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**MINISTRY OF ECONOMY
INDUSTRIAL PROPERTY PROTECTION OFFICE**

DRAFT-LAW ON INDUSTRIAL PROPERTY

Skopje, 08.06.2001

DRAFT-LAW ON INDUSTRIAL PROPERTY

BASIC PROVISIONS

Article 1

This law regulates the acquisition and protection of industrial property rights.

Industrial property rights shall be patent, industrial design, trademark and appellation of origin and geographical indication.

Article 2

Rights recognized under this law shall not be used against public interest determined by law.

Article 3

Under this law, foreign legal and natural persons in respect of protection of industrial property rights in the Republic of Macedonia shall enjoy the same rights as domestic legal and natural persons if it results from international agreements and conventions or application of principle of reciprocity.

The existence of reciprocity shall be proven by the person who is invoking reciprocity.

Article 4

Administrative procedure regarding acquisition and protection of industrial property rights shall be performed by the Industrial Property Protection Office of the Republic of Macedonia (hereinafter: "the Office").

The Office is an independent administrative organization having capacity of legal entity.

The Office is subordinate to the Government of the Republic of Macedonia.

Article 5

The Office keeps registers of applications and recognized industrial property rights and register of representatives in the field of industrial property.

The information for the applied for and recognized industrial property rights shall be published in the Official Gazette issued by the Office.

The Director of the Office shall issue regulations, which set up in grater detail the procedure for recognition of the rights.

Article 6

Protection of industrial property rights in the Republic of Macedonia may be sought by filing suitable application to the Office.

The applicant may also file to the Office applications requiring protection of industrial property rights abroad if that is in accordance with the international agreements and conventions, which are binding on the Republic of Macedonia.

Protection of industrial property rights may also be required in the Republic of Macedonia with an application filed abroad, if that is in accordance with the international agreements and conventions, which are binding on the Republic of Macedonia. These applications shall have the same rights as the national applications, unless otherwise provided by the respective agreement or convention.

Article 7

Application for recognition of industrial property right shall be filed in writing, personally, by mail or by electronic means.

Application for recognition of industrial property right shall be filed in Macedonian language and Cyrillic alphabet.

Application for recognition of industrial property right may also be filed in foreign language provided that it includes indication of the requested right and information about contact with the applicant in Macedonian language.

If the application is filed in a foreign language, within a month period the applicant must submit translation of the application in Macedonian language. Otherwise, the application shall be deemed to be withdrawn.

Article 8

In the administration procedure for protection of industrial property rights the Office decides in first instance.

In the procedure for recognition and maintenance of industrial property rights, the Office shall issue decisions, conclusions and other acts under this Law. In absence of appropriate provisions in this Law, the Law on general administrative procedure shall be applied.

No oral hearing shall be conducted in the procedure before the Office.

The Office shall conduct the procedure referring to Article 6 paragraph (2) and (3) in accordance to the international agreements, which are binding on the Republic of Macedonia, as well as the regulations and instructions of these agreements. In absence of appropriate provisions in the international agreements, regulations and instructions, the provisions of this Law shall apply.

Administrative suit may be instituted against first instance decision of the Office.

Article 9

Where two or more applicant file application for recognition of the same right in the Republic of Macedonia, the applicant who filed his application first or has the earliest priority date, if priority right is requested, he shall have priority over the other applicants.

Priority right for applications which citizens of the Republic of Macedonia who are temporary residents abroad filed through the consulates and embassies of the Republic of Macedonia abroad or diplomatic and consular offices of other states which are representing the Republic of Macedonia shall be the day of receiving the application in the diplomatic or consular office.

Article 10

In the procedure before the Office and administration bodies, the foreign legal or natural persons shall be represented by an authorized person who is a domestic legal or natural person registered for representation in the field of industrial property.

Article 11

The Office is obliged make available to all interested legal and natural persons its documentation and information for the applications and protected industrial property right, except the documentation which has not been published in the Official Gazette issued by the Office.

Only information from the register of applications shall be available for the applications for industrial property right.

Unpublished application may be made available only with consent of the applicant.

The documentation and information from paragraph (1) of this Article, as well as the other services related to protection of industrial property shall be made available by paying the expenses for information services.

Article 12

For acquisition and maintenance of industrial property right fees shall be paid under the Law on administrative fees, as well as specific expenses for the procedure for recognizing the right.

If the fees and expenses for recognition of industrial property right are not paid in the prescribed time limit, the application shall be rejected. If the fees or expenses for maintaining the validity of industrial property right are not paid, the right shall no longer be valid.

The Government of the Republic of Macedonia is passing an act determining the fees for the specific expenses in the procedure and the expenses for giving information services.

PART ONE

PATENT

Object of patent protection

Article 13

Patent shall be granted for invention in all fields of technology, which is new, involves inventive step and is susceptible of industrial application.

The following in particular shall not be considered to be inventions within the meaning of paragraph (1) of this Article:

1. discoveries, scientific theories and mathematical methods;
2. esthetic creations;
3. rules, instructions or methods for performing mental activities, playing games or doing business;
4. presentation of information defined by contents of such information;
5. computer programs.

The following shall be excluded from protection by patent:

1. inventions related to new animal species and plant varieties and essentially biological processes for production of animals or plants, except inventions relating to microbiological processes and products from such processes;
2. inventions whose publishing or exploitation would be contrary to the public order and morality. Exploitation of invention shall not be deemed contrary to public order or morality only because it is prohibited by law or appropriate regulation;
3. inventions for surgical and diagnostic methods or method for treatment of living human or animal body, except inventions relating to products, in particular substances or compositions for use in any of these methods.

Novelty of invention

Article 14

Invention shall be considered to be new if it does not form part of the state of the art.

State of the art shall be held to comprise everything made available to the public by means of oral or written description by use or in any other way before the date of filing the patent application.

State of the art also includes contents of the patent application referred to in items a, b and c of this paragraph, that have been filed before the date referred to in paragraph (2) of this Article, that have been made available to the public

from the filing date of the application or after that date by publishing the patent in a way provided by this Law:

- a. national patent applications, as originally filed in the Office, except for patent applications that have been rejected or withdrawn before the publication date;
- b. European patent applications, as originally filed in the European Patent Office (hereinafter EPO) under the European Patent Convention from October 5, 1973 (hereinafter EPC) requesting protection in the Republic of Macedonia;
- c. International applications, as originally filed under the Patent Cooperation Treaty from June 19, 1970, amended on February 3, 1984 (hereinafter PCT) filed to the Office as elected Office in accordance of Article 39 of PCT.

The provisions from paragraphs (1) to (3) shall not exclude from patentability any substance or composition comprised in the state of the art where it is intended for use in method or treatment referred to in Article 13 paragraph (3) item 3, provided that such use is not comprised in the state of the art.

Non-prejudicial disclosures

Article 15

While estimating whether the invention is new under Article 14 of this Law, the fact that the invention was available to the public six months prior to the filing of the application shall not be taken into consideration if it was due to or in consequence of:

- a. evident abuse in relation to the applicant or his legal predecessor, or
- b. the fact that the applicant or his legal predecessor has displayed the invention at an official or officially recognized exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928 and last revised on May 31, 1988.

Provision from paragraph (1) item b shall be applied only if while filing the application the applicant indicates that the invention was exhibited and submits written certificate issued by the competent authority of a state member of Paris Union founded by the Paris Convention for Protection of Industrial Property (hereinafter: Paris Union). If the applicant does not act under the provisions of this paragraph, it shall be considered that priority right was not sought.

Inventive step

Article 16

Invention shall be considered to involve an inventive step if, having regard to the state of the art within the meaning of Article 14 paragraph (2), it is not obvious to a person skilled in the art.

In deciding whether an invention involves inventive step, the content of the applications referred to in Article 14 paragraph (3) of this Law shall not be taken into consideration.

The applicant may renounce the initial application and file a new application for the same invention. The first application shall not be considered in deciding whether there has been an inventive step in the later application.

Industrial applicability

Article 17

Invention shall be considered susceptible of industrial application if the object of protection can be manufactured or used in any kind of industry, including agriculture.

PROCEDURE FOR ACQUISITION OF RIGHT

Persons entitled for acquisition of patent rights

Article 18

The right to a patent shall belong to the inventor or **his** successor in title.

If the inventor is not applicant, the applicant shall be deemed to be entitled until proven otherwise.

If the invention has been created jointly, by several inventors, the right to patent shall belong to all inventors or their successors in title.

Inventor

Article 19

Inventor shall be the person who has created the invention in the course of his creative work.

The person who has contributed to the creation of an invention by providing only technical assistance shall not be deemed to be inventor.

The inventor shall have the moral right to be mentioned in the patent application, the documents and registers.

The inventor has rights under this Law and other rights determined with international agreements and conventions, law, general acts and contract.

Inventor's successor in title

Article 20

Inventor's successor in title shall be legal or natural person entitled to acquire a patent by virtue of law, legal business or inheritance.

The employer shall be considered to be inventor's successor in title where by virtue of law or the working contract he has the right to acquire a patent for invention created under inventor's employment.

PATENT GRANTING PROCEDURE

Initiating a procedure

Article 21

Patent granting procedure shall be initiated by filing a patent application to the Office.

Patent granting procedure may also be initiated by filing European patent application and application file in accordance to the Patent Cooperation Treaty (PCT).

Patent granting procedure on applications referred to in paragraph (2) of this Article shall be prescribed by the Regulations whereby the procedure for granting patent right has been regulated (hereinafter: Regulations).

Unity of invention

Article 22

Each invention shall be filed as separate patent application.

One patent application may contain more than one invention only if such inventions are so linked to form a single inventive concept.

Concept of priority

Article 23

From the filing date **of** a proper patent application in the Office, the applicant shall have priority right to any other person who shall later file an application for the same invention.

Exception from paragraph (1) of this Article shall be when conditions for recognition of priority right determined in Articles 24 and 26 of this Law are fulfilled.

Union priority right

Article 24

Any legal or natural person who has filed a proper application in any of the state member of the Paris Union shall be granted priority right in the Republic of Macedonia from the date of filing the first application provided that the application

for the same invention is filed to the Office within 12 months from the filing date of the first application and that the right of priority is claimed.

The application from paragraph (1) of this Article shall be considered proper if the filing date is determined under the national legislation of the state member of the Paris Union in which it was filed or in accordance with the international agreements concluded between the states member of the Paris Union, regardless of the future legal outcome of the application.

Priority claim

Article 25

The applicant who intends to use the priority right referred to in Article 24 shall be obliged in the application filed in the Republic of Macedonia to give all information for the application the priority to which is claimed and, not later than three months as from the date of filing the application, to submit a copy of the first application certified by the competent authority of the state member of the Paris Union or international organization with which the first application was filed.

Multiple priority right

Article 26

The applicant may file a claim for granting multiple priority right on the basis of several earlier applications filed in one or more state members of the Paris Union.

Where multiple priority right is claimed, the time limits, which according to this Law shall run from the date of granted priority right, are calculated from the earliest date of multiple priority right.

Characteristics of the invention to which priority claim relates

Article 27

The priority claim shall relate only to such characteristics of the invention, which are contained in the first application or applications for which priority is claimed.

If certain characteristics of the invention do not appear among the patent claims contained in the first application or applications, for granting priority right it shall be sufficient that all other documents of application as a whole specifically disclose such characteristics.

Certificate for priority right

Article 28

On request of the applicant, the Office shall issue a certificate of priority right acquired on the basis of filing date of the application provided that it is in compliance with the provisions set out in Articles 23 of this Law.

The conditions, procedure and contents of the certificate referred to in paragraph (1) of this Article shall be prescribed by the Regulations.

Amendments in patent application

Article 29

Patent application with determined filing date may not be additionally amended by extending the object for which protection is required.

Content of patent application

Article 30

Patent application shall contain:

1. request for the grant of patent;
2. description of the invention;
3. one or more patent claims;
4. brief contents of the invention (abstract);
5. drawing (if necessary) referred to in the description and the patent claim;
6. evidence for paid application fee;
7. translation in Macedonian language if the application was filed in foreign language.

The request for grant of a patent shall contain; an express indication that grant of a patent is required, title of the invention expressing the essence of the invention and indications concerning the applicant and the inventor.

A written declaration of the inventor in case he does not want to be mentioned in the application shall be filed to the Office not later than within 2 months as from the filing date of the application.

The patent application must disclose the invention in a manner sufficiently clear and precise for it to be carried out by a person skilled in the art.

If the application relates to a viable biological or microbiological material, which cannot be described, the application must be accompanied by evidence that a sample of that material has been deposited with the competent institution not later than the filing date of the patent application.

The competent institution referred to in paragraph (5) of this Article shall be considered to be an institution which complies with the requirements prescribed in the Budapest Treaty on International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1997.

The patent claims shall define the subject matter for which protection is required. They shall be clear and concise and fully supported by the description of the invention. Patent claims may be independent and dependent. The independent claims shall contain essential characteristics of an invention. The dependent claims shall contain specific characteristics of the invention defined in the independent and other dependent claim.

The abstract shall be a short summary of the essence of an invention serving exclusively for the purpose of technical information.

The content and the manner of drafting particular elements of the patent application shall be prescribed by the Regulations.

Date of filing the application

Article 31

The accordance of the filing date of the patent application shall require that on such a date the application contains:

1. request for grant of patent;
2. name or company name, and residence or business seat of the applicant;
3. description of an invention and one or more patent claims, even if such description and claims do not comply with the requirements prescribed by this Law and the Regulations.

Entry of the application into the register of patent applications

Article 32

If the application contains basic elements referred to in Article 31, the Office shall issue a conclusion for accordance of the filing date.

If the application does not contain basic elements referred to in Article 31, the Office shall invite the applicant to correct the deficiencies within 30 days as from the day of receipt of the invitation.

If the applicant corrects the deficiencies within the time limit, the Office shall issue a conclusion whereby the date of receipt of proper application within the meaning of Article 31 of this Law shall be accorded as the filing date of the application.

If the applicant does not correct the deficiencies within the time limit, shall be deemed that the application has not been filed.

The application to which filing date have been accorded by conclusion, shall be entered in the register of patent applications.

The content of the register of patent applications and the manner of keeping it shall be prescribed by the Regulations.

Division of patent application

Article 33

The applicant may divide the subject matter of the patent application having the accorded filing date (the original application) into two or more applications and separate procedure shall be carried out on the basis of each of them.

Division of the original patent application shall be allowed up to **issuing** the decision for grant of patent.

Patent application resulting from the division of the original application (a divisional application) shall maintain the filing date of the original application and enjoy the priority thereof.

Ordering the patent application

Article 34

After the entering of the patent application in the register of patent applications, the Office shall examine whether:

1. the filing fee for the application has been paid;
2. translation of the application in Macedonian has been filed, where the application is in a foreign language;
3. the drawings referred to in Article 30 paragraph (1) item 5 of this Law have been filed.

If the patent application does not contain all basic elements referred to in Article 30 of this Law, the Office shall invite the applicant to correct the determined deficiencies within two months from the day of receipt of the invitation.

On reasoned request of the applicant, the time limit referred to in paragraph (2) of this Article may be extended for justified reasons by no more than two months.

If the applicant does not correct the determined deficiencies referred to in paragraph (2) of this Article within the prescribed time limit, the Office shall reject the patent application by issuing a conclusion.

Where a patent application refers to drawings, which are not included in the application, the Office shall notify the applicant that he may file them within the prescribed time limit. If the applicant does not comply with the notification of the Office any reference to the drawings shall be considered to be non-existent.

If the applicant corrected the application within the time limit, the application shall be deemed to be proper.

Processing an application in case of dispute

Article 35

In case of dispute referring to the right from the patent application, the applicant may require the Office to process the application immediately.

Request for immediate processing of the application may not be filed earlier than 12 months from the day of filing the patent application.

In case of dispute referring to paragraph (1) of this Article, the applicant shall act according to provisions from Article 31 paragraph (4) of this Law.

Examination the contents of the application

Article 36

The examination of the patent application shall establish whether the application complies with the following requirements:

1. whether the inventor is mentioned;
2. whether a proper priority claim has been filed within the meaning of Article 24 and 25 of this Law, if priority right is claimed;
3. where the applicant is represented by a representative, whether the representative is entered into the Register of representatives kept by the Office;
4. whether the application complies with the rule on unity of invention referred to in Article 22 of this Law;
5. whether the subject matter of the application is at first sight patentable within the meaning of Article 13 paragraph (2) and (3) and Articles 14, 15 and 17 of this Law.

Notification after examination the patent application

Article 37

If the patent application does not contain all basic requirements referred to in Article 36 of this Law, the Office shall notify the applicant and invite them to correct the determined deficiencies within two months from the day of receipt of the notification.

On reasoned request of the applicant, the time limit referred to in paragraph (1) of this Article may be extended for justified reasons by no more than two months.

Issuing a conclusion for rejection

Article 38

The Office shall issue a conclusion for rejection of the patent application if the applicant does not correct the determined deficiencies within the time limit referred to in Article 37 of this Law.

Issuing a conclusion for granting

Article 39

Where the patent application complies with the requirements referred to in Article 36 of this Law, the Office shall issue a conclusion that all requirements for granting a patent have been fulfilled and invite the applicant to pay the expenses for publishing the patent in the Official Gazette of the Office, the expenses for issuing a patent certificate and patent specification and the fee for maintaining the validity within 30 days.

Decision for rejection

Article 40

The Office shall issue a decision for rejection of the patent application if the applicant does not comply with the requirements for the conclusion referred to in Article 39.

Decision for granting

Article 41

If the applicant complies with the time limit set in Article 39, i.e. pays the determined fees and expenses, the Office shall issue a decision for granting a patent for the first 10 years of validity and invite the applicant within 9 years to submit written evidence of substantive examination referred to in Article 43 issued by institutions authorized for substantive examination referred to in Article 44.

The decision for granting shall be published in the Official Gazette of the Office within three months from the day of issuing.

The contents of the data, which shall be published in the Official Gazette of the Office, shall be prescribed by the Regulations.

Decision for refusal

Article 42

The Office shall issue a decision for refusal of the claim for granting a patent if the application has been filed for an invention which is not patentable under Article 13 paragraph (2) and (3) and Article 17 of this Law.

The decision on the refusal of the patent application shall not be issued if the applicant has not been previously notified in writing about the grounds for the refusal and invited to make a declaration thereon.

The patent applicant shall have the right to make a declaration concerning the grounds for refusal of the protection of invention within a prescribed time limit and to submit evidence on the possible new facts that might influence the Office final decision.

On the reasoned request of the applicant the time limit referred to in paragraph (3) of this Article may be, for justified reasons, extended for not more than 6 months.

Filing evidence of substantive examination

Article 43

The patent owner or owner of the exclusive right from patent is due to submit translation of the evidence of substantive examination conducted in one of the elected Offices no later than the expiring of the ninth year from the day of filing the application in the Office.

If the applicant filed an application for recognizing the same invention to the patent offices of other countries, as evidence he may submit the translation of the results from the substantive examination or the granted patent.

If the patent owner or owner of the exclusive right from patent does not act in compliance with paragraph (1) of this Article, the validity of the patent in question shall expire on the date of the expiring on the tenth year of the patent term.

The patent owner or owner of the exclusive right from patent is due to submit the evidence from paragraph (1) of this Article even if a third party had instituted an action for infringement of patent rights. In that case, the Office shall start an emergency procedure for issuing one of the decisions referred to in Article 47 of this Law.

Institutions for substantive examination

Article 44

The substantive examination of the patent application referred to in Article 45 shall be conducted in one of the elected offices.

The elected offices referred to in paragraph (1) of this Article shall be as a rule national and international Offices which under Article 16 or Article 32 of the Patent Cooperation Treaty have the status of International Searching Authority or International Preliminary Examining Authority for international preliminary examination of international patent applications.

Contents of substantive examination

Article 45

The substantive examination determines that the invention is in compliance with all requirements for granting a patent right, i.e. that the subject matter of the application is:

1. invention which is patentable under Article 13 paragraph (2) and (3) of this Law;
2. invention which has been described in the way it is obvious to a person skilled in the art under Article 30 paragraph (4) of this Law;
3. invention which is in compliance with the rule of unity of invention from Article 22 of this Law;
4. invention which is new under Article 14 and 15 of this Law, which contains an inventive step under Article 16 of this Law and is industrially applicable under Article 17 of this Law.

Additional examination of the evidence

Article 46

The Office shall issue a final decision for granting a patent on the basis of the submitted evidence from the substantive examination from Article 43 paragraph (1) and (2) of this Law and on the basis of the additional examinations from this Article.

The additional examination of a patent application shall establish whether the invention complies with the requirements for granting a patent, i.e. whether the subject matter of the application is:

1. invention which is patentable in compliance with Article 13 paragraph (3) of this Law and which is morally allowed in compliance with Article 13 paragraph (3) item 3 of this Law;
2. invention, which is new with regard to all of the patent applications, filed earlier to the Office in compliance with Article 14 of this Law.

Issuing final decision

Article 47

On the basis of the filed evidence, the Office determines to what extent the contents and scope of the patent application for the given invention complies

with the requirements referred to in Article 14, 16 and 17 of this Law and shall issue one of the following decisions:

1. decision that the invention complies with all requirements referred to in Article 14, 16 and 17 of this Law and that patent claim(s) fully complies with those requirements;
2. decision that the invention only partially complies with the requirements referred to in Article 14, 16 and 17 of this Law and that gives limited future validity of the patent claim(s) in the scope in which it complies with the requirements;
3. decision for declaring as nullity if the invention does not comply with the requirements for patent protection from the day of filing the patent application.

The provisions from Article 36, 37, 38, 39, 40, 41, 42, and 43 of this Law are also applied in the procedure for granting additional patent or patent for secret invention, except if otherwise prescribed by the provisions from this Law.

Patent register

Article 48

The data specified in the decision to grant a patent shall be entered into the patent register kept by the Office on the date of the decision.

The data specified in the decision to refuse the request for granting a patent shall be entered into the register of patent applications.

The contents and the manner of keeping the patent register shall be prescribed by the Regulations.

Publication of a patent

Article 49

A patent shall be published in the Official Gazette of the Office within 3 months as from date of the decision of the grant thereof.

The contents of the data of granted patent, which are published in the Official Gazette of the Office, shall be prescribed by the Regulations.

Patent certificate

Article 50

The patent owner shall be issued a patent certificate within 6 months from the date of the decision on granting a patent.

The patent certificate shall be accompanied by patent specification.

The contents and form of the certificates and the patent specification shall be prescribed by the Regulations.

Patent of addition

Article 51

If the applicant or patent owner amends or improves invention for which he had filed patent application or received grant (hereinafter: "basic patent") he may require patent of addition for the performed amending or improving.

Unless otherwise prescribed by this Law, renouncing the basic patent application shall stop the procedure on the patent of addition.

Conditions for granting patent of addition

Article 52

On request of the patent owner, the office shall issue a decision for patent of addition became basic patent if the decision for granting basic patent has been declared as nullity or if the patent ceased to be valid.

The proposal determining that the patent of addition became basic shall be filed within three months from the date the decision for declaring the basic patent as nullity comes to force or from the date it stopped being valid.

If one or more patents of addition became basic, on request of the patent owner the other patents of addition may be connected to that new basic patent as patents of addition.

Patent for secret invention

Article 53

The applications for granting patents on inventions of domestic legal and natural persons referring to national defense are considered to be secret and are being filed to the Minister of Defense.

If in the procedure for examining the filed application the Minister of Defense determines that the invention is not secret, the application shall be submitted to the Office. If in the course of procedure for examining the application the Office determines that the invention is secret, it shall pass it on to the Minister of Defense.

If after granting patent for secret invention the Minister of Defense determines that the invention stopped being secret, the entire file shall be submitted to the Office. After receiving the patent, the Office shall register the patent in the patent register, issue to the patent owner a patent certificate and specifications and publish the data under Article 49 of this Law.

Using secret invention

Article 54

The Ministry of Defense has the exclusive right to use the secret invention and dispose of it.

The patent owner for secret invention protected by patent is entitled to remuneration, regardless whether the invention is being used in the defense and to which extent.

The amount of the remuneration referred to in paragraph (2) of this Article shall be agreed by the applicant and the Minister of Defense.

If the agreement referred in paragraph (3) of this Article is not achieved, the applicant may ask the competent court to determine the amount of the remuneration.

Protection of secret invention

Article 55

Secret invention shall not be published.

Domestic legal and natural persons may file for protection of secret invention abroad only with consent of the Minister of Defense.

The regulations for Article 47 and 48 of this Law shall be applied mutatis mutandus for patent applications which are in interest of the security of the state.

The Minister of Interior shall be competent to decide on the applications under paragraph (3) of this Article.

The Government of the Republic of Macedonia shall decide which inventions shall be considered secret under Articles 53 and 54 of this Law, as well as the procedure of granting patent for those inventions.

DURATION, MAINTENANCE AND CEASING OF PATENT

Validity of patent

Article 56

A patent is valid for 20 years as from the filing date of the patent application.

The validity of a patent may be extended to more than 20 years if the subject matter of the patent is a medical product or a product for protection of plants or process for their production, which has on undergo an administrative procedure required by law before it can be put on the market, for the duration of such administrative procedure, but not more than 5 years.

Supplementary certificate for protection of medical products and productions for plants protection

Article 57

The validity of the patent under Article 56 paragraph (2) may be extended by issuing a supplementary protection certificate

The procedure for issuing the supplementary protection certificate shall be prescribed by the Regulations.

Annual maintenance fees

Article 58

Before issuing a decision for granting a patent, the Office shall invite the patent owner to pay a total amount of fees for maintenance of the patent for the period since the filing date of the application up to the date of the patent grant.

The annual maintenance fee for the forthcoming period shall be due on the date corresponding to the filing date of the patent application.

If the patent owner fails to pay the maintenance fees within the determined time limit, he may pay them within three months from the expiration of the time limit with regular fee increased by 25%, as well as in an extended time limit of six months from the expiration of the additional three months in double amount.

Ceasing of patent before expiration of its validity

Article 59

A patent right shall cease before the expiration of its validity date:

1. if the prescribed fees and expenses are not paid, the day after the expiration of the time limit for payment thereof;
2. if the patent owner renounces his right, the day after the filing of the request for renouncing to the Office;
3. on basis of court decision or act of the Office in cases provided for in this Law, the day determined in the decision or act;
4. with the lapse of the legal person who is the industrial design owner or upon the death of the natural person who is the industrial design owner, on the day of lapse or death, unless the right has been transferred to the legal successors in title of the legal person or to the heirs of the natural person.
5. If the patent owner or the owner of exclusive right to patent does not comply with Article 41 paragraph (1) or Article 43 of this Law, the validity of the patent shall expire on the date of the expiring of the tenth year of the patent term.

Article 60

If license, pledge or any other right of a third person has been entered into the patent register, the patent owner may **no** renounce his rights without written consent from the person who is signatory of the license, pledge or other right.

If the patent owner does not pay the fee within the determined time limit and license, pledge or any other right of a third person has been entered into the patent register, the Office shall inform the third person that the fee had not been paid and that in order to keep his right he shall have to pay the fee within six months from the date of the information.

In case of an action for securing the registered rights of a third person, the court may decide to transfer the patent to the person in whose name is the license, pledge or other right, if that is necessary for securing those rights.

CONTENTS OF PATENT RIGHTS

Exclusive patent rights

Article 61

The patent owner shall have the exclusive right to exploit and to dispose of the protected invention.

Any other person not having the patent owner's consent shall be prohibited from:

1. producing, offering for sale, selling, using, exporting or importing and stocking for such purposes the product carried out according to the invention;
2. using the process, which is the subject matter of the invention or offering the use thereof.

The patent owner's exclusive right of exploitation of the invention shall not apply to:

1. acts in which the invention is exploited for private and non-commercial purposes;
2. acts done for the purposes of research and development of the subject matter of the protected invention, in particular: making, using, offering for sale, importation or exportation of the protected product, where such acts are reasonably connected with experiments and tests necessary for registration of human and veterinary medications, medical and veterinary products or preparations for protection of plants;
3. direct and individual preparation of medicine in pharmacy on the basis of an individual medical prescription and acts relating to the medicine so prepared.

Article 62

If the patent was issued for process, its rights shall also refer to the products and substances directly obtained **by** that process.

In absence of proof to the contrary, it shall be deemed that the product have been obtained by a protected process if the product is new and there is a substantial likelihood that the product was obtained by a protected process and that the patent owner has not been capable on thorough reasonable efforts to determine the process actually used. In particular, it shall be deemed that there is reasonable doubt that the product was obtained by a protected process if the protected process is the only known process.

Scope of exclusive rights

Article 63

The scope of the exclusive rights of the patent owner shall be determined with the text of the patent claims which have been finally accepted in the patent granting procedure, while the description and the drawings shall be used for interpreting the patent claims.

Transfer of right

Article 64

The applicant and patent owner may by agreement fully or partially transfer his right under the conditions prescribed by this Law and other provisions.

The agreement for transfer of right shall be filed in written form.

On request of one of the parties in the agreement, the agreement referred to in paragraph (2) of this Article shall be entered in an adequate register kept by the Office.

Agreement, which has not been filed in written form and entered in the adequate register, shall not have legal effect.

License agreement

Article 65

The applicant and patent owner may by agreement fully or partially license the invention, i.e. patent.

The license agreement shall be filed in written form.

If the patent application was filed by more than one person or more than one person is patent owner, consent from all patent owners shall be necessary for concluding a license agreement.

License agreement, which has not been filed in written form, shall not have legal effect. If it has not been entered in the adequate register it shall not have legal effect for third persons.

Article 66

The license agreement in particular shall contain: duration of license, scope of license, whether the license is exclusive and the amount paid for the licensed right, where such remuneration has been agreed.

On request of one of the parties in the agreement, the agreement referred to in paragraph (1) of this Article shall be entered in the adequate register kept by the Office.

Article 67

In the license agreement, any provisions, which pose limitations to the licensee that, do not result from the right which is subject matter of the agreement or that is unnecessary for maintaining that right shall be declared as nullity.

LIMITATION OF A PATENT RIGHTS

Right of prior user

Article 68

A patent shall have no effect against a person who, prior to the filing date of the application or the date of granted priority, had privately and in a good faith exploited the invention or manufactured the product which is the subject matter of the invention or made serious preparations for such exploitation in the Republic of Macedonia.

The person referred to in paragraph (1) of this Article shall have the right to proceed, without the patent owner's consent, with exploitation of the invention to the extent to which he had exploited or prepared its exploitation up to the filing date of the application for the said invention.

The right referred to in paragraph (2) of this Article may be transferred or inherited only with the working process and production plant in which the exploitation of the invention has been prepared or started.

Vehicles in international traffic

Article 69

Use of product made on the bases of the protected invention in the construction or equipment of a vessel, aircraft or land vehicle belonging to any of

the member States of the Paris Union shall not be considered to be patent infringement where such transport means finds itself temporarily or accidentally in territory of the Republic of Macedonia, provided that the product serves exclusively for the purposes of the said transport means.

Compulsory license

Article 70

If the patent owner does not exploit the protected invention or exploits it to the extent which is insufficient to satisfy the needs of the Macedonian market, and refuses to conclude a license agreement or sets forth non-market conditions for concluding such agreement, the right of use of the invention may be given to another person with obligation to pay remuneration to the patent owner.

Compulsory license may be given to a legal or natural person who shall prove that he has the technological possibility and production capacity to use the invention protected with patent.

Compulsory license shall not be given if the patent owner proves the existence of legitimate reasons justifying the non-exploitation or insufficient exploitation of the protected invention.

Article 71

Request for granting compulsory license shall be decided on by the court of the Republic of Macedonia, on the basis of an opinion from the adequate administrative body competent for the area to which the license refers.

Article 72

A request for granting a compulsory license may be filed after the expiration of the period of 4 years as for the filing date of the application or after the expiration of the period of 3 years as from the date of the patent grant, whichever occurs later.

If the exploitation of the protected invention is of public interest (health, defense, protection and improvement of human environment) or of particular interest to a particular branch of economy, the compulsory license may be granted even before the expiration of the terms referred to in paragraph (1) of this Article.

Article 73

Where compulsory license is granted, the patent owner has the right to adequate remuneration. The amount of the remuneration is agreed by the patent owner and the user to whom the license was granted, i.e. who shall be using the invention protected with patent. If agreement is not achieved, the amount of the remuneration shall be determined by the competent court.

The absence of agreement or court decision referred to in paragraph (1) of this Article shall not prevent the person who was granted license to exploit the invention.

Article 74

Compulsory license shall be granted only for the purposes of supplying the domestic market.

Compulsory license shall not be exclusive.

The duration of the compulsory license shall be connected exclusively with the duration of the reasons it had been granted for.

Article 75

Compulsory license may also be granted if the invention protected by patent cannot be exploited fully or partially without using some other invention protected with previous patent where the later invention, which is a more significant technical progress, is of particular meaning to state economy or satisfying the general needs.

If compulsory license is granted under paragraph (1) of this Article, the owner of the former patent may request compulsory license for exploiting the invention after the later patent.

TERMINATION OF PATENT DUE TO NON-EXPLOITATION

Article 76

The Office may issue a decision for termination of the patent if granting compulsory license could not reach the goal for which the license was granted on request of an interested legal or natural person according to previously acquired opinion of the administrative body competent in the area in which the patented invention should be exploited.

The request for terminating the patent cannot be filed before expiring of two years from the date of granting the first compulsory license.

The request referred to in paragraph (2) of this Article shall be filed to the Office in a written form.

Within 15 days from the receiving the request the Office shall submit the request to the patent owner and invite him to declare himself within 30 days from receiving the information.

The Office shall decide on the request for termination of a patent exclusively on basis of the documentation filed by both parties.

Administrative suit may be instituted against the decision of the Office.

Article 77

The patent stops being valid the date when the decision of the office for terminating the patent entry into force.

The decision referred to in paragraph (1) of this Article shall be published in the Official Gazette of the Office.

DECLARING DECISION FOR GRANT OF PATENT AS NULLITY

Article 78

The decision for the grant of patent shall be declared as nullity if it is established that the conditions for granting of that right, provided by this Law, did not exist.

Article 79

The decision for granting the right on patent may be declared as nullity during the whole term of protection, ex officio, at the proposal of an interested person or at the proposal of the public prosecutor.

The proposal for declaring a decision as nullity referred to in paragraph (1) of this Article shall be filed to the Office in a written form.

The proposal referred to in paragraph (1) of this article shall be accompanied by necessary evidence.

The Office shall submit the proposal to the right owner within 15 days from the receipt thereof and invite him to declare himself within 30 days from the receipt of the proposal.

The Office shall decide on the proposal for declaring as nullity exclusively on the basis of the documentation filed by both parties.

Administrative suit may be instituted against the decision of the Office.

The data to be contained in the proposal for declaring a decision for granting the right on patent as nullity shall be prescribed by the Regulations.

Article 80

If the person filing the proposal for declaring as nullity the decision for granting right on patent renounces the proposal during the procedure, the Office may continue the procedure ex officio or on request of the owner of that right.

JUDICIAL PROTECTION

Article 81

The person who shall infringe the right to applied for or protected invention shall be responsible for the damage according to the general rules for remuneration of damage.

The person whose right has been infringed may request, apart from the remuneration, the person who had infringed the right to be prohibited any future activity, which infringes the right and the decision stating the infringement to be published in the media on expense of the infringing party.

Article 82

Infringement of the right from application or granted patent shall be any unauthorized exploitation thereof in production and sale of protected invention or unauthorized disposal of the patent.

Article 83

The patent applicant, the patent owner and the person who was granted exclusive license may institute an action for infringement of the rights referred to in Article 61 of this Law.

The court may interrupt the procedure for infringement of the patent application until the Office issues a decision for granting a patent.

If the plaintiff fails to accompany the action for infringement of patent right with request for filing adequate written evidence referred to in Article 43 paragraph (4) of this Law, the court may determine a time limit within which such request has to be filed.

If the demand or evidence referred to in paragraph (3) of this Article are not filed within the time limit, the action shall be rejected.

Article 84

The action for infringement of the right to applied for or protected invention may be instituted within three years from the date when the plaintiff learnt of the infringement and the person who made it or within five years from the performed infringing act.

Article 85

The procedure on action for infringement of the right to applied for or protected patent shall be expeditious.

Contesting the patent right

Article 86

The inventor, his heir or some other legal successor in title may institute an action before the competent court asking to be declared as patent owner for the entire time of the duration of the patent if the patent was granted to a person who is not inventor, his heirs or some other legal successor.

Article 87

Within three months from the date of the submitting of the court decision of acceptance the request referred to in Article 68 of this Law, the plaintiff may request his name to be entered in the adequate register as patent owner and to be issued adequate certificate.

If the person whose request has been accepted within the time limit referred to in paragraph (1) of this Article does not request his name to be entered in the adequate register as patent owner, the right shall be removed from that register.

Article 88

The rights which a third person has obtained from the former patent owner referred to in Article 69 of this Law shall also apply to the new patent owner if they had been entered in the adequate register or properly filed for registering before the action.

Action for granting right to inventor

Article 89

The inventor may institute an action requesting the court to decide his name to be mentioned in the application and all certificates referred to in Article 19 paragraph (3) of this Law.

In case of death of the inventor, the right for instituting an action passes on his heirs.

Article 90

Apart from the request referred to in Article 81 paragraph (2) of this Law, the plaintiff may also ask the court decision in the case in which he was recognized as inventor to be published in the media on the expense of the defendant, as well as to receive remuneration for non-material damage.

Article 91

The action referred to in Articles 83 and 84 of this Law may be filed from the date of filing a patent application, as well as during the entire duration of the patent.

Article 92

In case of infringement of moral right and non-existence of material damage, the court may rule the inventor to receive adequate material remuneration for damage on his personality, honor and reputation, i.e. non-material damage, if it is determined as justified by the circumstances in the case, particularly the degree of damage and its duration.

PART TWO

INDUSTRIAL DESIGN

Object of protection by industrial design

Article 93

Industrial design right shall protect three-dimensional or two-dimensional design applied on a given industrial or handicraft product or part of a product (hereinafter: design) to the extent that it fulfils the requirements as to novelty and individual character.

For the purpose of this Law the term design shall mean the appearance (outer look) of a product, or the part thereof, characterized by its visible features, in particular: shape, contours, texture, lines, motives, or a combination of these features.

For the purpose of this Law the term product shall mean any article manufactured by industry or handicraft.

A design incorporated in or applied to a product which embodies a part intended for incorporation in a complex product may be protected by an industrial design right, if the incorporated part, for the design of which protection is sought, remains visible during normal use of the complex product, and if the visible features of the incorporated part, taken individually, fulfill the requirements as to novelty and individual character.

Normal use under the preceding paragraph of this Article shall mean a use with purpose by the user of the product and shall exclude the maintenance and repair of the product.

Novelty of design

Article 94

A design of product shall be considered new under this Law if it is not identical to any design available to the public prior to the filing date of the application or, if priority has been claimed, prior to the granted date of priority.

Individual character of design

Article 95

A design of product shall be considered to have individual character if the overall impression it produces on the user of the product substantially differs from the overall impression produced on such a user by any design which was previously available to the public.

A design of product shall not be considered to have individual character for the sole reason that it relates to other products.

In assessing individual character of a design of product, the degree of creativity of the designer in developing the new design of product shall be taken into consideration.

Availability to the public

Article 96

The design shall be deemed to have been made available to the public if:

1. it has been published following the application or the grant of the industrial design right or otherwise;
2. it has been exhibited or used in trade;
3. it has been disclosed otherwise, in the normal course of business that has made it known to the relevant business circles in the Republic of Macedonia.

There shall be no effect on the assessment of the novelty and individual character within the meaning of Articles 94 and 95 of this Law when, for no more than twelve months prior to the filing date of the application, respectively if the priority was claimed prior to the granted priority date, it was made available to the public by the designer, his successor in title or a third party as a result of provided information.

Paragraph (2) of this Article shall also apply in the case when a design has been made available to the public by a third person who acquired the information on the design of product in an unauthorized manner or to whom it has been disclosed as confidential information.

Absolute grounds for refusal

Article 97

An industrial design right shall not protect a design of product which:

1. is not subject matter of protection under Article 93 of this Law;
2. is contrary to law and morality;
3. presents technical plan or scheme;
4. exclusively presents cartographic or photographic work;
5. contains, embodies or substantially imitates a national coat of arms or any other public coat of arms, a flag or an emblem, the name or abbreviated name of a country or international organization, unless with the consent of the competent authority of that country or organization;
6. contains or imitates appearance of a famous person, unless with the consent of that person or the competent authority or a person empowered to care of the image of a deceased famous person.

Relative grounds for refusal

Article 98

An industrial design right may not protect a design of product:

- 1., which is not new under Articles 94 and 96 of this Law;
- 2., which has no individual character under Articles 95 and 96 of this Law;
3. which is exclusively dictated by the type of that product or the product into which it is to be incorporated, or by technical or functional characteristics necessary for the achievement of a certain technical result or normal function of any of these products.

An industrial design right may not protect a design of product that infringes the earlier acquired rights of the owners specified under Article 113, paragraph (1) items 1 to 5 of this Law.

Grounds for refusing protection by industrial design right under paragraph (2) of this Article may be invoked only by the applicant of the earlier application or the owner of the earlier right.

Persons entitled to acquisition of industrial design right

Article 99

The designer or his successor in title is entitled to initiate the procedure and acquire the industrial design right under this Law.

If the designer is not the applicant for industrial design, the applicant shall be considered entitled unless proven otherwise.

If several designers have jointly created an industrial design, all the designers or their successors in title shall be deemed entitled persons.

A person who has only provided technical assistance in the creation of an industrial design shall not be considered as designer.

PROCEDURE FOR GRANTING INDUSTRIAL DESIGN RIGHT

Filing the application

Article 100

The procedure for the grant of an industrial design right shall be initiated by filing a submission containing a request for granting industrial design right and other specific elements prescribed by this Law (hereinafter: industrial design application).

Separate application shall be filed for any new design.

If the application relates to one design (hereinafter: individual application), the design may be applied to one or to several products.

If the application relates to several different designs (hereinafter: multiple application), all designs for which protection is sought must relate to the products classified under a single subclass under the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter: the International Classification).

The application shall contain the date it was filed at the Office and the applicant shall be given receipt for that.

Content of application

Article 101

An industrial design application shall contain:

1. request for grant of industrial design;
2. data about the applicant;
3. photograph or graphical representation of the design for which protection is sought;
4. description of the design, where necessary for assessing novelty.

An industrial design application shall be deemed as filed if it complies with the requirements under paragraph (1) of this Article.

Other components of the application and supplements to the application shall be filed in the manner and in the number of copies as prescribed by the Regulations whereby the procedure for granting right to industrial design has been regulated (hereinafter: the Regulations).

Date of filing the application

Article 102

If the application contains all basic elements referred to in Article 101 paragraph (1), the Office shall issue a conclusion for accordance of the filing date.

If the application does not contain all basic elements referred to in Article 101 paragraph (1), the Office shall invite the applicant to correct the deficiencies within 30 days as from the day of receipt of the invitation.

If the applicant corrects the deficiencies within the time limit, the Office shall issue a conclusion whereby the date of receipt of proper application within the meaning of Article 101 paragraph (1) of this Law shall be accorded as the filing date of the application.

If the applicant does not correct the deficiencies within the time limit, shall be deemed that the application has never been filed.

The industrial design application the filing date of which has been accorded with conclusion of the Office shall be entered in the Register for industrial design applications.

The content of the register of patent applications shall be prescribed by the Regulations.

Division of industrial design application

Article 103

A multiple industrial design application may, at the applicant's request, during the granting procedure be divided into two or more applications, each referring to one or several designs.

The applicant shall accompany the request for division of industrial design application with new industrial design applications.

The divided applications shall maintain the same priority right as the divided multiple application.

The request for dividing the industrial design application may be filed until the issuing of the decision for granting industrial design right.

Priority right

Article 104

If an industrial design application has been filed in compliance with Article 101, paragraph (1) of this Law, the applicant shall acquire the priority right on the basis of the application filing date over any other applicant filing the industrial design application at a later date for an identical design or a design differing only in minor details within the meaning of Article 95 of this Law.

Exhibition priority right

Article 105

If the applicant has exhibited the products containing or embodying the industrial design at an official or officially recognized international exhibition or fair in the Republic of Macedonia or in any of the states member to the Paris Union, he may request that the date of first day of exhibition of the products be accorded as priority date, provided that he files application for the same design within three months from date of the closing of the exhibition or fair.

The applicant invoking the exhibition priority right shall accompany the application with a certificate issued by a competent authority of the state member of the Paris Union member state proving that the exhibition or fair was recognized by the International Convention for International Exhibitions (Paris, November 28, 1928, revised May 31, 1988) and indicate the type of exhibition or fair, its place, its opening and closing dates and the first day of the exhibition of the products specified in the application.

Union priority right

Article 106

Any legal or natural person who has filed a proper industrial design application in any of the state member of the Paris Union shall be granted priority right in the Republic of Macedonia from the date of filing the first application provided that the application for the same industrial design is filed to the Office within 6 months from the filing date of the first application and that the right of priority is claimed.

The applicant who intends to use the priority right refer to in paragraph (1) of this Article shall be obliged in the application filed in the Republic of Macedonia to give all information for the application the priority to which is claimed and, not later than three months as from the date of filing the application, to submit a copy of the first application certified by the competent authority of the state member of the Paris Union whit which the first application was filed.

Article 107

In case of dispute referring to infringement of the right from the industrial design application, the applicant may request the Office to precede the application immediately.

The request for immediate proceeding of the industrial right application shall be filed within three months from the filing date.

**Examination of correctness
of industrial design application
(Formal examination)**

Article 108

The Office shall examine the correctness of the application after entering in the Register for industrial design applications.

An industrial design application shall be correct if:

1. the prescribed application fee have been paid, and the evidence of payment thereof attached thereto;
2. single or a multiple application has been filed under Article 100, paragraphs (3) and (4) of this Law;
3. it is drafted in the manner as to contain all the necessary components and supplements under Article 101, paragraphs (1) and (3) of this Law;
4. an orderly power of attorney is attached thereto if the application is filed through a representative.

Correction of industrial design application

Article 109

If the application contains all basic elements within the meaning in Article 101, paragraph (1) of this Law, but has not been filed in a way as to contain all the necessary components and supplements in compliance with this Law and the Regulations, the Office shall invite the applicant to correct established deficiencies within two months from the date of the receipt of the invitation.

On the reasoned request of the applicant, the time limit referred to in paragraph (1) of this Article may be, for the justified reasons, extended for not more than two months.

If the applicant corrects the application within the prescribed time limit, it shall be deemed to be correct from the beginning.

If the applicant of the industrial design shall not within the prescribed time limit comply with the invitation and shall not correct the application, the application shall be rejected by a conclusion.

Article 110

If the industrial design application is correct under Article 108 of this Law, the Office shall examine whether it complies with the requirements for granting right to industrial design.

Refusal or partial refusal of an industrial design application

Article 111

If the design for which the industrial design application is filed has been excluded or partially excluded from protection on the grounds specified in Article 97 of this Law, the Office shall issue a decision on refusal or a decision on partial refusal of the application.

The decision on the refusal or the decision on the partial refusal of the industrial design application may not be issued if the applicant has not been previously notified in writing about the grounds for the exclusion, entire or partial and invited to make a declaration thereon.

The industrial design applicant shall have the right to make a declaration concerning the grounds for the exclusion of the design from protection within three months from the day of the receipt of a written notification and to submit evidence on the possible new facts that might influence the final decision of the Office.

In the declaration the applicant may not additionally change the design.

On the reasoned request of the applicant, the time limit referred to in paragraph (1) of this Article may be, for the justified reasons, extended for not more than 6 months.

Publication of the application

Article 112

If an industrial design application complies with all the requirements related to the correctness of the application within the meaning of Article 108, paragraph (2), if the design of product is not excluded from the protection under Article 97 of this Law and if the prescribed publication fee has been paid, the application data shall be published in the Official Gazette.

The content of the data from the application, which are to be published in the Official Gazette, shall be prescribed by the Regulations.

Opposition

Article 113

The opposition to the published industrial design application may, within three months counting from the date of publication, be filed to the Office by:

1. the owner of an earlier industrial design or applicant of an earlier industrial design application;

2. a person who at the time of filing the industrial design application had a trade name provided that this trade name or the essential part thereof is identical to the published design or part thereof;

3. a natural person whose name and family name, or appearance is identical to the published design or is essentially imitated by the published design;

4. the owner of an earlier industrial property right, if the subject of such a right is identical to the published design or is essentially imitated by the published design;

5. any person having a copyright on a work which is identical to the published design or is substantially imitated by the published design;

6. any interested person who is of the opinion that the published design has not met the requirements as to novelty or individual character or is exclusively dictated by the kind or respectively by the functional features of the product under Article 98 of this Law.

The time limit for filing the opposition, prescribed in paragraph (1) of this Article, shall not be extended.

The opposition shall be filed in the manner as prescribed by the Regulations.

Opposition procedure

Article 114

The Office shall examine whether the opposition is filed by the person entitled to file the opposition within the meaning of Article 113, paragraph (1) of this Law, whether the opposition is filed in the prescribed time limit and whether it is justified and accompanied by the appropriate documentation.

If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall issue a decision on the rejection of the opposition.

If the requirements referred to in paragraph (1) of this Article are complied with, the Office shall notify the industrial design applicant about the grounds specified in the opposition and shall invite him to make a declaration and to submit his comments within 30 days.

If the applicant does not make a declaration concerning the grounds specified in the opposition and does not submit his comments within the time limit referred to in paragraph (3) of this Article, it shall be considered that the applicant does not oppose the grounds specified in the opposition and the application shall be refused within the boundaries of the grounds referred to in the opposition.

Examination of the opposition

Article 115

If the applicant makes a declaration concerning the grounds specified in the opposition, the Office shall examine the justification of the opposition within

the boundaries of the specified grounds, taking into consideration facts and submitted evidence.

If the Office establishes that the opposition is unjustified, it shall be refused and the written decision to that effect shall be sent to the applicant and to the person who has filed the opposition.

If the Office establishes that the opposition is justified, it shall refuse the industrial design application, entire or partial, and shall communicate a written decision to that effect to the applicant and to the person who has filed the opposition.

Grant of industrial design right and entry into the register

Article 116

If the grounds refer to in Article 97 and Article 98, paragraphs (1) and (2) not constitute a ban to the grant of an industrial design right, the Office shall issue a conclusion that all requirements for granting right to industrial design had been complied with and invite the applicant within 30 days to pay the maintenance fee for the first five years of duration of the industrial design, the expenses for publishing the industrial design in the Official Gazette and the expenses for issuing an industrial design certificate.

If the applicant pays the fees and expenses within the determined time limit, the Office shall issue a decision for granting right to industrial design and enter the granted right in the Register for industrial designs.

If the determined expenses and maintenance fee for the first five-year term not be paid, the application of industrial design shall be rejected by a decision.

Article 117

The decision referred to in Article 116 of this Law determines the scope of the granted protection of the right to industrial design presented on a photograph or drawing and explained in the description, if any.

Publication of industrial design

Article 118

The data on the industrial design shall be published in the Official Gazette not later than within three months from the date of entry of the industrial design in the register.

(2) Data to be published in the Official Gazette shall be prescribed by the Regulations.

Industrial design certificate

Article 119

Industrial design certificate shall be issued to the right owner within six months from the date of issuing a decision for granting industrial design.

The data contained in the Industrial design certificate shall be prescribed by the Regulations.

CONTENTS OF INDUSTRIAL DESIGN RIGHTS

Moral rights of the designer

Article 120

The designer shall always have the right to be mentioned as the designer of the industrial design in all the documents and public presentations, irrespective of the fact whether he is the applicant or the right owner.

The transfer or waiver of the right referred to in the preceding paragraph shall be considered as nullity.

Should several designers have jointly created an industrial design, all the designers shall have an equal right irrespective of their contribution to the creation of the industrial design, therefore all of them shall have right to be mentioned as designer.

Exclusive rights

Article 121

The owner of the industrial design shall have the exclusive rights to use the protected industrial design and put on the market products containing the protected industrial design.

The owner of the industrial design shall have the right to prohibit any unauthorized use of the industrial design by third persons.

Without the consent of the right owner of the industrial design, third person may not manufacture, offer, put on the market, import, export or use any product containing, constituting or substantially imitating the protected industrial design, nor store such a product for the specified purposes.

The owner of an industrial design is entitled to demand from each person who had put or intends to put on the market a product containing, constituting or imitating the industrial design, information about the origin of the product and trade circulation of the product or the documentation relating to that product.

Limitation of industrial design rights

Article 122

The exclusive industrial design rights shall not affect the use of the products containing or constituting the protected design of product:

1. for private and non-commercial purposes,
2. for the purpose of informing the public or for the purpose of education, if this is in compliance with good business practices and shall not harm the interests of the right owner and designer.

Vehicles in international traffic

Article 123

The exclusive industrial design rights shall not relate to products containing the protected design or to which the protected design of product has been applied if they constitute the equipment, accessories or spare parts of air-crafts temporarily entering the territory of the Republic of Macedonia, including also the importation of the products for the purpose of repair, as well as the actual repair of such air-crafts.

Right of a prior user

Article 124

The right owner may not invoke the exclusive rights in relation to a third person who has used the same industrial design or who has performed the relevant preparations for the use of the same industrial design prior to the filing date of the application to the Office or to the date of granted priority right, if claimed, provided that the third person created the industrial design knowing nothing of the existence of the industrial design which was not available to the public at that time.

The third person referred to in the previous paragraph may not use the industrial design under paragraph (1) of this Article in a manner exceeding the boundaries of usual entrepreneurial activities.

The third person may not transfer the right referred to in this Article not transferring at the same time the ownership of the form of entrepreneurship he has used exercising his right to use the industrial design.

Acquiescence in use of industrial design

Article 125

The owner of the prior industrial design right shall have no right to request the invalidation of a later industrial design on the basis of his earlier priority right,

nor prohibit the use of the later identical or substantially similar industrial design, if he had within a five year period consciously acquiesced this usage, unless the later industrial design was protected in bad faith.

The owner of the industrial design with the later priority right shall have no right to prohibit the use to the owner of the earlier industrial design right.

Acquiescence in the use of an industrial design under paragraph (1) of this Article may not be a reason for its deletion from the register.

License agreement

Article 126

The owner of an industrial design may transfer to third persons the right to use the industrial design, for the whole or a part of the territory of the Republic of Macedonia.

The provision referred to in paragraph (1) of this Article shall also refer to the applicant.

The right to use an industrial design shall be acquired on the basis of a license agreement, and such right shall have effect against third persons after the entry of the license in the register. The entry of the license shall be made at request of one of the contractual parties.

The license agreement shall be drawn up in writing and signed by the contracting parties.

The license agreement shall contain particularly the duration of the license, its scope, whether it is exclusive, as well as the amount of the remuneration, if it was agreed on.

The licensee may institute a court action concerning the infringement of rights arising from the industrial design only if the owner of the industrial design shall approve it.

The licensee shall be authorized to grant sub-licenses only if expressly agreed upon.

If the industrial design application was filed by more than one person or industrial design was granted on the name of more than one person, the consent of all those persons shall be necessary for concluding a license agreement.

Pledge

Article 127

An industrial design may be the subject matter of pledge.

The right referred to in paragraph (1) of this Article shall be effective against third persons only after the entry thereof in the register.

Transfer of rights

Article 128

The applicant or owner of the industrial design may fully or partially transfer his right from the application or the industrial design to another person.

Together with the request for assignment of rights, the applicant shall file a certified copy of the contract or part of the contract showing the assignment of the right, or a declaration on the assignment of right signed by the old and new owner of right.

The contract on the assignment of rights shall particularly contain the indication of the contracting parties, the industrial design registration number or the number of the industrial design application.

The assignment of right shall be entered in the adequate register on the request of one of the contracting parties and shall be published in the Official Gazette of the Office.

ACQUISITION, DURATION, MAINTENANCE AND CEASING OF INDUSTRIAL DESIGN

Acquisition of industrial design

Article 130

An industrial design right shall be acquired by a decision on the grant of the right and by the entry of the industrial design in the register and shall be valid from the date of filing a proper application.

The date of entry of the industrial design into the register shall be equal to the date of decision on the grant of the industrial design right.

Duration and maintenance of industrial design right

Article 131

An industrial design right shall be valid 5 years counting from the filing date of industrial design application.

The industrial design validity may be renewed by periods of five years each up to the total term of 20 years of uninterrupted protection, provided that the industrial design owner, during the last year of protection or at the latest within six months upon the expiration of such a term, files to the Office a request for the renewal of the industrial design validity and pays of the appropriate maintenance fee and expenses.

The new period of protection shall begin with the day of expiration of the preceding term of protection.

The data to be contained in the request for extension of the industrial design validity shall be prescribed by the Regulations.

Ceasing of industrial design right

Article 132

An industrial design shall cease to be valid:

1. if the term of the industrial design validity within the meaning of the Article 131 of this Law has expired;
2. upon the written declaration by a right owner on the waiver of the industrial design, on the day following the day of filing the declaration to the Office; such declaration shall have no legal effect if a specific right has been entered into the register in favour of third persons and the industrial design owner had not before obtained a written consent from those persons;
3. with the lapse of the legal person who is the industrial design owner or upon the death of the natural person who is the industrial design owner, on the day of lapse or death, unless the right has been transferred to the legal successors in title of the legal person or to the heirs of the natural person.

The ceasing of industrial design validity shall be entered in the register of industrial designs.

DECLARING DECISION FOR GRANTING INDUSTRIAL DESIGN RIGHT AS NULLITY

Article 133

The decision for granting an industrial design right shall be declared as nullity if established that the conditions for the grant of that right, provided by this Law, did not exist.

Article 134

The decision for granting the right on industrial design may be declared as nullity during the whole term of protection, ex officio, at the proposal of an interested person or at the proposal of the public prosecutor.

The proposal for declaring a decision as nullity shall be filed to the Office in a written form.

The proposal referred to in paragraph (1) of this article shall be accompanied by necessary evidence.

The Office shall submit the proposal to the right owner within 15 days from the receipt thereof and invite him to declare himself within 30 days from the receipt of the proposal.

The Office shall decide on the proposal for declaring as nullity exclusively on the basis of the documentation filed by both parties.

Administrative suit may be instituted against the decision of the Office.

The data to be contained in the proposal for declaring a decision for granting industrial design as nullity shall be prescribed by the Regulations.

Article 135

If the person who filed the proposal for declaring as nullity the decision for granting industrial design right renounces it during the procedure, the Office may continue the procedure ex officio or at request of the owner of that right.

Registers

Article 136

The Office shall keep register of applications and register of industrial designs.

The registers referred to in paragraph (1) of this Article shall be available to the public.

The Office shall enable any interested persons the inspection of data related to the published applications and the granted industrial design rights.

The Office shall issue at the request of any interested person an excerpt from the industrial design register.

The data to be entered in the register under paragraph (1) of this Article shall be prescribed by the Regulations.

Entering changes in the registers

Article 137

On request of the applicant or the industrial design owner, the Office shall enter in the register any change relating to the personal name or the residence, if a natural person is concerned, to the company name or the residence of the applicant, as well as other changes occurred after the filing of the industrial design application or after the grant of the industrial design, provided that these changes reflect the actual situation and shall have no affect on the industrial design itself.

The changes entered in the register of industrial designs shall be published in the Official Gazette.

The data to be contained in the request for the entry of any change related to the industrial design shall be prescribed by the Regulations.

Article 138

On request of any interested person, the Office shall carry out the services of identity and similarity searches related to the applied for and registered industrial design in the Republic of Macedonia.

JUDICIAL PROTECTION

Article 139

An industrial design owner may, if his rights under Article 121 of this Law have been infringed or threatened, institute an action before the competent court and request:

1. establishment of the infringement of the industrial design rights;
2. prohibition of committed or intended infringement of the industrial design right;
3. elimination of the damage caused by the infringement of the industrial design right, including the destruction of articles by which the industrial design right has been infringed;
4. remuneration for the damage;
5. publication of the court decision at the defendant's expense

The procedure following the action under paragraph (1) of this Article shall be expeditious.

Article 140

Imitation of industrial design shall also be considered infringement thereof.

Imitation referred to in paragraph (1) of this Article shall be established if the average consumer, regardless the type of goods, can notice difference only by paying particular attention.

Article 141

The action for infringement of an industrial design right may be instituted within three years from the date when the plaintiff learnt of the infringement and the person who made it or within five years from the performed infringing act.

The procedure on action for infringement of the right to industrial design shall be expeditious.

Contesting the right on industrial design

Article 142

The designer of the industrial design, his heir or any other successor in title may institute an action before the competent court and request the right on industrial design to be revoked and himself to be declared owner of that right if that right was granted to a person who is not a designer, heir of the designer or his successor in title.

Article 143

Within three months from the date of submission of the court decision accepting the request, the plaintiff may request to be entered into the adequate register as industrial design owner and adequate certificate to be issued to him.

If the person whose request was accepted within the time limit referred to in paragraph (1) of this Article does not file a request to be entered into the adequate register as owner of the granted right, the right shall be deleted from that register.

Action for granting ownership

Article 144

The designer may institute an action and request the competent court his name to be put in the application and all certificates under Article 99 of this Law.

After the death of the designer, the right for instituting an action shall pass on his heirs.

Article 145

In addition to the request referred to in Article 144 of this Law, the designer may also request the decision from the legal action for recognizing him as designer to be published at expense of the defendant, as well as for remuneration of non-material damage.

Article 146

The action under Article 144 and 145 of this Law may be instituted from the date of filing the industrial design application, as well as during the entire time of validity of the industrial design.

Article 147

Where the moral right has been infringed without material damage, the court may decide the designer to be paid initial remuneration for damage on his personality, honor and reputation, i.e. for non-material damage, if it is established that that is justified with the circumstances of the case and particularly the duration thereof.

Court decision and transfer of rights

Article 148

If the application was filed by an unauthorized person or if the industrial design right has been granted and entered in the register to the name of an

unauthorized person contrary to the provisions of Article 99 of this Law, the authorized person may bring to a court a request for the grant of authorities based on the law and/or for the whole or a part of the pertaining rights transfer, irrespectively of other rights and requests arising from the industrial design.

The authorized person referred to in paragraph (1) of this Article may initiate a court proceeding within three years from the day of the publication of the application, or, in the case when the court has established that the unauthorized person did not act in good faith, during the entire term of protection of the industrial design.

Should a court make a final decision on the grant and transfer of the rights under this Article, the right on license and other rights entered in favour of third persons shall cease on the day of entry of the changes in the register. If, before the grant of the rights referred to in this Article, the unauthorized right owner or licensee used the right or performed necessary preparations for the use of the right, they may obtain the right of non-exclusive license within the term and under the conditions usually required for the use of the right, if requested within three months from the day of the receipt of a notification sent to them by the Office after the entry of the new right owner.

The Office shall enter into the register the facts established in the submitted final court decision and other changes under this Article.

PART THREE

TRADEMARK LAW

Object of protection by trademark

Article 149

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

Trademarks may protect signs, in particular: words, letters, numerals, pictures, drawings, combinations of colours, three-dimensional forms, shapes of the goods or the packaging thereof, as well as the combinations of all the above indicated signs.

A seal, a stamp and a hallmark (official mark identifying precious metals, measures, etc.) shall not, under this Law, be considered to be trademarks.

Distinctiveness

Article 150

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

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

Absolute grounds for refusal

Article 151

A trademark shall not protect a sign:

1. which is contrary to the public order or morality;
2. which is not capable of being represented graphically;
3. which is not distinctive, i.e. which is not capable of distinguishing the goods or services in trade;
4. which indicates exclusively the kind of goods and services, their quality, quantity, intended purpose, value, geographical origin, the time of production, price or weight;
5. which is customary to marking certain kind of goods or services;
6. which represents exclusively the shape defined by the kind of the goods, or the shape of the goods necessary to obtain a specific technical result, or the shape giving a substantial value to the goods;
7. which may, by its representation, create confusion in trade and deceive the public particularly as to the geographical origin, nature, quality or any other characteristic of the goods or service.
8. which contains or consists of a geographical indication identifying wines or spirits, but refers to the wines or spirits which are not from such geographical region.
9. which contains a national coat of arms or other public arms, a flag or an emblem, the name, or the abbreviated name of a country or of an international organization, and the imitations thereof, except with the authorization of the competent authority of the country or the organization;
10. which contains official signs or hallmarks for control and guarantee of quality and imitations thereof;
11. which contains national or religious symbols or imitations thereof.

The signs specified in subparagraphs 3, 4 and 5 of paragraph (1) of this Article may be protected by trademarks if the applicant proves that during the long-term use, the sign has become distinctive.

Relative grounds for refusal

Article 152

Also, a trademark may not protect a sign:

1. which is identical with the earlier trademark registered by other person (previously protected sign) designating the same or similar kind of the goods or services;

2. which is identical with, or similar to, the earlier trademark registered by other person designating the same or similar kind of the goods or services which would result in deceiving a average consumer, including the possibility of association by the public of the sign applied for with the earlier registered trademark.

The expression "earlier registered trademarks" shall comprise:

1. trademarks enjoying priority right referred to in Articles 157, 158 and 159 of this Law;

2. earlier internationally registered trademarks with the effect in the Republic of Macedonia;

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

A trademark shall not protect a sign, which infringes earlier acquired rights of the owners referred to in Article 166, paragraph (1), items 2 - 5 of this Law.

A trademark shall not protect a sign which is identical with or similar to a trademark the validity of which has expired in compliance with Article 188, paragraph (1), item 1 of this Law, if a trademark application is filed before the expiration of the period of two years, counting from the expiration date of the trademark validity, unless the protection of such a sign is applied for by the owner in whose name the trademark has been protected, or by his successor in title.

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

PROCEDURE FOR GRANT OF TRADEMARK

Filing an trademark application

Article 153

The procedure for the grant of a trademark shall be initiated by filing a submission containing a request for the grant of a trademark and other relevant elements provided by this Law (hereinafter: a trademark application).

Each sign applying for a trademark protection shall be filed as a separate application.

One and the same trademark application may be used for requesting protection of two or more goods and services.

Content of application

Article 154

A trademark application shall contain:

1. a request for the grant of a trademark;
2. a representation of the sign applied for a trademark protection;
3. the list of the goods or services the protection is applied for.

In addition to the requirements referred to in paragraph (1) of this Article, the application for collective or certification trademark shall also contain a general act or contract for collective or certification trademark.

Other components of the application and supplements to the application shall be filed in the manner prescribed by the Regulations, whereby procedure for granting trademark right has been regulated (hereinafter: the Regulations).

Date of filing the application

Article 155

If the application contains all basic elements referred to in Article 154 paragraphs (1) and (2) of this Law, the Office shall issue a decision for accordance of the filing date.

The application which contains all basic elements referred to in Article 154 paragraphs (1) and (2) of this Law shall contain an application number, date and hour of reception in the Office and the applicant shall be issued a receipt at his request.

If the application does not contain all basic elements referred to in Article 154 paragraphs (1) and (2) of this Law, it shall not be considered to be trademark application and the Office shall invite the applicant to correct all deficiencies within 30 days of the date of reception of the notification.

If the applicant corrects the deficiencies within the determined time limit, the date of reception of the corrected application within the meaning of Article 154 paragraphs (1) and (2) of this Law shall be considered to be the filing date, for which the Office shall issue a decision for accordance of the filing date.

If the applicant does not correct the deficiencies within the prescribed time limit, it shall be considered that an application has never been filed.

A trademark application the filing date of which has been accorded with a conclusion shall be entered into the register for trademark applications.

Division of application

Article 156

Any trademark application may, at the request of the applicant, be divided during the trademark granting procedure into two or more applications in respect to the proposed list of the goods and services.

The divided applications shall maintain the priority right on the basis of the filing date of the first application.

The request for division of the application shall be allowed if the applicant of the earlier application had filed a request for protection of one trademark for two or more goods or services from the International classification of goods and services. The applicant shall accompany the request for division of the application with new trademark applications.

The request for division of an application may be filed until the issuing of the decision for granting trademark right.

Priority right

Article 157

If the trademark application is filed in compliance with Article 154, paragraphs (1) and (2) of this Law, the applicant shall acquire the right of priority on the basis of the application filing date over any other applicant filing later a trademark application for the identical or similar sign whereby the protection for the identical or similar goods or services are applied for.

Union priority right

Article 158

Any legal or natural person who has filed a proper application in any of the state member of the Paris Union shall be granted priority right in the Republic of Macedonia from the date of filing the first application provided that the application for the same sign is filed to the Office within 6 months from the filing date of the first application and that the right of priority is claimed.

The applicant who intends to use the priority right referred to in paragraph (1) of this Article shall be obliged in the application filed in the Republic of Macedonia to give all information for the application the priority to which is claimed and, not later than three months as from the date of filing the application, to submit a copy of the first application certified by the competent authority of the state member of the Paris Union with which the first application was filed.

Exhibition priority right

Article 159

If the trademark applicant has exhibited the goods or services marked by a specific sign at an official or officially recognized international exhibition or fair in the Republic of Macedonia or in any of the member States of the Paris Union, he may request that the date of the first day of the exhibition of the goods or of rendering of services be accorded as priority date, provided that he files the

application within three months as from the date of the closing of the exhibition or fair.

The applicant invoking the exhibition priority right shall accompany the application with a certificate issued by a competent authority of the Paris Union member state proving that the exhibition or fair was recognized by the International Convention for International Exhibitions (Paris, November 28, 1928, revised May 31, 1988) and indicate the type of exhibition or fair, its place, its opening and closing dates and the first day of the exhibition of the products or services specified in the application.

Article 160

The grant of priority right under Article 159 of this Law shall not extend the time limit referred to in Article 158 of this Law.

Order of proceeding – exceptions

Article 161

Trademark applications shall be preceded according to the filing date.

As exception to the provisions from paragraph (1) of this Article, an application may be proceeded immediately if:

1. there is a dispute referring to infringement of the right;
2. request for international registration of trademark has been filed;
3. under other provisions, it is necessary to perform earlier registration of a trademark.

In the cases referred to in paragraph (2) of this Article, the applicant shall file an individual request for immediate proceeding of the application, no earlier than 3 months from the filing date.

Examination of correctness of trademark application (Formal examination)

Article 162

After entry of the trademark application in the register, the Office shall examine its correctness, i.e. whether it complies with all the requirements prescribed by this Law.

The trademark application shall be correct if:

1. a separate application has been filed within the meaning of Article 153, paragraph (2) of this Law;
2. the prescribed application fee have been paid, and the evidence of payment thereof attached thereto;
3. it has been drafted in a manner to contain all the necessary components and supplements within the meaning of Article 154, paragraphs (1) and (3) of this Law;

4. an orderly power of attorney is attached thereto, if the application is filed through a representative.

Correction of trademark application

Article 163

If the application contains basic elements within the meaning of Article 154, paragraphs (1) and (2) of this Law, but is not filed in a way to contain all the necessary elements and supplements in compliance with this Law and the Regulations, the Office shall invite the applicant to correct the established deficiencies within two months as from the day of receipt of the invitation.

On the reasoned request of the applicant the time limit referred to in paragraph (1) of this Article may be, for the justified reasons, extended for not more than two more months.

If the applicant corrects the application within the prescribed time limit, the application shall be considered to be correct as from the beginning.

If the applicant does not, within the prescribed time limit, comply with the invitation and does not correct all the deficiencies within the meaning of paragraph (1) of this Article, the application shall be rejected by a conclusion.

Refusal of application (Examination of absolute grounds for refusal)

Article 164

If the sign for which a trademark application is filed, is excluded from the protection in respect to all, or partially excluded from protection in respect to some of the specified goods or services on the grounds referred to in Article 151 of this Law, the Office shall issue a decision on the refusal or a decision on the partial refusal of the application.

The decision on the refusal of the trademark application shall not be issued if the applicant has not been previously notified in writing about the grounds for the exclusion, entire or partial and invited to make a declaration thereon.

The trademark applicant shall have the right to make a declaration concerning the grounds for the exclusion of the sign from the protection within a within three months from the day of the receipt of a written notification and to submit evidence on the possible new facts that might influence the final decision of the Office.

On the reasoned request of the applicant the time limit referred to in paragraph (3) of this Article may be, for justified reasons, extended for not more than 6 months.

Publication of application

Article 165

If the trademark application complies with all the requirements regarding correctness of the application within the meaning of Article 162, paragraph (2), if the sign is not excluded from the protection within the meaning of Article 151 of this Law, and if the prescribed publication fee is paid, the application shall be published in the Official Gazette of the Office.

The application data to be published in the Official Gazette shall be prescribed by the Regulations.

Opposition

Article 166

The opposition to the published trademark application may be, within three months counting from the publication date, filed with the Office by:

1. the owner of the earlier trademark within the meaning of Article 152, paragraphs (1) to (4) of this Law;

2. a person who has, at the time of filing the trademark application, a trade name provided that such trade name or the essential part thereof is identical with or similar to the published sign and provided that she/he manufactures identical or similar goods or renders identical or similar services to those the published sign refers to, or where such goods or services are the subject matter of the firm's activity.

3. a natural person whose name and surname, or appearance are identical with or similar to the published sign applied for the trademark protection;

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

5. any person having copyright in the work which is identical with or similar to the published sign.

The time limit for filing the opposition, prescribed in paragraph (1) of this Article, shall not be extended.

The opposition shall be filed in the manner as prescribed by the Regulations.

Opposition Procedure

Article 167

The Office shall examine whether the opposition is filed by the person entitled to file the opposition within the meaning of Article 166, paragraph (1) of this Law, whether the opposition is filed in the prescribed time limit and whether it is justified and accompanied by the appropriate documentation.

If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall issue a decision on the rejection of the opposition.

If the requirements referred to in paragraph (1) of this Article are complied with, the Office shall notify the trademark applicant about the grounds specified in the opposition and shall invite him to make a declaration and to submit his comments within 30 days.

If the applicant does not make a declaration concerning the grounds specified in the opposition and does not submit his comments within the time limit referred to in paragraph (3) of this Article, it shall be considered that the applicant does not oppose the grounds specified in the opposition and the application shall be refused within the boundaries of the grounds referred to in the opposition.

Examination of opposition

Article 168

If the applicant makes a declaration concerning the grounds specified in the opposition, the Office shall examine the justification of the opposition within the boundaries of the specified grounds, taking into consideration facts and submitted evidence.

If the Office establishes that the opposition is unjustified, it shall be refused and the written decision to that effect shall be sent to the applicant and to the person who has filed the opposition.

If, in the examination procedure concerning the opposition, the Office establishes that the opposition is justified, it shall refuse the trademark application, entire or partial, and shall communicate a written decision to that effect to the applicant and to the person who has filed the opposition.

Grant of trademark and entry into the register

Article 169

If the grounds referred to in Article 151, paragraph (1) and Article 152, paragraphs (1) to (4) do not constitute a ban to the grant of the trademark, the Office shall issue a conclusion inviting the applicant within one month from reception of the notification to pay the fee for maintenance of the trademark for the first ten-year period, the expenses for publishing the trademark in the Official Gazette of the Office and the expenses for issuing a trademark certificate.

If the fee and expenses referred to in paragraph (1) of this Article are not paid, the trademark application shall be rejected by a decision.

If the applicant pays the fee and expenses referred to in paragraph (1) of this Article within the time limit, the Office shall issue a decision for granting a trademark right and enter the granted right in the trademark register.

Publication of trademark

Article 170

The data concerning a trademark shall be published in the Official Gazette of the Office within three months as from the date of entry of the trademark into the register.

The data to be published in the Official Gazette of the Office shall be prescribed by the Regulations.

Trademark certificate

Article 171

The Office shall issue the owner trademark certificate not later than within six months as from the date of publication of the trademark in the Official Gazette of the Office.

The data to be contained in the trademark certificate shall be prescribed by the Regulations.

CONTENTS OF TRADEMARK RIGHTS

Exclusive rights

Article 172

The trademark owner shall have the exclusive right of using the trademark on the market for marking his goods or services.

The trademark owner has the right to use the symbol ® next to his trademark.

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

1. identical to trademark for identical products or services;
2. identical or similar to trademark for identical or similar products or services if that similarity may confuse the average consumer, including the possibility of association between the sign and the trademark;
3. identical or similar to trademark for different products or services if the trademark is known in the Republic of Macedonia and if the use of that sign without justified reason may lead to unfair advantage and damage the distinctive character or reputation of the trademark.

The prohibition referred to in paragraph (3) of this Article⁴ shall also include:

1. putting the sign on products and their packages;
2. giving services or put on the market products marked with that sign, or storing products with that intention;
3. import or export of products under that sign;
4. use of the sign in correspondence or marketing.

Limitation of right

Article 173

The trademark shall not entitle its owner to prohibit third persons from using in the course of the trade their name, surname, sign or trade name, address of the residence, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the date of production of the goods or of rendering of a service or any other characteristic of the goods, irrespective of the fact that those indications are identical with or similar to the trademark, or form parts of a trademark, but provided that they are used in compliance with the established trade practice and fair market competition.

The trademark shall not entitle its owner to prohibit third persons from using in the course of the trade a sign which is identical with or similar to a trademark if it is necessary for the indication of the intended purpose of the goods, particularly the accessories or spare parts thereof, or the kind of services which are rendered in compliance with the established trade practice and fair market competition.

Acquiescence in use of trademark

Article 174

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

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

Exhaustion of right

Article 175

The owner of the trademark shall not have the right to prohibit the use of the trademark for the goods or services put on the domestic market by himself, or

with his consent, except where essential changes on the goods, or the deterioration of their characteristics, or the change of the nature of the goods or services have occurred after they have been put on the market.

Reproduction of trademark in publications

Article 176

If the reproduction of a registered trademark in dictionaries, encyclopedia or similar publications creates an impression that it is a generic name of the products or services for which the trademark has been registered, the editor of the publication shall, at request of the trademark owner, enable the reproduction of the trademark in the first following issue of the publication to be accompanied by an indication that it has been registered.

LICENSING AND TRANSFERRING TRADEMARK RIGHT

License

Article 177

The owner of a trademark may license to third persons the right to use a trademark in respect to all of the goods or services for which it is granted or only in respect to the part of those goods or services.

The provision from paragraph (1) of this Article shall also refer to the applicant.

Article 178

The right to use a trademark shall be acquired on the basis of the license agreement and such right shall have effect against third persons after the entry of the license into the register. The entry of the license into the register shall be made on the request of the contracting parties.

The license agreement shall be made in a written form and shall be signed by the contracting parties.

The license agreement shall contain information particularly referring to the duration, the scope of the license, whether the license is exclusive and the amount of the remuneration, if it was agreed on.

Article 179

The licensee may institute the action concerning the infringement of the rights arising from a trademark, only if the trademark owner gives his consent thereto.

The licensee shall be authorized to grant a sub-license only if it is expressly agreed upon.

Article 180

In the license agreement any provision which sets limitations to the licensee which do not raise from the right which is subject matter of the agreement or which is not necessary for maintaining that right shall be declared as nullity.

Pledge

Article 181

A trademark may be subject to pledge.

The rights referred to in paragraph (1) of this Article shall be effective against third persons only after the entry thereof into the register.

Transfer of rights

Article 182

The trademark applicant or the trademark owner may transfer, entirely or partially, his trademark right to another.

The request for the assignment of rights shall be accompanied by a certified copy of the contract or the declaration of the assignment of rights signed by the old and the new owner of rights.

The contract on the assignment of rights shall particularly contain the indication of the contracting parties, the trademark registration number, or the trademark application number.

The assignment of right shall be entered in the adequate register on the request of one of the contracting parties and shall be published in the Official Gazette of the Office.

Transfer of trademark right registered on the name of trade agent

Article 183

If the trademark has been registered in the Republic of Macedonia on the name of the trade agent or distributor of the trademark owner, the owner may request the competent court to transfer the right to his name, except when the trade agent or distributor proves that he acted in good faith.

On request of the trademark owner, the Office shall enter the transfer of the right referred to in paragraph (1) of this Article in the register.

ACQUISITION, DURATION, MAINTENANCE AND CEASING OF TRADEMARK

Acquisition of trademark right

Article 184

A trademark shall be acquired by a decision on the grant of the right and the entry of a trademark into the register, and shall be valid from the filing date of a proper application.

The date of entry of a trademark into the register shall be the same as the date of decision on the grant of a trademark right.

Duration of trademark

Article 185

A trademark shall be valid for 10 years counting from the date of filing the trademark application.

In case of division of the application to 2 or more applications, the counting time referred to in paragraph (1) of this Article shall start as from the date of filing the first application.

A trademark may be renewed indefinite number of times, and that, for the periods of ten years each, provided that the trademark applicant file with the Office a request for the renewal of the trademark validity and pays the corresponding fee and procedural expenses, during the last year of the ten-year period of protection, or not later than within six months after the expiration of this period.

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

The data to be contained in the request for the renewal of the trademark validity shall be prescribed by the Regulations.

Use of trademark

Article 186

A trademark owner shall, to maintain the trademark validity, use a trademark in respect to the goods or services for which it has been granted, unless serious reasons exist for its non-use, not depending of the trademark owner's will.

The use of trademark referred to in paragraph (1) of this Article shall also include use of the trademark on packages, catalogues, brochures, directions, advertisements, invoices, correspondence, means for electronic commerce, etc.

Article 187

The use of a trademark in a slightly modified form not changing the distinctive character of a trademark, and the use of a trademark on the goods and equipment exclusively for the purpose of export shall also constitute the use of a trademark.

The use of a trademark by another person having the owner's consent shall be considered to be the use by the owner himself.

Ceasing of trademark right

Article 188

A trademark shall cease to be valid:

1. if the term of protection expires, and the trademark owner does not file, within a prescribed time limit, a request for the renewal of the trademark validity and does not pay a prescribed fee;
2. upon the written declaration by a right owner on the waiver of a trademark, on the day following the day of filing the declaration to the Office; such declaration shall not have the legal effect, if the specific right has been entered into the register in favour of third persons, and the trademark owner had not previously obtain a written consent from those persons;
3. with the lapse of the legal person who is the trademark owner, or with the death of a natural person who is the trademark owner; on the day of the lapse, or on the day of death, unless the right has been transferred to the successors in title of the legal person, or to heirs of the natural person;
4. on the basis of a court decision or act of the Office in cases provided for in this Law as from the date determined in that decision or act.

CANCELATION OF TRADEMARK IN CASE OF NON-USING

Article 189

If the trademark owner has not used the trademark for marking the goods or services it refers to without justified reasons for over 5 years as from the date of entering the trademark into the trademark register or as from the date when the trademark was last used, the Office may at request of an interested person issue a decision of cancellation of that trademark.

In the procedure on the request for cancellation of a trademark, the trademark owner shall have to prove that he is using the trademark.

The right to collective may be cancel if the trademark is not used under the general act or contract for collective trademark.

The request referred to in paragraphs (1) and (3) of this Article shall be filed to the Office in written form.

Within 15 days as from the reception of the request, the Office shall submit it to the trademark owner and invite him to declare himself within 30 days as from the reception of the notification.

The Office shall decide on the request for cancellation of trademark exclusively on the basis of the documentation submitted by both parties.

Administrative suit may be instituted against the decision of the Office.

A trademark ceases to be valid as from the date of the entry into force of the decision for cancellation issued by the Office.

DECLARING DECISION FOR GRANTING TRADEMARK RIGHT AS NULLITY

Article 190

The Office shall issue a decision on declaring as nullity the decision on the grant of a trademark if it is established that the conditions for the grant of that right, provided by this Law, did not exist.

Article 191

The decision on the grant of a trademark may be declared as nullity during the whole term of the protection (the first 10 years), ex officio, on the proposal of an interested person, or on the proposal of the public prosecutor.

The proposal for declaring a decision as nullity referred to in paragraph (1) of this Article shall be filed to the Office in written form.

The proposal referred to in paragraph (1) of this article shall be accompanied by necessary evidence.

The Office shall submit the proposal to the right owner within 15 days from the receipt thereof and invite him to declare himself within 30 days from the receipt of the proposal.

The Office shall decide on the proposal for declaring as nullity exclusively on the basis of the documentation submitted by both parties.

Administrative suit may be instituted against the decision of the Office.

Article 192

If the person who filed the proposal for declaring as nullity the decision for granting trademark right renounces it during the procedure, the Office may continue the procedure ex officio or at request of the owner of that right.

COLLECTIVE AND GUARANTEE (CERTIFICATION) TRADEMARK

Collective mark

Article 193

A collective trademark shall protect a sign intended for the collective designation of the goods or services put on the market by an association of legal and natural persons.

Article 194

Under this Law and in compliance with the international conventions the Republic of Macedonia is party to, a given sign may also be protected as collective trademark by a foreign legal person.

Article 195

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

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

Article 196

On the request of the applicant or the owner of a collective trademark, the Office shall enter into the register any change or amendment of the contract regulating the use of a collective trademark.

(2) The rights arising from a collective trademark shall not be transferable, and shall not be the subject matter of the license.

Guarantee (certification) trademark

Article 197

Certification (guarantee) trademark protects a sign which is being used by several companies under supervision of the trademark owner and protects the

quality, origin, production process and other joint characteristics of goods or services of those companies.

The provision from Article 151 paragraph (4) of this Law shall not be applied on certification trademarks, except for agricultural or alimentary products.

REGISTERS

Article 198

The Office shall keep register of trademark applications and register of trademarks.

The registers referred to in paragraph (1) of this Article shall be available to the public.

The Office shall enable any interested persons the inspection of data relating to the published applications and granted trademarks.

The Office shall issue, on the request of any interested person, the excerpt from the registers.

The data to be entered into the registers referred to in paragraph (1) of this Article shall be prescribed by the Regulations.

Entering changes in the registers

Article 199

On request of the applicant or the owner of a trademark, the Office shall enter into registers any change referring to the name of the natural person, the trade name or business seat or address of the applicant, as well as any change that happened after the filing of the trademark application or granting that right, provided that they correspond to the real state and do not influence the appearance of the mark.

The changes entered in the trademark register shall be published in the Official Gazette of the Office.

The data which should be contained in the request for entering of any change related to the trademark in the register shall be prescribed by the Regulations.

Search

Article 200

On the request of any interested person, the Office shall carry out services of identity and similarity searches of applied for and registered trademarks valid in the Republic of Macedonia.

INTERNATIONAL REGISTRATION

Article 201

The trademark owner or applicant may file a request for international registration of the trademark under the international agreements and conventions the Republic of Macedonia is party to.

The provisions of this Law shall be applied to all issues which are not provided for in those agreements.

The requirement referred to in paragraph (1) of this Article shall be filed through the Office in a procedure prescribed by the Regulations.

For the purposes of the international registration of trademarks in compliance with the Madrid Agreement Concerning the International Registration of Marks, the publication of the application prescribed in Article 165 of this Law, shall be replaced with the publication of the international registration in the Official Gazette of international registrations of trademarks of the World Intellectual Property Organization.

The time limit for filing the opposition to the grant of the internationally registered trademark for the Republic of Macedonia, shall run as from the first day of the month following the month indicated on the edition of the Official Gazette of the World International Property Organization in which such trademark has been published.

JUDICIAL PROTECTION

Article 202

The person who infringes a trademark right shall be responsible for damage according to the general rules for damage remuneration.

The person whose right was infringed, apart from damage remuneration, may also ask the person who infringed the right to be prohibited any future activity which infringes the right and ask for publication of the court decision which confirms the infringement in the media on expense of the defendant.

Article 203

Any unauthorized use of a protected trademark on the market or unauthorized disposing thereof shall be considered infringement of the trademark rights.

Imitation of a trademark shall also be considered infringement thereof.

The imitation referred to in paragraph (2) of this Article shall be established if the average consumer of goods or services, regardless of the type of goods and services, could notice the difference only by paying particular attention or if the trademark is translation, transcription or transliteration of the granted trademark.

Article 204

An action for infringement of the rights referred to in Article 172 of this Law may be instituted by the trademark owner or the owner of the exclusive license.

Article 205

If a collective or certification (guarantee) trademark is used without authorization, the user of the collective trademark may ask the competent court to prohibit future activity which infringes the right, to determine a damage remuneration and publish the court decision at the expense of the defendant.

If the user of the collective and certification (guarantee) trademark does not institute an action within a year from the date of the infringement, the owner of the collective trademark may do that.

Article 206

The action for infringement of a trademark right may be instituted within three years from the date when the plaintiff learnt of the infringement and the person who made it or within five years from the performed infringing act.

Article 207

The procedure concerning infringement of trademark right shall be expeditious.

Contesting trademark right

Article 208

An legal or natural person may institute an action and request the competent court to establish that the sign used on the market to mark his goods or services is identical or similar to the trademark used by another legal or natural person to mark his own goods or services of the same or similar type and that that sign was generally known as the sign for marking of the goods or services of the plaintiff even before the defendant had filed the trademark application.

The plaintiff may ask the court to issue a decision declaring him as the trademark owner.

The contesting referred to in paragraph (1) of this Article shall not be accepted by the court if the defendant, the trademark owner, proves that he had used the mentioned sign for the same or similar type of goods or services even before filing the application for as long as the plaintiff or longer.

The action referred to on paragraph (1) of this Article may not be instituted after the expiration of the time limit of 5 years as from the date of entering the trademark in the trademark register.

PART FOUR

**APPELLATION OF ORIGIN
AND GEOGRAPHICAL INDICATION**

SUBJECT MATTER OF PROTECTION

Article 209

Geographical name shall be protected with an appellation or origin and geographical indication.

Geographical name shall mark the products produced by natural or legal persons on a given geographical area.

Article 210

Appellation of origin shall be the geographical name of the country, region or place which mark the product which originates from that region and the quality and particular characteristics of which are exclusively or essentially conditioned to the geographical environment, including the natural and human factor and production, processing and preparation of which is entirely carried out in a given limited region of origin.

Article 211

Geographical indication shall be the geographical name of the country, region or place which mark the product the quality, reputation or other characteristic of which may be essentially be attributed to the geographical origin.

The geographical indication of a product may be protected only if the production and/or processing and/or preparation for production are carried out in the place of origin.

The geographical name, which does not comply with the requirements for protection as appellation or origin, may be protected as geographical indications.

Article 212

A product may be marked by a geographical indication if the raw materials used for its production originate from a geographical area larger than or different from the processing area provided that:

1. the production area of the raw materials is limited and that special conditions for the production of raw materials exist;
2. the traditional way of production, the human factor, is crucial for the quality and particular characteristics of the product.

Article 213

Appellation of origin and geographical indication may also be used to protect geographical name of a given country, region or place for product which with the long-term use on the market became generally known as name of the product which originated from that territory, as well as the traditional geographical or non-geographical name which refers to certain origin of the product under Article 210 and Article 211 (2) of this Law.

CONDITIONS FOR PROTECTION

Article 214

Geographical name may be used for marking natural, agricultural, industrial, handicraft and home-made products.

Article 215

A geographical indication or appellation of origin shall not be granted for protection of the name of the place of origin of a product which:

1. does not meet the requirements provided by this Law,
2. is against law and morality;
3. with its contents is liable to mislead the public as to the kind, origin, quality, manner of production or other characteristics of the product;
4. is identical to the name of a plant variety or animal race, in case when it is liable to mislead the public as to the geographical origin of the product;
5. is identical or similar to a geographical name or trademark previously registered for identical or similar products, when it is possible the average consumer to be misled.

Article 216

A geographical indication or appellation of origin shall not be granted protection if the name of the place of origin of a product due to the long-term use on the market, has become the common name for a certain type of products.

The name of the place of origin protected by a geographical indication or appellation of origin may not become generic.

Article 217

If the names of two or more places of origin of a product are the same or almost the same in writing, protection of such geographical names with geographical indication or appellation of origin shall be granted to all persons who comply with the requirements provided for by this Law, and in the manner prescribed in the Regulations whereby the procedure for protection geographical indication and recognition of right of an authorized user has been regulated

(hereinafter: the Regulations), on the principles of equitable treatment of the producers on the market and truthful informing of consumers, except when it is liable to mislead the public as to the true geographical origin.

Article 218

Geographical name may be protected by a foreign natural or legal person and he may be registered as authorized user of the protected geographical name only if those rights have been granted in the countries of origin and if he complies with the requirements provided in this Law.

Foreign natural and legal person may be granted the rights referred to in paragraph (1) of this Article if that results from the international agreements the Republic of Macedonia is party to or on the grounds of bilateral agreement for mutual protection if that was provided in the legislation of the person's country of origin.

The geographical name which has already been protected with geographical indication or appellation of origin in the Republic of Macedonia may also be protected abroad on the grounds of bilateral agreements for mutual protection or the international agreements the Republic of Macedonia is party to.

The application for protection in a foreign country may be filed only by the authorized users of the geographical names, which have been entered, in the adequate register kept by the Office.

PROCEDURE FOR GRANTING PROTECTION

Article 219

The procedure for the grant of the protection of a geographical name and/or acquisition of the right to use a protected geographical name shall be initiated by filing a submission containing a request for granting geographical name and request for granting the right to use a geographical indication or appellation of origin, together with the other supplements prescribed by this Law (hereinafter: application).

Article 220

While filing the application, foreign persons shall accompany the request for granting geographical name with a true copy of public certificate or another legal act in the official language of the country of origin as evidence that the geographical name has been protected in that country, as well as certified translation in Macedonian language

Article 221

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

Article 222

The application for protection of a geographical name may be filed by:

- natural or legal persons acting as producers of a given product, and associations having capacity to acquire rights and incur liabilities relating to protection and the right of use;
- state administrative body, local administrative body and chambers interested in protection of geographical names within the scope of their activity.

Article 223

The application for protection of geographical name shall contain a request for protection of geographical name with indication that the requested protection is by geographical indication or appellation of origin.

The application for protection of geographical name by appellation of origin, apart from the request for protection of geographical name, shall also contain an elaboration for the product, which shall be marked with the geographical name.

The application for protection of geographical name by geographical indication, apart from the request for protection of geographical name, shall also contain a specification for the product, which shall be marked with the geographical name.

The contents of the request for protection of geographical name, the elaboration and specification shall be prescribed by the Regulations.

Article 224

The Director of the Office shall determine the institution competent for preparing the elaboration or specification.

The institution competent of preparing the elaboration shall perform the control of the particular characteristics of the product for which it issues evidence.

The institution competent of preparing the specification shall give evidence to the person who applies for authorized user that he produces a product with the same characteristics as the product the geographical name of which has been protected with geographical indication and that the production and/or processing and/or preparation of which is being performed on a given geographical region.

Article 225

The Office shall keep Register of applications for protection of geographical names and register of applications for using the protected geographical names, Register of protected geographical names and Register of authorized users of protected geographical name.

The contents of the registers referred to in paragraph (1) of this Article shall be prescribed by the Regulations.

The registers referred to in paragraph (1) of this Article shall be available to the public.

The interested parties may inspect the protected geographical name and the authorized users of those names only in presence of an employee.

On written request of interested party and after paying the determined fee, the Office shall issue excerpt from the registers.

Article 226

Protection of the name of the place of origin of product by geographical indication or appellation of origin shall be made by issuing a decision and entering the geographical name of the product and type of product to which that name refers in the Register of protected geographical names.

The right to use the protected geographical names shall be acquired by issuing a decision for granting the right of an authorized user and entering it in the Register of authorized users of protected geographical names.

Article 227

The protection of geographical names shall not be limited.

The right to use a protected geographical names shall last for 5 years and may be renewed an infinite number of times. The owner of the right shall file an application for the renewal of the right before the expiration of the 5 years in the manner prescribed in the Regulations.

The renewal of the right to use the protected geographical names shall be approved if the requirements for acquiring that right have been met. Otherwise, the right of use shall cease on the day of expiration of a 5-year period of protection. The registration of the renewal of the right shall be made as prescribed by the Regulations.

RIGHT OF USE

Article 228

The appellation of origin is a collective right and may be used exclusively by legal and natural persons who:

1. produce a product for the geographical name of which appellation of origin has been granted;
2. fully perform the production process in the geographical region specified in the elaboration;
3. are entered in the Register of users as users of that appellation of origin.

The geographical indication is a collective right and may be used exclusively by legal and natural persons who:

1. produce a product for the geographical name of which geographical indication has been granted;

2. perform the production and/or processing process and/or the preparation of the product in the geographical region specified in the specification;
3. are entered in the Register of users as users of that geographical indication.

Article 229

The application for granting the right to use the protected geographical name shall contain request for granting to use protected geographical name, evidence for performing certain activity an adequate evidence referred to in Article 224 paragraph (2) and (3).

The content of the request for granting to use protected geographical name, evidence for performing certain activity adequate evidence referred to in Article 224 paragraph (2) and (3) shall be prescribed by Regulations.

EXAMINATION OF APPLICATION

Article 230

If the application does not contain all the necessary elements and supplements in compliance with this Law and the Regulations, the Office shall invite the applicant to correct the established deficiencies within one month as from the day of receipt of the invitation.

On the reasoned request of the applicant the time limit referred to in paragraph (1) of this Article may be, for the justified reasons, extended for not more than one more months.

If the applicant does not, within the prescribed time limit, correct the application or pay the expenses he is due to pay for correcting the application, the Office shall issue a decision for rejection of the application for protection of the geographical name or the application for granting right of authorized user.

Article 231

If under this Law and the Regulations the Office establishes that the application is correct, it shall continue with the examination thereof and determination whether it complies with the prescribed requirements for protection of geographical name or granting right to authorized user.

Article 232

If the Office decides that the application does not comply the requirements for protection of the geographical name or granting the right to authorized user of the protected geographical name, it shall inform the applicant in writing about the

grounds for which the geographical name cannot be protected or the right to authorized user be granted and invite him to declare himself within three months.

On the reasoned request of the applicant the time limit referred to in paragraph (1) of this Article may be, for the justified reasons, extended for not more than three more months.

If the applicant does not, within the prescribed time limit, declare himself, or if he does and the Office decides that it cannot protect the geographical name or grant the right to authorized user of a protected geographical name, it shall issue a decision for refusal of the application for protection of the geographical name or the application for granting right of authorized user of the geographical name.

If in the case referred to in paragraph (3) of this Article the subject matter is an application for appellation of origin which complies with the requirements for protection by geographical indication or application for granting the right to use the appellation of origin which complies with the requirements granting a right to use the geographical indication, the Office shall notify the applicant and with his approval, shall recognize geographical indication or grant the right to use the geographical indication.

Article 233

If the application for protection of geographical name complies with the requirements provided in this Law, the Office shall issue a decision for protection of the geographical name and enter it in the Register for protected geographical names.

If the application for granting right to authorized user of geographical name complies with the requirements provided in this Law, the Office shall invite by conclusion the applicant to pay within 30 days the fee for granting the right of authorized user of geographical name for the first 5 years, the expenses for publishing the data about the granted right to use a protected geographical name and the expenses for issuing a certificate, as well as to submit evidence of the made payments.

If the applicant does not within the time limit referred to in paragraph (2) of this Article submit evidence of the made payments, the Office shall issue a decision for rejecting to grant right to authorized user of protected geographical name.

Article 234

If the applicant submits evidence of the made payments referred to in Article 233(2) of this Law, the Office shall issue a decision for granting right to authorized user and enter the name of the applicant in the Register for authorized users of protected geographical name and the Register of protected geographical names.

Article 235

The publication of the protected geographical name in the Official Gazette of the Office is done ex officio.

The data for the protected geographical name, which are being published in the official Gazette of the Office, shall be prescribed by the Regulations.

Article 236

When the right owner pays the expenses for publishing the right of authorized user, the Office shall publish the data for the granted right of authorized user in the Official Gazette.

The data for the granted right of authorized user, which are being published in the Official Gazette of the Office, shall be prescribed by the Regulations.

Article 237

The Office shall issue the authorized user of geographical indication a certificate for the recognized right of authorized user within 6 months from the date of issuing the decision.

The contents and form of the certificate shall be prescribed by the Regulations.

RIGHTS OF AUTHORIZED USER

Article 238

The user of the protected geographical name has the right to use it for marking exclusively the type of product enters in the Register of protected geographical name kept by the Office.

The right on use also refers to the use of the protected geographical name on the packages, business certificates and marketing materials.

The way of marking the products the geographical name of which has been protected shall be prescribed by the Regulations.

Article 239

The protected geographical name cannot be subject of agreement for transfer of right, license, pledge, franchise, etc.

If the protected geographical name is subject of previously applied or registered trademark, that trademark cannot be transferred, licensed, pledged, etc.

Article 240

The users of geographical names may request prohibition of the acts infringing the rights for use thereof in the following cases:

1. direct or indirect unauthorized use of the protected geographical name for identical or similar products for the purpose of acquiring financial advantage;
2. marking products, which do not originate from the place of origin indicated with the protected geographical name, even if the true geographical origin of the product is indicated, the translation of geographical indication is used or it is accompanied by additional expressions, like kind, type, sort, imitation, etc.;
3. any kind of use of a protected geographical name that is detrimental to, or takes advantage of the reputation of a protected geographical name;
4. any use of false information which can mislead the consumers as to the geographical origin, nature and quality of a product on the packaging, business certificates or other documents, giving false impression of the real origin;
5. any other uses liable to mislead the consumers as to the geographical origin of the product.

Article 241

The authorized users of protected geographical names cannot request prohibition for infringement of the right if the protected geographical name is being used for informing or educating the public in a way that does not damage their interests.

The use of a geographical name for the purposes referred to in paragraph (1) of this Article shall be performed without remuneration.

Article 242

At request of the applicant or the authorized user of the protected geographical name, the Office shall enter in the adequate register all changes regarding the granted right of authorized user, which happened after the filing of the application or the granting of the right, if they correspond to the factual situation.

If the request refers to significant changes in the scope of production, it shall be accompanied with evidence referred to in Article 224 paragraph (2) and (3) of this Law, no older than 3 months.

The changes entered in the Register of authorized users shall be published in the Official Gazette of the Office.

The data, which should be contained in the request for entering the changes, shall be prescribed by the Regulations.

DECLARING DECISION FOR PROTECTION OF GEOGRAPHICAL NAME AS NULLITY

Article 243

The decision for protection of geographical name or grant of right of use shall be declared as nullity in the procedure before the Office, if established that the requirements for protection of geographical name or granting right of use thereof were not complied with from the very beginning.

The decision referred to in paragraph (1) of this Article may be at any time declared as nullity either ex officio or at the proposal of an interested party, or a public prosecutor.

The proposal for declaring as nullity the decision referred to in paragraph (2) of this Article shall be filed to the Office in written form.

The proposal referred to in paragraph (3) of this Article shall be accompanied with the necessary evidence.

The Office shall within 15 days of reception of the proposal submit it to the person who filed the application for protection of geographical name or the owner of the right of use and invite him to declare himself within 30 days from the reception of the proposal.

The Office shall decide exclusively on the basis of the documentation submitted by both parties.

Administrative suit may be instituted against the decision of the Office.

Article 244

With the declaration as nullity the decision for protection of the geographical name, the right to authorized user of that geographical name shall terminate also.

The decision for declaring as nullity the decision for protection of geographical name, and with that the termination of the right to use that geographical name, and the decision declaring as nullity the decision for granting right of authorized user shall be entered into the adequate registers and published in the Official Gazette of the Office ex officio.

REVOKING THE RIGHT OF USE THE PROTECTED GEOGRAPHICAL NAME

Article 245

The decision for granting the right of use of a protected geographical name may be revoked if it is established that the conditions for granting the right to use the protected geographical name provided in this Law ceased to exist. In the procedure on the request for revocation of the right for using a protected

geographical name, the authorized user shall have to prove that the conditions for the granted right still exist.

Article 246

The decision for grant of right of use of a protected geographical name may be revoked either ex officio or at the request of an interested party, or a public prosecutor.

The request for revocation of the decision referred to in paragraph (1) of this Article shall be filed to the Office in written form.

The request referred to in paragraph (2) of this Article shall be accompanied with all the necessary evidence.

The Office shall within 15 days of reception of the request submit it to the owner of the right of use and invite him to declare himself within 30 days from the reception of the notification.

The Office shall decide exclusively on the basis of the documentation submitted by both parties.

Administrative suit may be instituted against the decision of the Office.

Article 247

If the person who filed the request for revocation of the decision of granting right of use of a protected geographical name renounces it during the procedure, the Office may continue the procedure ex officio.

The right of the person who has been registered as authorized user in the adequate registers shall cease the day after the date of the decision for revocation of that right.

JUDICIAL PROTECTION

Article 248

Any interested person, authorized user of protected geographical name, association of consumers, public prosecutor may institute an action before a competent court against the person infringing any of the rights referred to in Article 240 of this Law, with request for:

1. establishment of the existence of an infringement;
2. prohibition or prevention of any future activities infringing the rights;
3. remuneration for damage;
4. confiscation of the goods produced or put on the market with the aim of infringement;
5. submission of the documents and data of the infringing party relating to the unauthorized use of a protected geographical name or otherwise, for the assessment of the damage;
6. enforcement measures to prohibit continued infringement of rights, and in particular enforcement measures for destruction of the goods referred to in item 4 of this paragraph;

7. publication of the court judgment at the expense of the defendant.

The action for infringement of the protected geographical name may be instituted within 3 years as from the day the plaintiff learnt about the infringement and no later than within 5 years as from the day of the infringement.

The action for infringement of the protection of geographical name or right to authorized user shall be expeditious.

On the proposal of the plaintiff, the court may rule on provisional measures in accordance with the Law on enforcement procedure if any delay should cause an irreparable harm or where there is risk of evidence being destroyed.

PART FIVE

PENALTIES AND SECURITY MEASURES

Civil penalty

Article 248

During an infringement of the right acquired on the basis of this Law, if the right has been infringed intentionally and because of omission, the right owner may request payment of agreed or usual remuneration increased by 200%, regardless whether the infringement resulted in material damage.

On deciding on the request for payment of remuneration and determining the amount, the court shall take into consideration all circumstances in the case, particularly the degree of guilt of the defendant, the amount of the agreed or usual remuneration and the preventive purpose of the penalty.

If the material damage is higher than the penalty, the right owner may request remuneration of the difference until full compensation.

Provisional measures

Article 249

If the right owner submits evidence that his right acquired under this Law had been infringed, the court shall at his proposal rule provisional measures for satisfying the requirements of this Law, and in particular:

1. confiscating, excluding from the market and keeping samples, means, equipment and documents in relation to them;
2. prohibiting of all activities, which infringe the right and continuation thereof;
3. ruling other similar measures.

In case of a reasonable doubt that the protection referred to in paragraph (1) of this article cannot be applied later, the court may rule and execute those measures without previous notification and hearing of the opposing party.

The procedure on the provisional measures shall be expeditious.

The provisions for executive procedure shall be applied for the procedure for ruling provisional measures unless otherwise provided by this Law.

Article 250

If the right owner submits evidence that his right acquired under this Law was infringed and that there is reasonable doubt that the evidence of that infringement shall be destroyed and it shall be impossible to obtain such evidence at a later time, at his proposal the court may secure those evidence without previously notifying and hearing the opposing party.

The securing of evidence referred to in paragraph (1) of this Article may include search, inspection premises, documentation, inventory, databases, computer programs, review and confiscation of documents, hearing witnesses, findings and statements from experts.

The decision for accepting the proposal for securing evidence and the proposal shall be submitted to the opposite party during the securing of the evidence. If that is not possible, the decision and the proposal shall be submitted as soon as possible.

The opposition to the decision referred to in paragraph (3) of this Article shall not postpone the execution of the decision.

The procedure on securing evidence shall be expeditious.

The provisions for executive procedure shall be applied for the procedure for securing evidence unless otherwise provided by this Law.

Security measures

Article 251

The right owner may request the persons who were in any way connected to the infringement of the right acquired under this Law (producer, publisher, importer, distributor, consignor, owner, seller, owner of samples, items or means with which the right was infringed and other persons) to submit the data and documents regarding the infringement without delay.

If the persons referred to in paragraph (1) of this Article do not submit the data or document at their disposal, they shall be responsible for remuneration of damage caused by the failure to submit.

Border measures

Article 252

If the right owner lodges an application that the import of given goods in the country infringes his right acquired under this Law, at his request the customs officials may rule the following border measures:

1. the goods to be examined by the right owner or his representative;
2. the goods to be seized, excluded from trade or stored in a safe place.

The request referred to in paragraph (1) of this Article shall be accompanied with detailed description of the goods, the necessary evidence of the right and evidence of probable infringement thereof.

At request of the customs officials, the right owner shall submit bail for possible damage caused by the measures referred to in paragraph (2) of this Article.

The customs officials shall immediately notify the importer and receiver of goods of the ruled measures.

The customs officials shall suspend the ruled measures referred to in paragraph (4) of this Article if the right owner does not institute an action for infringement of right within 8 days.

The customs officials shall immediately notify the importer and receiver of goods of the suspension of the ruled measures.

REPRESENTATION

Article 253

In the procedure for protection of industrial property rights, the client may be represented by natural and legal persons entered in the Register kept by the Office.

In the Register referred to in paragraph (1) of this Article the office may enter:

1. natural person who has graduated faculty of law or any technical faculty and passed the specialist examination in industrial property or special examination in the field regulated by this Law, taken in the Office;
2. legal person who has employed at least one person who has graduated faculty of law or any technical faculty and fulfils the conditions referred to in item 1 of this Article.

Director of the Office shall issue regulations regarding the Register of representatives referred to in paragraph (1) of this Article and the contents of the special examination referred to in paragraph (2) of this Article.

PENALTY PROVISIONS

Article 254

Fine in the amount of - to - MKD shall be imposed to the legal person which:

1. performs unauthorized representation of foreign legal and natural persons (Article 253);
2. performs unauthorized use of applied for or protected invention (Article 61);
3. performs unauthorized use or imitation of applied for or protected industrial design (Article 121);

4. performs unauthorized use or imitation of applied for or protected trademark (Article 172);
5. performs unauthorized use or imitation of a well-known trademark;
6. performs unauthorized use or imitation of protected geographical name (Article 240);
7. at request of the right owner does not submit the documents and data regarding an infringement (Article 251).

For offences referred to in paragraph (1) of this Article, the competent person in the legal person shall also be imposed a fine in the amount of - to - MKD.

For offences referred to in paragraph (1) of this Article, the legal person shall be ruled security measure prohibition of performing the activity in the period of 6 months to one year.

For the offences referred to in paragraph (1) of this Article , a fine in the amount of - to - MKD shall be imposed on the person who independently performs economic or professional activity without the capacity of legal entity.

For the offences referred to in paragraph (1) of this Article, a fine in the amount of - to - MKD shall be imposed on natural person.

For the offences referred to in paragraph (1) of this Article, the natural person shall be ruled security measure prohibition of performing the activity in the period of 6 months to one year.

TRANSITIONAL AND FINAL PROVISIONS

Article 255

Within three months following the entry into force of this Law, the Industrial Property Protection Bureau shall be transformed into Office for Protection of Industrial Property of the Republic of Macedonia.

Article 256

The regulation referred to in Article 5 of this Law shall be issued within 3 months as from the entry into force thereof.

Article 257

The provisions from this Law shall be applied to the procedures for granting industrial property rights, which were not finished by the date of entry into force of this Law.

The procedures for infringement of industrial property rights which were not finished by the date of entry into force of this Law shall be finished under the provisions which were in force until the date of entry into force of this Law.

The procedures for declaring as nullity a decision for granting industrial property rights which were not finished by the date of entry into force of this Law

shall be finished under the provisions which were in force until the date of entry into force of this Law.

The provisions from Article 57 for extension the term of validity of patents with supplementary certificate shall be applied to the applications filed to the Office after the date of entry into force of this Law.

The procedures on patent applications for plant variety and hybrid, which were not finished by the date of entry into force of this Law, shall be finished under the provisions which were in force until the date of entry into force of this Law..

The rights to plant variety and hybrid, which are valid at the date of entry into force of this Law, shall continue to be valid under the provisions of this Law.

The rights to model and design, which are valid at the date of entry into force of this Law, shall continue to be valid under the provisions of this Law.

Article 258

The date this Law comes to force, the Industrial Property Law ("Official Gazette of the Republic of Macedonia", No. 45/93) shall stop to be valid.

Article 259

This Law shall enter into force on the eighth day of the publishing thereof in "Official Gazette of the Republic of Macedonia".