of the person who has presented reasonable evidence to support his claim that his rights have been infringed or are about to be infringed, the court may order the provisional measure of:

- 1) seizure or exclusion of the infringing products from the channels of commerce;
- 2) seizure or prohibition of alienation of the materials or Articles (equipment, tools) principally used in the creation of the infringing products;
- 3) prohibition of acts infringing the rights or representing serious threat that the rights are about to be infringed.

A provisional measure may be passed, under the same conditions, against any person whose services are being used by a third party to infringe the rights (intermediary).

At the request of the person who has presented reasonable evidence to support his claims that his rights have been infringed or are about to be infringed on a commercial scale and demonstrates circumstances likely to endanger the recovery of damages, the court may order, apart from the provisional measures from paragraph 1 of this Article, a provisional measure of:

- 1) seizure of the movable and immovable property of the person against whom the provisional measure has been passed.
- 2) prohibition of payments of monetary funds from the account of the person against whom the provisional measure has been passed.

For passing the provisional measure from paragraph 3 of this Article, the court may order the communication of banking, financing, business or other essential documents and data or access to such documents and data.

The person against whom the prohibition referred in paragraph 1, items 2 and 3 and paragraph 2, item 2 of this Article has been passed and who has not acted in compliance with the prohibition or the order, shall be fined in compliance with the appropriate provisions of the law regulating enforcement and security procedure.

Procedure for the Determination of the Provisional Measure

Article 135

The Court may pass the provisional measure immediately after the receipt of the proposal for the determination of the provisional measure, without the preliminary hearing of the defendant, and in particular if there is danger that the delay would cause irreparable damage to the right holder.

The decision determining provisional measure, in the case from paragraph 1 of this Article is forwarded to the parties in the procedure with no delay and at the latest immediately after the enforcement of the measure.

When the provisional measure is determined before the initiation of the litigation or other procedure, the legal suit, or the proposal for the initiating of other procedure for the sake of the justification of the measure, must be submitted in the time limit of 30 days from the passing of the decision on the determination of the provisional measure.

Cancellation of Provisional Measure and Compensation of Damages

Article 135a

If the action against the infringement of rights has not been initiated within the time limit referred to in paragraph 3 of Article 135 or if other procedure for the justification of the provisional measure has not commenced, the court shall, upon request from the defendant cancel the procedure and revoke the acts already taken.

If the procedure before the court is cancelled and taken acts are revoked in compliance with this Article or if the court found that there has been no infringement or serious threat that the rights are about to be infringed, the defendant shall have a right to the compensation of damages for any injury caused by the provisional measure.

The court may condition the provisional measure by demanding deposit consisting of the adequate amount of money intended to ensure compensation for any prejudice suffered by the defendant in the case referred to in the paragraph 2 of this Article.

Apt Enforcement of the Law Regulating Enforcement and Security

Article 135b

The issues regarding the procedure of determination of the provisional measure, not subject to this Law, are aptly subject to the provisions of the law regulating enforcement and security.

Securing of Evidence

Article 136

Upon request by a party who has presented reasonably available evidence to support its claims that the rights have been infringed or are about to be infringed, the court may order, in the course of the court proceedings as well as before the commencement of proceeding on the merits of the case, the measures to preserve evidence, subject to the protection of confidential information.

The measures for preserving evidence referred to in paragraph 1 of this Article shall include:

- 1) taking the detailed description of the infringing products, with or without taking samples;
- 2) seizure of infringing products or part of products and, in appropriate cases, the materials and implements (equipment, tools), principally used in the production or distribution of the infringing products and the documents relating thereto.

Procedures for the Securing of Evidence
Article 136a

The court may order the measures for preserving evidence immediately after the submission of the request for the preserving of evidence without the other party having been heard, in particular where any delay would cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

In the case referred to in paragraph 1 of this Article, the parties shall be given notice without delay and after the implementation of the measure, at the latest.

When the securing of evidence is determined before the initiation of the litigation procedure, the legal suit must be initiated in the time limit of 30 days from the date of passing the decision on the securing of evidence.

Suspension of the Securing of Evidence and the Compensation of Damages
Article 136b

If in the time limit from Article 136a, paragraph 3 of this Law, the legal action is not initiated, at the proposal of the opposing party, the court shall suspend the procedure and abolish the measures taken.

If the procedure before the Court is suspended and taken acts are revoked or if the Court found that there has been no infringement or serious threat that the rights are about to be infringed, defendant shall have a right to the compensation of damages for any injury caused by the securing of evidence.

The Court may order that the measures to secure evidence may be subject to the deposit of adequate amount of money intended to ensure compensation for any injury suffered by the defendant in the case referred to in paragraph 2 of this Article.

Obtaining of Evidence
Article 136c

When a party in the proceedings before the Court has presented reasonable available evidence to support its claims and has specified evidence which is in the possession of the opposing party or is under control of the opposing party, the Court shall order that such evidence be presented by the opposing party, subject to the protection of confidential information.

Under the same conditions from paragraph 1 of this Article, in the case of the infringement committed on a commercial scale, the Court shall order, as proposed by a party, the communication of banking, financial or commercial documents which are in possession or under control of the opposing party, subject to the protection of confidential information.

Apt Implementation of the Law regulating the Litigation Procedure
Article 136d

The issues connected to the procedure for the securing of evidence, not regulated by this Law, are aptly subject to the provisions of the Law regulating the litigation procedure.

Time Limit for Filing the Infringement Action

Article 137

The infringement action may be brought within a period of three years from the date of obtaining knowledge of the infringement and of the infringer, but not later than five years from the date on which the infringement occurred or from the date when the last infringement occurred providing the infringement was performed continuously.

The infringement proceeding referred to in paragraph 1 of this Article shall be urgent.

Burden of Proof

Article 138

If the subject matter of an infringement of right is a process for obtaining a new product, any identical product shall be deemed to have been obtained by means of the protected process, until proven otherwise.

The burden of proof shall be on the defendant who manufactures such product, whereby the legitimate interests of such defendant in protecting his manufacturing and business secrets shall be taken into account.

Right of Information

Article 139

The Court may order the infringer, in response to a justified and proportionate request of a party whose right has been infringed to provide the information about the other persons involved in infringement, as well as information on the origin and distribution networks of the products and services that infringe the rights and to surrender the documents connected to the infringement of rights.

Providing of information specified in paragraph 1 of this Article the court may order also to the other person who:

- 1) was found in possession of the infringing goods on a commercial scale which infringe the right;
- 2) was found to be using the infringing services on a commercial scale which violate the right;
- 3) was found to be providing on a commercial scale services used in infringing activities which infringe the right;
- 4) was indicated by the person referred to in item 1), 2) or 3) of this Article as being involved in the manufacture or distribution of the goods or the providing of the services which infringe the right.

The information referred to in paragraph 1 of this Article shall comprise in particular:

- 1) data of the producers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- 2) the information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services in question.

If persons referred to in paragraphs 1 and 2 of this Article unreasonably fail to comply with a Court order and do not provide the requested information they will be responsible for the damage thus caused.

2. Action for the Establishment of the Right to Protection

Article 140

The inventor, his successor in title or employer shall be entitled to require through a civil action before the court the establishment of his right to the protection of a given invention instead of the person or, together with the person who has already filed an application for that invention.

If the decision to grant a patent has already been taken by the competent authority the inventor, his successor in title or employer referred to in paragraph 1 of this Article may require through a civil action before the court the establishment that he is the right holder instead of or together with the person Registered as the right holder.

Action under paragraph 1 of this Article may be initiated before the right has been granted and the action under paragraph 2 of this Article may be initiated prior to the expiry of the right.

The proceedings under paragraph 1 and 2 of this Article shall be urgent.

The final court decision upholding the claims referred to in paragraphs 1 and 2 of this Article shall be communicated to the competent authority, which shall enter changes concerning the applicant or right holder into the appropriate Register.

3. Action for the Protection of Employer's or Employee's Rights

Article 141

An employer or employee entitled, under the provisions of this Law, to the protection or commercial use of an invention made in the course of employment, may require through a civil action before the court the establishment and protection of his rights.

Action under paragraph 1 of this Article, for the establishment of the rights of the employee or employer, may be brought within two years from the date of the publication of the patent application, but not after the expiry of two years from the date of termination of employment during which the invention was made.

The final court decision upholding the claims referred to in paragraphs 1 and 2 of this Article shall be communicated to the competent authority, which shall enter the changes of ownership into the appropriate Register.

4. Action for Recognition of the Status of Inventor

Article 142

If any other person has been designated as the inventor in the patent or petty patent application or in any other document provided for by this Law, the inventor shall be entitled to require through a civil action before the court the establishment of his status as inventor and

order the entry of his name in the patent or petty patent application and in other relevant documents and Registers in accordance with the provisions of this Law.

There shall be no time limit for an action referred to in paragraph 1 of this Article.

In the case of the death of the inventor, his heirs shall be entitled to bring an action referred to in paragraph 1 of this Article.

5. Stay of the Civil Proceedings

Article 143

The court shall stay the proceedings on action for infringement of rights arising from the published application, pending a decision by the competent authority on such application.

If procedures defined in Articles 128 of this Law have been initiated before the competent authority, the court shall stay the proceedings on action referred to in Articles 132 paragraph 1, 133, 140 paragraph 2 and 142 of this Law until a final decision of the competent authority.

6. Revision

Article 144

Revision is always allowed against second-instance final court decisions passed in disputes relating to the protection and use of inventions.

XIV THE EUROPEAN PATENT APPLICATION AND THE EUROPEAN PATENT

Effects of European Patent Applications and European Patents in the Republic of Serbia

Article 145

A European patent application and a European patent shall, subject to the provisions of this Law, have the same effect and be subject to the same conditions as a national patent application and a national patent.

Filing of European Patent Application

Article 146

The European patent application may be filed:

- 1) with the European Patent Office;
- 2) with the competent authority.

Competent authority shall forward the European patent application to the European Patent Office within:

1) six weeks from filing, where the subject of the application is evidently not liable to secrecy under this Law;

2) four months of filing or if priority has been claimed, fourteen months from the date of priority, where the application requires further examination as to its liability to secrecy.

A European patent application filed with the competent authority shall have the same effect as if it has been filed on the same date with the European Patent Office, provided that it has been transmitted by the competent authority in accordance with the provisions of paragraph 2 of this Article to the European Patent Office in due time.

A European divisional patent application and the new European patent application referred to in Article 61 paragraph 1 item b) of the European Patent Convention shall be filed directly with the European Patent Office.

If the competent authority estimates that the invention falls under the category of inventions being important for the defence and security of the Republic of Serbia, it shall not transmit the European patent application to the European Patent Office in accordance with paragraph 2 of this Article, but shall act in accordance with provisions of this Law relating to inventions of importance for defence and security of the Republic of Serbia, and shall notify the applicant thereof.

The European patent application, which is to be filed with the competent authority in accordance with the provisions of this Article, may be filed in any of the official languages referred to in Article 14, paragraph 1 of the European Patent Convention or if it is filed in another language referred to in Article 14, paragraph 2 of the European Patent Convention, must be translated into one of the official languages and filed within two months from the filing of European patent application.

Fees and Procedural Costs for European Patent Applications

Article 147

The fees and costs payable in respect of European patent applications shall be paid to the European Patent Office in accordance with provisions of the European Patent Convention and regulations to the European Patent Convention.

Priority Right and Provisional Protection of European Patent Applications

Article 148

The European patent application, which has been accorded a date of filing and where the Republic of Serbia has been designated, shall be equivalent to a regular national patent application, with priority claimed for a European patent application, if such claim has been made, whatever the outcome of proceedings relating to the application may be.

A published European patent application shall confer upon the applicant the same provisional protection under this Law as is conferred by a national patent application, from the date on which a translation of the claims of the published European patent application into the

Serbian language is communicated by the applicant to the person using the invention in the Republic of Serbia.

The European patent application shall be deemed not to have had the effect specified in paragraph 2 of this Article, *ab initio*, if it is withdrawn, deemed to be withdrawn, if it is finally refused or if the designation of the Republic of Serbia has been withdrawn or deemed withdrawn.

*Effects of European Patent and Procedure for Entry of
the European Patent into the Register of Patents*

Article 149

Subject to paragraphs 2 to 6 of this Article, a European patent designated for the Republic of Serbia shall, from the date of the publication of mention of the grant of the European patent by the European Patent Office, confer the same rights as by a national patent under this Law.

Within 3 months from the date on which the mention of the grant of the European patent has been published, the owner of the patent shall submit to the competent authority:

- 1) a request for entry of the European patent into the Register of Patents;
- 2) a specification of the European patent as published in the Official Journal of European Patent Office translated into the Serbian language;
- 3) proof of the paid republican administrative fee for the request from point 1 of this paragraph and proof of payment of the republican administrative fee for the publication of data on the granted European patent in the Official Gazette.

If the European Patent Office maintains the European patent in force with amended claims, the patent holder shall submit to the competent authority the translation of the amended patent specification in Serbian language and proof that Republic administrative fee has been paid for the publication within three months from the date of the publication in the Official Gazette of the European Patent Office of data on the decision to maintain in force the European patent with amended claims.

The competent authority shall publish the mention of any translation duly filed under paragraph 2 or 3 of this Article.

If the translation referred to in paragraph 2 or 3 of this Article is not filed in the prescribed time-limit or the prescribed administrative fees are not paid within the period referred to in paragraph 2 or 3 of this Article, the European patent shall be deemed to be void *ab initio* for the Republic of Serbia.

The European patent and the European patent application on which it is based shall be deemed not to have had *ab initio* the effects specified in paragraph 1 of this Article and Article 148, paragraph 2 of this Law, to the extent that the patent has been revoked in the scope as if it were revoked by the decision under Article 131 this Law.

The competent authority passes decision on the entry of the European patent in the Register of Patents and elaborates patent specification in the Serbian language. For the elaboration of patent specification, republican administrative fee need to be paid.

If the person filing a request for the entry of European patent into the Register of Patents does not furnish proof on the paid republican administrative fee, from paragraph 7 of this article, in the prescribed term from the date of receipt of the invitation to pay republican administrative fees,

the competent authority shall reject by a conclusion the request for the entry of the European patents in the Register of patents.

Translation of the amended patent specification, as published by the European Patent Office, the competent authority shall publish at the written request of the right holder, providing that administrative fee has been paid and the translation has been submitted.

Data on the European patent enrolled in the Register of patents shall be published in the Official Gazette of the competent authority.

If the European patent office declares the European patent entered into the Register of patents totally null and void, the competent authority passes a decision ex officio on the annulment of the decision on the entry of the European patent into the Register of patents.

Authentic Text of European Patent Applications or European Patents

Article 150

The text of a European patent application or a European patent in the language of the proceedings before the European Patent Office shall be the authentic text in any proceedings conducted in The Republic of Serbia.

Notwithstanding paragraph 1 of this Article, a translation furnished in accordance with Article 148, paragraph 2 or Article 149, paragraph 2 and 3 of this Law, shall be regarded as authentic, except in revocation proceedings, where the application or patent in the language of the translation confers narrower protection than that conferred by it in the language of the proceedings.

An applicant or the owner of a European patent may file a corrected translation of the claims of the European patent application or European patent at any time.

The corrected translation of the claims of the published European patent application referred to in paragraph 3 of this Article shall not have any legal effects in the Republic of Serbia until it has been communicated to the person using the invention in the Republic of Serbia.

The corrected translation of the specification of the European patent referred to in paragraph 3 of this Article designating the Republic of Serbia shall not have any legal effect, until the competent authority has published the mention of the correction of the specification. Publication of the mention of corrected translation shall be done as soon as possible after payment of costs prescribed for the publication.

Any person who, in good faith, uses or has made effective and serious preparations for the use of an invention, so that such use does not constitute an infringement of the rights arising from the application or patent in the original translation, may, after the corrected translation takes effect, continue such use in the framework of his job or for his needs, without payment of remuneration.

Rights of Earlier Date

Article 151

European patent application and a European patent designating the Republic of Serbia shall have, with regard to a national patent application or petty patent application and a national

patent or petty patent, the same prior art effect as a national patent application or petty patent application and a national patent or petty patent.

In the Republic of Serbia, a national patent application or petty patent application and a national patent or petty patent shall have, with regard to a European patent designating the Republic of Serbia, the same prior art effect as they have with regard to a national patent or petty patent.

Simultaneous Protection

Article 152

Where a European patent designating the Republic of Serbia and a national patent or petty patent have the same filing date or, where priority has been claimed and the same priority date has been granted to the same person or his successor in title, the national patent or petty patent shall have no effect to the extent that it covers the same invention as the European patent designating the Republic of Serbia, as from the date on which the time limit for filing an opposition to the European patent has expired without an opposition having been filed, or as from the date on which the opposition procedure has resulted in a final decision to maintain the European patent.

Conversion of a European patent application into a National Patent Application

Article 153

The competent authority shall carry out a procedure for the grant of national patent upon the request of an applicant of a European patent application in the following cases:

- 1) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3 of the European Patent Convention,
- 2) where the translation of a European patent application has not been filed in due time in accordance with the provision of Article 14, paragraph 2 and Article 90, paragraph 3 of the European Patent Convention.

In the case referred to in paragraph 1 item 1) of this Article, a request for conversion of European patent application into the national application shall be filed with the competent authority. The competent authority shall, subject to the provisions on national security, transmit the request for conversion of European patent application into the national application directly to the central industrial property offices of the Contracting States specified therein. The time limit for the transmission and the legal sanction for belated transmission are provided for in the European Patent Convention.

In the cases referred to in paragraph 1 item 2) of this Article, a request for conversion of European patent application into the national application shall be filed with the European Patent Office, which shall transmit it to the competent authority, if the Republic of Serbia is specified therein.

The request for conversion of the European patent application into the national application shall be deemed as filed after the conversion fee and costs have been paid and the

proof of payments has been submitted to the competent authority. The time limit for filing the request for conversion is provided for in the European Patent Convention. The effects of the European patent application referred to in Article 66 of the European Patent Convention shall lapse if the request for conversion is not filed in due time.

Within two months from the filing date of the request for conversion of a European patent application into a national patent application, the applicant shall pay the costs for publication of mention of the conversion and submit the proof of payment and shall file with the competent authority the translation of the original text of the European patent application into the Serbian language. Mention of the conversion shall be published in the Official Gazette.

If the prescribed remuneration of costs referred to in paragraph 5 of this Article has not been paid and the proof of payment has not been submitted to the competent authority in due time, or if the translation of the original text of the European patent application into the Serbian language is not filed in due time, the request for conversion shall be deemed not to have been filed, and the competent authority shall pass a decision about it.

Renewal Fees for European Patents

Article 154.

Renewal fees for European patents shall be paid to the competent authority for the years following the year in which the mention of the grant of the European patent was published in accordance with special regulation.

Dispositions of European Patent Applications and European Patents

Article 155

The provisions of this Law on the assignment, license, right of pledge, and compulsory licenses shall apply to European patent applications and European patents with effect on the territory of the Republic of Serbia.

Protection against Infringement

Article 156

The provisions of this Law on the protection of rights under Civil Law in the case of infringement shall apply to European patent applications and European patents designating the Republic of Serbia.

Revocation of the European patent

Article 157

Subject to the provision of Article 138 of the European Patent Convention, European patent may be revoked in the procedure before the competent authority in accordance with the provisions of this Law, with the effect for the Republic of Serbia.

In the proceeding before the competent authority relating to the validity of the European patent, the right holder of the European patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

If a request for revocation of a European patent is filed with the competent authority after the initiation of the opposition procedure before the European Patent Office, referred to in Article 99 of the European Patent Convention or the procedure concerning a request for limitation or revocation referred to in Article 105a of the European Patent Convention, the competent authority shall stay the procedure concerning the request for the revocation up to the termination of the mentioned procedures before the European Patent Office.

Application of European Patent Convention

Article 158

Provisions of this Law shall apply to the European patent applications and European patents designating the Republic of Serbia unless provided otherwise in the European Patent Convention.

European Patent Convention shall apply in the case of conflict between the European Patent Convention and this Law.

XV INTERNATIONAL PATENT APPLICATION PURSUANT TO THE PATENT COOPERATION TREATY

International Application

Article 159

An “international patent application” shall mean a patent application filed under the Patent Cooperation Treaty. Any reference to the Patent Cooperation Treaty in this Law shall also be construed as reference to the Regulations under the Patent Cooperation Treaty.

The provisions of the Patent Cooperation Treaty, of this Law and of regulations under this Law shall apply to international patent applications filed with the competent authority acting as the receiving office, or in which the competent authority has been indicated as the designated or elected office.

International Application Filed with the Competent Authority as a Receiving Office

Article 160

An international patent application may be filed with the competent authority acting as a receiving office, if the applicant is a natural person who is a national and a resident of the Republic of Serbia or a legal person whose seat is in the Republic of Serbia.

International Application Indicating the Competent Authority as a Designated or Elected Office
Article 161

An international application in which the Republic of Serbia, pursuant to the provisions of the Patent Cooperation Treaty has been designated or elected for the granting of a national patent, shall be filed with the competent authority, in the Serbian language, within a period of thirty months, at the latest, from the international filing date or from the date of priority, if priority has been claimed in the international application.

The time limit referred to in paragraph 1 of this Article shall be extended by 30 days, if the applicant of the international patent application pays a prescribed extension fee and submits the proof of payment to the competent authority.

An international application filed with the competent authority acting as the designated or elected office shall be published in the Official Gazette in accordance with Article 102 of this Law, not later than six months from the date of receipt of the application by the competent authority.

The applicant shall be granted the provisional rights laid down in Article 18, paragraph 1 of this Law as of the date of publication of application in the Official Gazette as specified in Article 102 of this Law.

The substantive examination of an international application shall be conducted at the request of the applicant, if such request has been filed within the time limit stipulated in Article 103 of this Law.

An international application published in accordance with Article 21 of the Patent Cooperation Treaty shall not be deemed to be part of the state of the art under the provisions of Article 10, paragraph 2, item 2) of this Law until conditions stipulated in paragraph 1 of this Article have been fulfilled.

International Search and International Preliminary Examination Authority

Article 162

For international applications filed at the competent authority as the receiving office, the applicant may designate authority for international search and international preliminary examination in compliance with the signed international treaties.

XVI PETTY PATENT

Subject Matter and Conditions of Protection

Article 163

A petty patent is a right granted for an invention that is new, involves an inventive step and is susceptible to industrial application.

Petty patent cannot be used to protect:

- 1) inventions from the field of biotechnology;
- 2) substances;
- 3) medicaments;
- 4) substances or compositions from article 10, paragraphs 3 and 4 of this Law;

- 5) plant varieties or animal races;
- 6) procedure that can be protected by a patent.

Petty patent application can contain only one independent claim and at the most four dependent claims.

Petty patent application cannot be used to obtain protection for the unity of invention.

A petty patent application can be divided into two or more independent petty patent applications (divisional application).

Petty patent application cannot be filed as the application for patent of addition in the meaning of Article 88 of this Law.

Examination of the petty patent application

Article 164

After the grant of the filing date of the application, in compliance with the article 97 of this Law, the competent authority in the procedure of grant petty patent:

- 1) examines if the petty patent application fulfils conditions from Article 99, paragraph 1 of this Law;
- 2) examines if the petty patent application fulfils conditions from Article 163, paragraphs 2-6 of this Law;
- 3) establishes if the subject matter of protection has not been covered by provisions of Article 7, paragraph 4 of this Law;
- 4) establishes that the subject matter of protection is the invention not exempted from patentability in the meaning of Article 9, paragraph 1 of this Law;
- 5) examines if the subject matter of protection has been described completely and clearly, in compliance with the article 82, paragraphs 1 and 2 of this Law;
- 6) examines if the subject matter of protection is the technical solution of a certain problem;
- 7) examines if the petty patent application is in compliance with the provisions of article 83, paragraph 1 and article 85, paragraph 1 of this Law.

If the competent authority establishes that the application and the subject matter of protection of petty patent fulfils conditions from paragraph 1 of this Article, providing that the proofs on the payments from article 107, paragraph 5 of this Law have been furnished, it passes decision on the petty patent grant.

In the procedure of petty patent grant, the subject matter of invention mentioned in the application is not examined with regard to novelty, inventive level and industrial applicability.

If the competent authority finds that the subject matter of the application does not comply with the requirements, as referred to in paragraph 1 of this Article, the applicant shall be informed about it in the examination report, which specially contains a reasoned statement covering all grounds against the grant of the petty patent, and the applicant shall be invited to correct deficiencies in the prescribed time limit, which shall last no less than two months, but also cannot be longer than three months.

After the receipt of the examination report, from paragraph 4 of this Article, the applicant can change just once the description, patent claims and drawing, if the change is filed simultaneously with the response of the applicant to the examination report, and other changes can be made only with the agreement of the competent authority.

Upon a reasoned request of the applicant, competent authority shall extend the time limit referred to in paragraph 2 of this Article, by the period of time the competent authority deems justified, but not exceeding three months.

If the applicant fails to correct the deficiencies referred to in paragraph 4 of this Article, the competent authority shall pass a decision rejecting petty patent application.

The petty patent application shall not be published.

Substantive Examination of Granted Petty Patent

Article 165

At the request of the petty patent holder the competent authority shall examine the granted petty patent in accordance with Article 104, paragraph 1 items 5) and 6) of this Law.

It shall be deemed that the request for the examination of the granted petty patent is filed only when the fees for the substantive examination and search report are paid and the proofs of payments are submitted.

The request referred to in paragraph 1 of this Article may not be withdrawn.

If the requirements referred to in paragraph 1 of this Article are fulfilled, the competent authority shall issue to the petty patent holder the certificate of examination.

If the requirements referred to in paragraph 1 of this Article are not fulfilled the competent authority shall ex officio revoke the petty patent.

Notification of the issued certificate of examination and decision on revocation of petty patent shall be published in the Official Gazette and entered into the Register of petty patents.

The provisions of Article 132 to 144a and the provisions of Article 26 to 38 of this Law in part relating to the initiation of proceedings do not apply if the granted petty patent does not have certificate of examination.

Provisions of the article 101, paragraphs 3 and 4 of this Law are not applied to the examination procedure of the granted petty patent from paragraph 1 of this Article.

Conversion of the Application

Article 166

Before passing a decision to grant rights, the applicant may file a request for the conversion of the petty patent application into patent application or industrial design and vice versa.

Request for the conversion of the petty patent application into the patent application, or request for the conversion of the patent application into the petty patent application can be filed only once.

If the request for the conversion of the petty patent application into the patent application or the request for the conversion of the patent application into the petty patent application from paragraph 2 of this article is filed more than once, the competent authority shall refuse the request for the conversion.

A converted application shall retain the filing date of the application of the originally filed application.

Article 167

Provisions of this Law shall duly apply to petty patents, unless otherwise expressly stipulated.

XVII CONDITIONS FOR THE ENTRY INTO THE REGISTER OF REPRESENTATIVES

Article 168

Natural persons who are nationals and residents of the Republic of Serbia, who have command of one language of international communication and who represent clients on professional basis, may be entered into the Register of Representatives referred to in Article 5 of this Law under one of the following conditions:

- 1) that they have not been convicted of a criminal offence to unconditional prison sentence of at least six months or a criminal offence that makes them unworthy to be representatives;
- 2) that they are graduates from one of the following faculties: The Faculties of Technology and Engineering Sciences or the Faculties of Sciences and Mathematics or the Faculty of Pharmacy or the Faculty of Law;
- 3) that they have at least three years of working experience in the field of industrial property with the competent authority and have passed a special expert examination with the competent authority or at least five years of working experience in the field of industrial property with the competent authority.

Legal persons having seat in the Republic of Serbia and employing at least one Law Faculty graduate and one graduate from one of following faculties: The Faculties of Technology and Engineering Sciences or the Faculties of Sciences and Mathematics or the Faculty of Pharmacy that fulfils conditions referred to in paragraph 1 of this Article, may also be entered into the Register of Representatives referred to in Article 5 of this Law.

Persons mentioned in paragraphs 1 and 2 of this Article shall submit to the competent authority the address of the representative office.

Special expert examination prescribed in paragraph 1, item 3) of this Article shall be taken before a panel established by the competent authority.

Administrative fee has been prescribed for the special expert examination.

The competent authority shall issue a certificate of passed special expert examination.

The competent authority shall prescribe in particular the program for the special expert examination.

Entry in the Register of Representatives

Article 168a

Entry in the Register of Representatives, which contains a representative number, data concerning the representative and the date of enrolment into the Register, shall be made upon written request of a natural and legal person.

Applicant mentioned in paragraph 1 of this Article has the obligation, along with the request for the entry in to the register, to file proof of the fulfilment of conditions from Article 168, paragraph 1, point 2 of this Law and proof of the payment of the republic administrative fee, and the competent authority checks the compliance with other conditions from Article 168, paragraphs 1 and 2 of this Law.

If, along with the request for the entry into register, the proof of the fulfilment of conditions from Article 168, paragraph 1, point 2 of this Law is not furnished or the proof of the payment of the republic administrative fee, the competent authority shall reject the request.

The competent authority shall pass decision to enrol a person into the Register of Representatives if the person mentioned in paragraph 1 of this Article meets all the prescribed conditions.

The competent authority shall pass decision refusing the application to enrol a person in the Register of Representatives if all conditions prescribed in Article 168 have not been met.

The competent authority shall enter the changes of data into the Register of Representatives at a written request, providing administrative fees have been paid.

Enrolment into the Register of Representatives shall be published in the Official Gazette.

Renewal, Delete, Re-Entry

Article 168b

Entry in the Register of Representatives shall be renewed every year, calculating from the date of the enrolling.

Renewal of registration in the Register of Representatives shall be made at written request confirming the fulfilment of conditions prescribed in Article 168 of this Law providing there is proof of payment of administrative fee.

Persons enrolled in the Register of Representatives shall be deleted from the Register:

- 1) at the request of the Registered representative;
- 2) ex officio without delay after having knowledge of the occurrence of circumstances such as:
 - (1) death of the natural person or termination of the legal entity;
 - (2) deprivation of business capacity;
 - (3) termination of citizenship of the Republic of Serbia of a natural person or conviction for criminal offence to an unconditional prison sentence of at least six months, which makes a person unworthy to be a representative;
- 3) the entry into the Register is not renewed.

Person who has been deleted from the Register may be re-entered if written request is submitted with a proof of payment of the Republic administrative fee is submitted.

The competent authority shall pass decision on the delete and re-entry in the Register of Representatives.

Delete and re-entry in the Register of Representatives shall be published in the Official Gazette.

XVIII APT IMPLEMENTATION OF THE PROVISIONS OF THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE

Article 169

The issues referring to the procedures regarding the applications for the protection of inventions, procedure following requests for certificate and procedure with regard to the granted rights not arranged by this Law, are subject to the implementation of the provisions of the Law regulating general administrative procedure.

XIX PENAL PROVISIONS

Misdemeanour

Article 170

Legal person who manufactures, imports and/or exports, offers for sale, places on the market, stores or uses for commercial purposes the product or process protected by patent or petty patent without authorization contrary to the provisions of this Law (Article 14 and 15) shall be punished by a fine of RSD 100,000 to 2,000,000.

An entrepreneur shall be punished for the acts referred to in paragraph 1 this Article by a fine of RSD 50,000 to 500,000, and

For the acts referred to in paragraph 1 this Article a fine shall be imposed on a natural person or a responsible person in legal person of RSD 50,000 to 150,000.

The infringing objects in the misdemeanour acts and the objects used for the perpetration of the misdemeanour under paragraph 1-3 of this Article shall be seized, provided that the infringing objects are also destroyed.

The judgment prescribing fine against the offender for a misdemeanor referred to in paragraphs 1-3. of this Article shall be published in the media for the public information.

Article 171

A legal person who acts as representative in the exercising of the rights under Article 5 of this Law without having a power of attorney shall be sanctioned on grounds of the misdemeanour with a fine of between RSD 100,000 and 1,000,000.

The natural person or responsible person in a legal person shall be sanctioned on grounds of the misdemeanour for the acts under paragraph 1 of this Article with a fine of between RSD 10,000 and 50,000.

XIX AN INFORMATION AND EDUCATION SERVICES

Article 171a

The competent authority performs education and information services in the field of legal protection of inventions and other intellectual property rights: conducts training of interested parties, provides professional assistance to the authorities responsible for enforcing intellectual property right, performs diagnostics of intellectual property rights for legal persons, announces publication on intellectual property and performs search reports from available data bases of industrial property.

For the performance of information and education services, the competent authority shall charge Republic administrative fees.

XX TRANSITIONAL AND FINAL PROVISIONS

Continuity in the Maintenance of Registers

Article 172

The Register of Patent Applications, the Register of Patents, the Register of Petty Patent Applications and the Register of Petty Patents, specified by the Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and „Official Gazette of RS”, No. 115/2006), shall continue to be maintained pursuant to this Law.

Pledges entered, by the date of this Law entering into force, into the Register of Possessory Lien on Movable Property and Rights (hereinafter: The Pledge Register) at the Agency for Business Registers shall remain in effect and shall be entered into the relevant Register with the competent authority.

The Agency for Business Registers shall, within 30 days from the date of this Law entering into force, forward to the competent authority data and documentation on the basis of which pledge on patent, petty patent or rights arising from the application have been entered into the Pledge Register.

Effects of this Law on Valid Patents and Petty Patents and on applications for patents and petty patents that are filed by the date of entering into force of this Law

Article 173

The Registered patents and petty patents valid on the date of this Law entering into force shall remain in effect and they shall be subject to the provisions of this Law.

The provisions of this Law shall also apply to patent applications and petty patent applications submitted by the date when this Law, takes effect providing that administrative procedure has not yet been finalized, as well as to other proceedings instituted in respect of patent and petty patent that remain pending on the date when this Law takes effect.

Extended European patents and extended European patent applications

Article 174

The provisions of the Chapter XV of the Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and ”Official Gazette of RS“, No. 115/2006) shall apply on the European patent applications extended for the Republic of Serbia and on the European patents which have been granted based on such applications.

Deadline for Adoption of Bylaws

Article 175

Bylaws for the enforcement of this Law shall be adopted within six months from the date of entering of this Law into force.

Until the adoption of the bylaws referred to in paragraph 1 of this Article, bylaws adopted on the basis of the Patent Law („Official Gazette of the S&M”, No. 32/04 and 35/04 and ”Official Gazette of RS“, No. 115/2006) shall apply except for the provisions contrary to this Law.

Cessation of Validity of the Law

Article 176

On the date when this Law enters into force the validity shall cease for:

- 1) The Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and ”Official Gazette of RS“, No. 115/2006);
- 2) Provision of Articles 3 to 13 of the Law on Ratification of the Convention on the Grant of European Patents (“Official Gazette RS-International Treaties, No. 5/2010);

Cessation of Validity of the Provisions of this Law

Article 177

The validity of the provisions of this Law that regulates compulsory licenses of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems shall cease on the day of accession of the Republic of Serbia to the European Union.

Entry into Force

Article 178

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Serbia”, provided that the provisions of this Law referring to the Supplementary Protection Certificate shall apply from 1 July 2013.

FINAL PROVISIONS

Article 59

Independent Acts of the Law on the Amendments of the Patent Law

The Register of Patent Applications and the Register of Patents established by the Patent Law (“Official Gazette RS” No. 99/11 and 113/17-other laws) shall continue to be maintained as the Register of Patents pursuant to this Law.

The Register of Petty Patent Applications and the Register of Petty Patents established by the Patent Law (“Official Gazette RS” No. 99/11 and 113/17-other laws) shall continue to be maintained as the Register of Petty Patents pursuant to this Law.

Article 60

Bylaws for the enforcement of this Law shall be adopted within six months from the date of entering of this Law into force.

Bylaws from Article 26 of this Law shall be adopted within nine months from the entry into force of this Law.

Until the adoption of the Bylaws referred to in paragraph 1 and 2 of this Article, bylaws adopted on the basis of the Patent Law (“Official Gazette RS” No. 99/11 and 113/17-other laws) shall apply except for the provisions contrary to this Law.

Article 61

From the day of the accession of the Republic of Serbia to the European Union, the provisions of Articles 16 and 22 of the Patent Law (“Official Gazette RS” No. 99/11 and 113/17-other laws) shall be applied in the case that the right holder or the person authorized by the right holder placed the protected products on the market in a member state of the European Union or the European Economic Area.

Article 62

Provisions of the Patent Law (“Official Gazette RS” No. 99/11 and 113/17-other laws) regulating Supplementary Protection Certificate, as well as the provisions of Article 2, paragraph 1, items 19) to 28) shall cease to apply on the accession date of the Republic of Serbia to the European Union.

The provision of Article 36 of this Law shall apply after the day of the accession of the Republic of Serbia to the European Union.

Article 63

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Serbia”.

Independent Acts of the Law on the Amendments of the Patent Law (“Official Gazette RS” No. 123/21)

Article 18

Certificates which started being valid and implemented till the day of enforcement of this Law, as well as certificates which shall start being valid and implemented till July 1, 2022, are subject to the implementation of the Patent Law. (“Official Gazette RS”, no. 99/11, 113/17 – state law, 95/18 and 66/19).

Provisions of Article 7 of this Law should apply on the certificates which will start being valid and implemented from July 2, 2022.

Article 19

Bylaws for the implementation of this Law shall be passed in the term of 6 months from the date when this Law enters into force.

Article 20

This Law enters into force on the eight day from the publication in the “Official Gazette of the Republic of Serbia”, except for the provisions of Article 1 and 7 that are implemented since July 2, 2022 and stop being valid on the date of accession of the Republic of Serbia to the European Union.