



CEFTA ISSUES PAPER 1

Intellectual Property Rights in the CEFTA 2006 Signatory Parties



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The information included in this report, and in particular the denomination of territories used in this document, do not imply any judgement on the part of the OECD on the legal status of territories mentioned in this publication.



FOREWORD

As we approach the fourth year of implementation of the CEFTA 2006, the challenge for the parties to the agreement is to ensure full implementation of all commitments. These commitments are important as they provide us with a means of strengthening our economic ties through greater regional trade and investment integration. Our shared goals are EU accession, sustainable long-term economic growth and improved living standards – CEFTA 2006 is a key instrument by which we can attain those goals.

The investment-related clauses of CEFTA 2006 are a novel feature of the trade agreement. The Parties recognised that without providing non-discriminatory treatment to investments from other Parties, coordinating our investment policies as much as possible, protecting intellectual property rights and opening our government procurement markets the benefits of closer trade ties would only be partially realised.

As CEFTA chair for 2010, Serbia welcomes the series of publications produced by the OECD Investment Compact for South East Europe on monitoring the implementation of the investment-related clauses in CEFTA 2006. The analysis contained in these series of papers will help the CEFTA Parties understand where progress has been made and where more work needs to be done. These publications would not have been possible without the financial support of the European Commission.

Closer cooperation between the CEFTA institutions, the European Commission and organisations such as the OECD Investment Compact ensure that the benefits of CEFTA 2006 reach their maximum potential.



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INTRODUCTION

The Central European Free Trade Agreement (CEFTA) 2006 represents a significant accomplishment for the economies of the Western Balkans along the path to EU accession. By focussing on greater economic integration through trade and investment, the Parties recognize that CEFTA 2006 is an important stepping stone to sustainable long-term growth and improved standards of living.

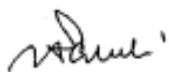
In addition to implementing traditional trade-related liberalisations such as tariff reductions, CEFTA 2006 obligates the Parties to undertake commitments related to investment policy. The investment-related clauses of CEFTA 2006 provide for non-discriminatory treatment of investments underpinned by the principle of national treatment, a commitment by the Parties to broadly coordinate their investment policies, progressive opening of their government procurement markets to one another, and effective protection of intellectual property rights (IPRs).

In an effort to monitor implementation of the investment-related clauses, the CEFTA Parties have mandated the CEFTA Secretariat to undertake actions to periodically review these commitments. With the financial support of the European Commission (EC), the CEFTA Secretariat requested the Organisation for Economic Cooperation and Development's Investment Compact for South East Europe (OECD-IC) to assist in this effort.

This report presents a comprehensive review of the legal frameworks covering IPRs in the CEFTA 2006 Parties, specifically the IPRs noted in Article 37 of CEFTA 2006. The basis for this report is a paper commissioned by the OECD-IC and prepared by the law firm of Karanovic and Nikolic in Belgrade, Serbia. The results of the original paper were presented by the OECD-IC during CEFTA week events in Podgorica, Montenegro on 27-28 October 2009.

This publication is part of a series of papers produced by the OECD-IC in the framework of the EC-funded exercise to monitor the implementation of the investment related clauses of CEFTA 2006. The other papers include a review of restrictions to national treatment, an assessment of the consistency of bilateral investment treaties signed among the CEFTA Parties, and an econometric analysis on industry location and the determinants of foreign direct investment in the original CEFTA Parties. The views expressed in these publications are those of the OECD-IC only, and do not reflect the official position of CEFTA institutions or CEFTA Parties themselves.

The continued cooperation between CEFTA institutions and the OECD-IC to monitor the investment-related clauses of CEFTA 2006 represents an example of the type of collaboration necessary to ensure that maximum benefits from closer trade and investment integration are reaped across the Western Balkans.



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ACKNOWLEDGEMENTS

The OECD Investment Compact would like to thank all the CEFTA contact points and stakeholders who participated in workshops on the investment related clause during CEFTA week in Podgorica, Montenegro between 27-28 October 2009.

Antonio Fanelli has had overall management responsibility for the series of working papers on the implementation of the investment-related clauses of the CEFTA. The report on intellectual property right legal frameworks in CEFTA 2006 Parties was prepared by Mr. Dragomir Kojic and Ms. Sanja Spasenovic from the law firm of Karanovic & Nikolic, Belgrade, Serbia. The report was edited by Milan Konopek from OECD-IC. Administrative support has been provided by Geraldine Daly. The publication process has been led by Vanessa Vallée and Geraldine Daly.

The OECD IC intends to continue providing input into the implementation of CEFTA 2006 and increase debate of benefits of regional trade integration in the broader framework of European economic integration.

The views expressed in this publication are of the OECD-IC and do not reflect the official position of the CEFTA institutions or any of the CEFTA Parties.

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EXECUTIVE SUMMARY

After the majority of the Parties of the original Central European Free Trade Agreement (CEFTA) joined the European Union (EU) and therefore left CEFTA, a new, enlarged CEFTA was signed on 19 December 2006 at the South East European Prime Ministers Summit in Bucharest. Its objective was to supersede the matrix of bilateral free trade agreements between the rest of the Western Balkan countries and to establish a free trade zone in the region by 31 December 2010. The Agreement came into effect on 26 July 2007 for Albania, Former Yugoslav Republic of Macedonia, Republic of Moldova, and UNMIK/Kosovo; on 22 August 2007 for Croatia; on 24 October 2007 for Serbia and on 22 November 2007 for Bosnia and Herzegovina.

The importance of the protection and enforcement of intellectual property rights (IPRs) in the development of free trade relations in the region is clearly emphasised in the Agreement. The Parties are obligated to implement the obligations arising from intellectual property (IP)-related international conventions listed in Annex VII of the Agreement, as well as to accede to those conventions they are not yet members of by 1 May 2014.

At the present time, the situation regarding IP protection among the CEFTA Parties is uneven. Croatia and Serbia, for example, have fully functioning IP Offices. On the other hand, IP protection in UNMIK/Kosovo¹ is weak and the IP Office in that CEFTA party has only started to receive applications. The IP offices in the remaining CEFTA Parties are functional, but need time and professional training to improve efficiency and consistency of service delivery. International donors such as the EU and US have provided donations of software and technology, as well as capacity building technical support.

In the process of harmonisation with EU legislation and World Trade Organization (WTO) standards, modern IP laws were enacted in CEFTA Parties in recent years, providing a solid legal framework for IP protection. However, the real issue in these emerging markets is still the discrepancy between the rules in force and their enforcement. The infringement of IP rights, especially of trademarks, copyrights and related rights is still common, and infringing goods are easily accessible. The region remains some way from EU standards of IP enforcement. Some of these economies (*e.g.*, Montenegro and Serbia) are attempting to combat the infringement by enacting special laws which provide the authorities with new, efficient mechanisms of IP protection, as well as prescribing severe punishments, both monetary and imprisonment, for infringers.

Although court practice (criminal and litigation proceedings) regarding IP rights has increased and become more consistent in recent years, reaching international best practices will require time. In some cases (*e.g.* UNMIK/Kosovo) it is practically non-existent. In general penal policy is still mild, with low monetary fines and probation sentences dominating, but it is gradually improving each year. None of the CEFTA Parties formed special IP Courts, therefore the competence for resolving IP rights infringement lies within general or commercial courts, depending on the Parties in dispute. Court efficiency is in general low, with the procedures lasting from one to several years depending on various factors, but primarily on the economy in question. Nevertheless, reforms of judicial systems are being carried out at the moment in a

¹ Throughout this publication “UNMIK-Kosovo” refers to “the United Nations Interim Administration Mission in Kosovo on behalf of Kosovo in accordance with United Nations Security Council Resolution 1244.”

majority of the CEFTA Parties in order to speed up the proceedings in general, and the results are starting to be visible.

In order to establish a free trade zone, the Parties are required to ensure efficient customs control and prevention of import, export and transit of IP-infringing goods. Special paragraphs in relevant laws have been added or amended to achieve that goal, providing customs officials with authority to stop the customs procedure and detain the goods (either *ex officio* or after request of the right holder) in case of suspicion of IPR infringement. Co-operation and exchange of information between the CEFTA Parties proves to be particularly important here, due to the international nature of infringing organisations.

Finally, it is important to note that the situation regarding IP protection is improving in the region. The difference between five or ten years ago is evident, and it is reasonable to assume that a decade from now the changes will be even more significant. The final aim is clear: EU membership. In order to get to that point, CEFTA Parties will have to complete a series of difficult tasks, including the implementation of EU regulations and standards regarding IP protection and enforcement. This also includes using effective communication campaigns to reinforce in the public's mind that intellectual property deserves to be protected as much as real property.

ALBANIA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Albania

This chapter reviews the legal framework in Albania for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

Intellectual property rights in Albania are governed by the following specific IP laws:

1. Law on Industrial Property (1994, amended in 1999, 2006) governing patents, trademarks, industrial designs and appellations of origin;
2. Law on Copyright and Related Rights (2005);
3. Plant Variety Law (2002, amended in 2005);
4. Law on Integrated Circuits (1999).

Accordingly, the following forms of IPRs are protected in Albania:

5. Patent
6. Trademark
7. Industrial Design
8. Appellations of Origin
9. Copyright
10. Related Rights
11. Plant Varieties
12. Topographies of Integrated Circuits

In addition, the following general regulations are relevant for certain aspects of IPR protection:

13. Unfair Competition Law (2003)
14. Civil Procedures Code (1996)
15. Criminal Procedures Code (1995)

It appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles or information and communication technology sectors.

IPR Authorities

The competent state authorities dealing with IP rights in Albania are: (1) Patent and Trademark Office (ALPTO) is a public institution of the central government under the supervision of the Ministry of Economy, Trade and Energy of the Republic of Albania. The ALPTO is the institution through which the rights of property over inventions, utility models, commercial trademarks and service marks, industrial

designs and geographical indications are granted and administered, and (2) Legal and Copyright Department is an institution under the supervision of the Ministry of Culture, Youth and Sports.

Industrial Property Rights

The majority of industrial property rights (patent, trademark, industrial design, appellations of origin) are governed by the Albanian Industrial Property Law (1994). Figure 1 provides a breakdown of all industrial property applications filed with the competent authority in Albania in the period from 2003 to 2007.

Patent

The regulatory framework for patent protection is established by the Industrial Property Law (1994).

The section of the Law relating to patent protection governs numerous issues with respect to patent-granting, namely: patentability requirements, patent-granting procedure, patent scope and term, patent transfer and licensing, patent invalidation, patent infringement, and patentability of utility models.

Patentability Requirements

Under the Law, a patent protection is available for all inventions which are novel, are industrially applicable and involve an inventive step.

An invention is considered “novel” if it does not form part of the prior art, that is, any invention which has been publicly available by means of use, publication, demonstration or in any other way, prior to the filing date or where priority is filed. An invention shall be considered as “industrially applicable” if it can be made or used in any kind of industry. Finally, an invention is considered to “involve an inventive step” if it would not have been obvious to a person skilled in the art at the filing date or where priority is claimed.

Certain creations are explicitly excluded from patent protection, namely any discoveries, scientific theories and mathematical methods, aesthetic creations, schemes and rules for performing mental acts, and presentations of information.

Patent-Granting Procedure

Patent application should be filed with ALPTO. An invention should be described clearly and completely, so that a person skilled in the art could carry it out. However, for a biologically reproducible material which cannot be described sufficiently in the application, and if the material is not available to the public, the application shall be supplemented by a deposit of the material with a recognised depositary institution.

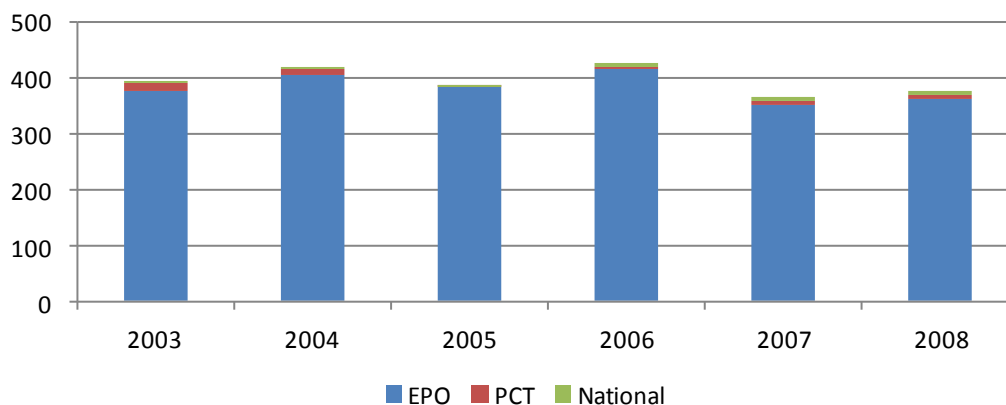
A patent application should contain the following documents: a request for the grant of a patent, a description of the invention for which the patent is sought, one (or several) claim(s), drawings referred in the description of the claims (if necessary), an abstract of the invention, and the Power of Attorney (if filed through a patent attorney).

The claims should be clear concise and supported by description of the matter for which protection is sought.

ALPTO conducts a formal examination of the patent application to ensure that it complies with all the requirements. However, it does not examine the application’s patentability, as that would imply that a

patent might be granted without a guarantee of its validity. If the application complies with the requirements, a patent is granted subject to the payment of a fee. The patent is then recorded and numbered in the Patent Register.

Figure 1. Patent Applications Structure by Applicant 2003 - 2008



Source : 2008 Annual Report, General Directorate of Patents and Trademarks.

EPO: European Patent Office
PCT: Patent Cooperation Treaty

Patent Scope and Term

A patent on a product or process gives its holder the right to prevent third parties from making, and offering or putting on a market a product which incorporates protected invention or such a process, as well as inducing others to do so.

The patent validity term is 20 years as of the filing date subject to the annual payment of maintenance fees. The patent term may be extended for an additional five years for inventions related to pharmaceutical products. The extent of the protection conferred by the patent is determined in light of the claims which are interpreted through the drawings and descriptions so as to combine fair protection for the owner of the patent, and with a reasonable degree of certainty for the third parties.

Patent Transfer and Licensing

A change of ownership in the patent application or the patent itself can be made by an agreement in writing and signed by parties involved, then recorded in the Patent Register. A patent application or a patent itself may also be judicially assigned in cases where they were filed or granted to persons not entitled to a patent.

Rights conferred by a patent may be licensed by the holder of a patent (*Licensor*) to a third party (*Licensee*), by signing a license contract made in writing. The Licensor shall not however be prevented from rights conferred by the patent once licensed.

Patent Invalidation

A patent may be invalidated on the grounds of failure of patentability requirement; failure to describe a patent clearly and completely, so that a person skilled in the art could carry it out; or when the subject of

the patent surpasses what was described in the patent application. Once invalidated, a patent, claim or part of a claim is deemed null and void as of the date of grant of patent.

Patent Infringement

Performing any of the acts conferred by the patent protection by a person other than the owner of a patent or a licensee, without consent, constitutes an infringement. The owner of a patent is entitled to institute court proceedings against any person who infringes a patent or performs acts which make it likely that such infringement will occur.

The proof of infringement falls upon the owner of a patent. The court would award damages and grant an injunction in order to prevent further infringement by third parties.

Patentability of Utility Models

Requirements for the patentability of a utility model are its novelty and industrial application.

Utility model protection applies to those models capable of contributing effectiveness or ease of application or of use to machines or parts of machines, instruments, utensils and everyday objects, where they consist of special forms, arrangements, and configurations or combinations of elements.

The duration of a utility model patent is 10 years as of the date of filing.

Trademark

The regulatory framework for protection of trademarks is established by the Industrial Property Law (1994).

The section of the Law relating to trademark protection governs the following issues: trademark protection requirements; trademark registration procedure; trademark scope and term; licensing and transfer of trademarks; trademark renunciation, invalidation and revocation; and trademark infringement.

Trademark Protection Requirements

Under the Law, a trademark is the right to protection of any sign or combination of signs that distinguish the goods or services of one natural or legal person from those of another, in particular, words (including personal names, letters, numerals, abbreviations), figurative signs (including devices, shapes of goods or of their packaging), combinations of colors and shades, and various combinations thereof. A collective mark, representing a mark registered by an industrial or commercial cooperative or an association of several enterprises used to designate the rights and services of such association, may also be subject to trademark protection.

Besides regular application procedure before ALPTO, an applicant for registration of a trademark may also apply for a registration of a mark on goods exhibited at an official or officially recognised international exhibition, within six months as of the date of the first exhibition. Figure 2 provides a breakdown of all trademark applications filed with the competent authority in Albania in the period from 2003 to 2008.

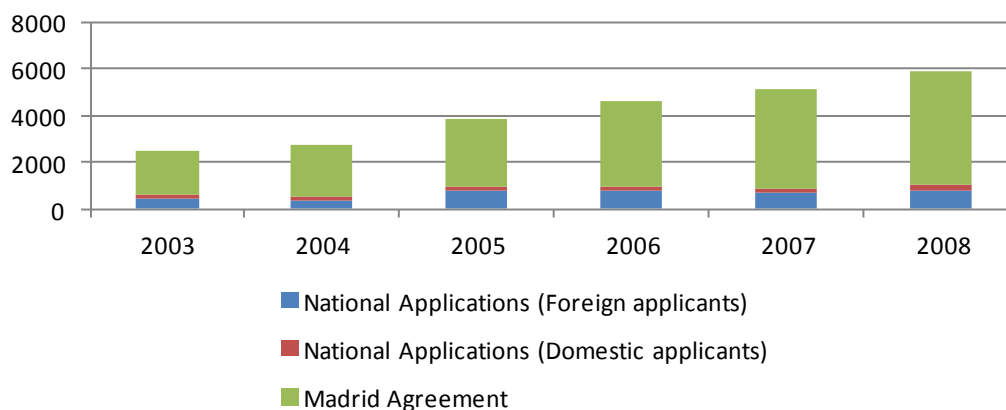
Trademark Registration Procedure

The trademark registration application should include: a request to register a mark, the name and address of the applicant, a representation of the mark, specification of the goods and services for which the

registration is sought (classified according to the International Classification of Goods and Services), a declaration claiming priority (in the case of filing the priority application), and the signature of the applicant. When filing for a collective mark, the regulations listing users, provisions for use of the mark and information regarding the control of use of the mark should be submitted as well.

ALPTO performs a preliminary conformity examination of the application within three months of the filing, and in the case of irregularities, invites the applicant to correct them within three months. The formal examination period can last five months, and then ALPTO takes a decision to register or reject the trademark.

Figure 2. Trademarks Applications Structure by Application 2003 - 2008



Source : 2008 Annual Report, General Directorate of Patents and Trademarks.

Trademark Scope and Term

The owner of a registered trademark has the right to prevent any third party from using the trademark without prior authorisation, in the course of trade, as a mark or as a trade name, where such use would likely result in confusion, or where the mark has become so famous that its use would be detrimental to the distinctive character or reputation of the mark.

The trademark registration is awarded for a period of 10 years as of the filing date. It may be renewed for additional 10-year periods, upon payment of the prescribed fees.

Licensing and Transfer of Trademarks

Trademark may be licensed by a written license contract, duly signed by both the licensor and the licensee conferring to the latter the licensing of all rights granted to the trademark holder (*i.e.*, licensor). A license contract shall be deemed null and void if it fails to stipulate an obligation by the licensor to ensure effective control of the quality of the goods or services of the licensee in connection with the registered trademark in question.

Trademark may also be transferred, with or without the transfer of the trademark holder's business. Such transfer may cover some or all the goods or services for which the trademark is registered or applied for.

Trademark Renunciation, Invalidation and Revocation

A registered trademark may be renounced by its owner in a written request filed with the ALPTO, and may apply to only those goods and services for which the mark is registered.

Additionally, a registered mark may be invalidated by the court at request of a third party, due to lack of constitutive elements, in the case where a mark cannot be registered, due to conflict with public interest or with any existing prior right. If invalidated, a registered mark shall be deemed null and void as of the date of its registration.

Finally, a registered trademark may also be revoked by its owner: if the registered mark had not been used in connection with the goods and services referred to in the registration for a period of five years, a registration shall cease to have effect on the date on which the revocation becomes effective.

Trademark Infringement

The owner of a registered trademark is entitled to institute proceedings before the relevant court against any person who infringes rights conferred by the trademark registration, or performs acts likely to lead to infringement. The proof of infringement falls upon the trademark holder and may result in awarding of compensation.

Industrial Design

The regulatory framework for protection of industrial design is established by the Industrial Property Law (1994).

The section of the Law relating to industrial design governs: protection requirements, registration procedure, scope and term of protection, licensing of rights, design renunciation and invalidation, and infringement of rights.

Protection Requirements

Under the Law, an industrial design protects the two-dimensional or three-dimensional external features of a product which are not solely dictated by the technical function of the product and which confer on it a specific appearance.

In order to be eligible for protection, an industrial design must be novel and applicable to industrial or handicraft products. The novelty requirement is assessed by comparison to other industrial designs which (by publication or public use) have been made available to the public anywhere in the world, prior to the filing date or the acquisition of the priority right of the application. In addition to the novelty requirement, the design will have to be original or have an individual character, or be applied to a product having a useful function.

Registration Procedure

Filing an application for the protection of industrial design with ALPTO gives priority right to its applicant. Additionally, an applicant for registration of industrial design who has exhibited product/s incorporating the design at an official, or officially recognised state exhibition, and who applies for the registration of the design within six months of its first exhibition, shall be deemed as having filed on that very day.

Application for the registration of industrial design should contain: a request to register a design; the name and address of the applicant; a description of the design; drawings of the general view of the article, schematic drawing or sample, for clarification purposes; a statement of the product or products in which the design is meant to be incorporated; the priority application, in the case where priority right is claimed; and the signature of the applicant.

The ALPTO examines the application for conformity and, in the case of irregularities, invites the applicant to correct them within three months. Upon further examination and payment of the registration fee, ALPTO registers and publishes the design(s) in question.

Scope and Term of Protection

Registering a design gives its holder the right to prevent third parties from making, importing, offering to supply, or distributing, any products which incorporate the registered design, or a closely similar design, for commercial purposes.

Registration of an industrial design is assigned for a period of five years with a possibility of subsequent renewal for a total of 15 years, upon payment of a prescribed fee.

Licensing of Rights

Rights conferred by an industrial design may be licensed to a third party, pursuant to a written license contract signed by both parties involved. The license of the rights conferred by the industrial design is registered in the Register of Industrial Designs.

Design Renunciation and Invalidation

A registered design may be renounced by its owner with a written declaration filed with the ALPTO.

Additionally, any party may request invalidation of the design by the court for lack of substantive registration requirements. Once invalidated, a design shall be considered as null and void as of the date of its registration.

Infringement of Rights

The owner of a registered design is entitled to institute proceedings before the relevant court against any person who infringes rights conferred by the design registration. If the owner of a registered design proves that an infringement has been committed, or is being committed, the court shall award him compensation.

Geographical Indications

The regulatory framework for protection of geographical indications is established by the Industrial Property Law (1994).

Under the Law, “geographical indication” is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that derive from that particular place of origin. It points to a specific place or region of production that determines the characteristic qualities of the product that originates there.

“Appellation of origin” is a special kind of geographical indication, used on products that have a specific quality that is exclusively or essentially related to the geographical environment in which the

products are produced. It designates both natural agricultural products, and industrial and handicraft products. Appellation of origin protects geographical names of products whose distinctive properties are mainly due to their location or origin of manufacture, and are a natural consequence of either the climate or soil or of an established manufacturing procedure, and names of products which have become generally known through use in trade indicating that respective products originate from a certain location.

Any geographical name which has become generally known through use in trade shall be excluded from the protection granted by appellation of origin.

The right to use an appellation of origin shall be granted upon obtaining an expert opinion from the competent authority.

Topographies of Integrated Circuits

The regulatory framework for protection of topographies of integrated circuits is established by the Law on Integrated Circuits (1999).

The law governs: protection requirements, registration procedure, scope and term of the rights, and infringement of rights.

Protection Requirements

Protection of the topography of an integrated circuit covers any three-dimensional disposition of elements (where at least one is active), as well as intermediates in the integrated circuits, or three-dimensional dispositions that will be part of an integrated circuit in an electronic product.

In order to be protected, topography needs to convey originality. In other words, topography is considered to be original if it is a result of its creator's own intellectual effort and if it was not already found in the semiconductor industry.

The right to protection of topography applies to its creator (or creators) when such topography results from a joint work.

Registration Procedure

The application for registration for protection should contain the name of the applicant and the creator, images of the topography (and explanation of sequences), an abstract of the characteristics of the electronic functions or functions of an integrated circuit manufactured on the basis of a protected topography, and (if already commercially exploited) the date of its first commercial exploitation.

Once the application filed before the ALPTO is formally examined, and if it is assessed as fulfilling all necessary requirements, it is then registered and a certificate is issued.

Scope and Term of Rights

The holder of protected topography should be granted exclusive rights to commercial exploitation, including the right to authorise (or prohibit) reproduction by any means or in any form, import, and sell (or otherwise distribute) topography or products that include integrated circuits containing such topography.

Exclusive right for the use of topography is granted for a period of 10 years, either as of the date the application was filed with ALPTO or as of the date when the topography was first commercially exploited

anywhere in the world. However, if the topography had not been commercially exploited, the exclusive rights expire 15 years after its fixation or encoding.

An integrated circuit may be marked with a capital “T” at the request of its rights holder.

Infringement of Rights

A person whose rights have been infringed is entitled to request damages and that the person infringing these rights is prohibited from carrying on the acts of violation. However, a person who commercially exploits an integrated circuit incorporating the protected topography, without prior knowledge of protection pending on the given topography, shall not be prevented from commercially exploiting the integrated circuit.

In case of violation, the compensation shall be calculated according to the amounts collected within the commercial exploitation of the protected topography.

Copyright and Related Rights

The regulatory framework for protection of copyright and related rights is established by the Law on Copyright and Related Rights (2005).

Copyright

The Law provides for the following regarding the copyright of the works of authorship: prerequisites for protection, scope and term of protection, and transferability of copyright.

Prerequisites for Protection

Under the Law, copyright protection applies to works of authorship from various fields of literature, art, or science. It applies to products of creative work of the human mind without taking into account the way of creation, means of practical forms of expression, their values, and destinations. Such works include written or performed works, architectural works, performances and presentations of artists and/or interpreters, sound records, and radio and television programmes.

Derived works may also (without prejudice to the original works of authorship from which they originate) be subject to copyright protection. It is the same with collections of the works of authorship, contributions, databases, or other materials, which because of their selection or arrangement constitute a separate intellectual creation of their authors.

Certain creations are excluded from copyright protection: ideas; theories; concepts; discoveries and inventions in a creative work; official texts of legal, administrative, legislative, or political nature and their translations; official symbols of the state and other public organisations and authorities; means of payment; news and press information; simple date and facts; as well as common folk expressions.

Scope and Term of Protection

An author enjoys personal non-proprietary rights such as deciding how and when the work shall be made publicly available, asking for recognition of authorship, deciding under whose name the work shall be made publicly available, asking for respect of integrity, withdrawing permission for the exploitation of the work, and objecting to authorship arbitrarily decided by others. The author also enjoys personal proprietary, or commercial, rights, such as the exclusive right of exploitation of the work in any way and form, and the right to remuneration in case of exploitation.

Copyright over a literary and artistic work shall run for the author's lifetime and for an additional 70 years following death. For the work of several authors, the additional 70 years starts at the date of death of its last author. For anonymous or works made under pseudonym, the term starts as of its first publication. For subsequent publication, this term shall apply for each publishing of the subsequent volume. For cinematographic and audiovisual works, protection expires 70 years after the death of the last person to survive, be it a designated co-author or not.

Transferability of Copyright

Only commercial copyright can be transferred to a third party through a contract. Such rights may be transferred in the exclusive or non-exclusive form. In case of the exclusive form of transfer, explicitly provided within an agreement, the owner of the original work no longer holds the right of usage of the work, during the defined period of time and in the agreed territory.

Related Rights

Besides the copyright, the Albanian Law on Copyright and Related Rights also governs related rights, including:

Rights of Interpreting and/or Performing Artists

This category comprises actors, singers, musicians, dancers, and other persons who present, sing, dance, recite, play, interpret in dramas, films, conduct orchestras, or perform an artistic or literary work, a performance of any kind (including folklore, variety shows, circus and puppet shows), as well as those interpreting and/or performing artists who play an important role for performance of a dramatic, literary, musical work, or a composition, or who conduct the orchestra or a chorus.

Proprietary rights of such artists, besides remuneration, are the following: authorise registration of their interpretation and/or performance; authorise direct or indirect reproduction of such registration; authorise or prohibit broadcasting by a cable or satellite or by any other means of their performance; authorise the distribution by sale, rent or any other way, of the record of their performance; and authorise the availability to the public of such records.

The rights of interpreters expire 50 years after the date of the public performance.

Rights of Phonogram Producers

This category comprises persons recording and fixing a work in a phonographic container (or in any other related appliance), for the reproduction of the sounds and voices directly from the performance.

The producer of phonograph records enjoys the exclusive right to distribute and to reproduce (whatever the registration or fixation process) either the phonographic containers or related appliance. Upon authorisation of the author, the phonographic producer enjoys the exclusive right of rental or lending of the phonograms he/she has produced and the right to authorise their lending or rental as well. The producer equally enjoys the right to oppose any non-authorised action for phonographic recording if such operations affect his/her commercial interests.

Property rights of the producer last for 50 years following the first settlement, and starting from the 1st of January of the consecutive year. If the recording was made available to the public, the 50-year term starts as of the date it was first made public.

Rights of Cinematographic or Other Audiovisual Work Producers

Such rights confer to the producer of a cinematographic work, or any other audiovisual work, or of the film sequence, the possibility upon author's authorisation, to exclusively authorise direct or indirect reproduction of the original works and distribution using all means, including the sale of the original works and of the copies deriving from the reproduction, and rental and lending of the original works and of its copies.

The rights conferred shall expire 50 years following the first fixation of the work.

Rights of Database Producers

Such rights give a database creator the possibility to authorise temporary or permanent reproduction (by any technical means and in any form) of the whole or part of the database, translation, adaptation, arrangement and any other form of alteration, distribution to the public of the database itself or copies of it, and communication, display, or public performance.

This right shall start as the date that the database is made available to the public, and shall expire 15 years from the 1st of January of the consecutive year.

Rights of Radio and Television Associations

Such rights comprise the rights of radio and television associations for satellite transmission and cable transmission of programmes.

These rights generally provide for the possibility of fixing and reproduction of transmissions; distribution of transmissions through sale or other forms of property transfer; re-broadcasting of the transmissions via cable, satellite, or any other technical means; communication of the transmissions to the public; adaptation and change of the transmissions; as well as import of authorised copies of such transmissions.

Court Practice

Albania's experience with IP property protection and enforcement is growing. Given economic reforms aimed at opening the economy and attracting foreign companies, awareness of IP rights has increased.

Conflicts regarding IP-related matters in Albania are exclusively resolved by the District Court of Tirana. According to the statistics provided by the District Court of Tirana, from 2006 until 2007, there were 17 cases of IP conflicts resolved. During 2008, that number increased to 26 cases, and at the moment, there are several ongoing judicial proceedings in the District Court of Tirana. The majority of the disputes relate to trademark infringements, although lately, many copyright conflicts have been dealt with by the competent administrative bodies (*i.e.*, General Directorate of Patents and Trademarks, or Albanian Office for Copyrights), and well as judicial authorities. Criminal proceedings however, still remain quite rare.

Generally, cases brought to the court by private parties deal with civil claims on infringement of IP rights. Administrative or criminal measures are the responsibility of state authorities, and are not investigated without a report from the parties whose rights are infringed. However, since criminal investigation can complicate the civil procedure, generally private parties choose to solve their cases by means of civil lawsuits. Courts cannot act *ex officio*, without a prior request from the competent authorities, but there is no doubt that if such an infringement is presented as a criminal offence, courts will not hesitate in applying the appropriate provisions.

Albanian criminal law provides sanctions related to IP crimes varying from fines to a maximum of five years of imprisonment, and judicial awards depend on the intensity of the infringement and the damages.

In a civil lawsuit, the timeframe for rendering judgement mostly depends on the instance of the court which is adjudicating the case. Usually the term for obtaining a decision from the court of first instance may be from six to nine months. However, term² for obtaining a decision of the Court of Appeal is at least one year. Finally, the term for obtaining a decision from the Supreme Court is about one year.

The enforcement of a decision can be reached voluntarily by the parties or by the Execution Office within the Ministry of Justice. In the latter case, the interested party may request a decision for the execution of the executive title. At the start of the execution, the sheriff sends to the debtor a notice to execute voluntarily the obligation contained in the execution order within 10 days. After this, the sheriff shall perform the procedure of execution himself. If the judgment is not enforced voluntarily by the parties, it will be executed by the sheriffs. In special cases the sheriff may request assistance from the authorities of public order and police.

Judicial practice regarding the enforcement of IP rights has been fairly consistent. Decisions rendered by the courts refer not only to domestic law, but also to international agreements ratified by the Republic of Albania.

Furthermore, following the entry into force of the Stabilisation and Association Agreement between Albania and EU on 1 April 2009, Albania has undertaken the obligation to bring its legislation in line with the EU legal framework. Hence, the judicial practice in Albania regarding these matters is going to follow the European Court of Justice Jurisprudence, which can be considered as a guarantee for European individuals and companies of the same legal and judicial standards as in other European countries.

The most interesting cases to be mentioned in the IPR field are those of infringements of some well-known trademarks and designs, such as Hard Rock Café Ltd v. Tirana Rock Cafe, GALLUP Inc v. MJAFT Foundation/BYLA, Red Bull v. Red Rock, Danone v. Arbi, Pampers, etc.

International Treaties

In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are in force in the Republic of Albania:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention 1967, as amended 1979), ratified by Albania in 1992;
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971), ratified by Albania in 1994;
3. WIPO Copyright Treaty (Geneva, 1996), ratified by Albania in 2005;
4. WIPO Performances and Phonograms Treaty (Geneva, 1996), ratified by Albania in 2002;
5. Madrid Agreement Concerning the International Registration of Marks (1891), ratified by Albania in 1995;

² The term provided includes the waiting time necessary for the adjudicating body to prepare the case; at this instance, generally two to three court hearings are needed.

6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), ratified by Albania in 2003;
7. Patent Cooperation Treaty (PCT, Washington, 1970), ratified by Albania in 2005;
8. Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement);
9. Universal Copyright Convention (Geneva Text, 1952), ratified by Albania in 2003;
10. Universal Copyright Convention (Paris Text 1971), ratified by Albania in 2003;
11. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961), ratified by Albania in 2000;
12. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971), ratified by Albania in 2001;
13. Paris Convention for the Protection of Industrial Property (1883), ratified by Albania in 1995;
14. Strasbourg Agreement Concerning the International Patent Classification (1971), ratified by Albania in 2007;
15. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), ratified by Albania in 2003;
16. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989), ratified by Albania in 2003;
17. Hague Agreement on the International Deposit of Industrial Designs, of November 6, 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 14 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967), ratified by Albania in 2007;
18. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, as adopted in Geneva on 2 July 1999);
19. International Convention for the Protection of New Varieties of Plants, ratified by Albania in 2005.

On the other hand, the republic of Albania has not yet ratified the following conventions or agreements:

1. Locarno Agreement Establishing an International Classification for Industrial Designs (adopted in 1968).
2. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (adopted on 12 June 1973, and amended on October 1, 1985).
3. Patent Law Treaty (adopted in Geneva on 1 June 2000).

4. Trademark Law Treaty (adopted in Geneva on 27 October 1994).
5. Nairobi Treaty on the Protection of the Olympic Symbol Party (adopted in Nairobi on 26 September 1981).

BOSNIA AND HERZEGOVINA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Bosnia and Herzegovina

This chapter reviews the legal framework in Bosnia and Herzegovina for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

Intellectual property rights in Bosnia and Herzegovina (BIH) are regulated by three main, IPR-specific laws and a series of secondary regulations. The three main laws are:

- Law on Copyright and Related Rights (2002)
- Law on Industrial Property (governing trademarks, patents, industrial design, and geographical indications) (2002)
- Law on Protection of New Plant Varieties in Bosnia and Herzegovina (2004).

Therefore, the following forms of IPRs are protected in BIH:

- Patent (including Technical Improvements)
- Trademark
- Indications of Geographical Origin
- Industrial Design
- Copyright
- Related rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Radio Broadcasting Organisations
- Plant Varieties.

In addition, certain aspects of IPRs enforcement are governed by the following general regulations:

- Customs Policy Act (2004)
- Criminal Code of Bosnia and Herzegovina (2003)
- Criminal Code of Federation of Bosnia and Herzegovina (2003)
- Criminal Code of the Republic of Srpska (2003)
- Trade Act of the Federation of Bosnia and Herzegovina (2004)
- Electronic Signatures Act of Bosnia and Herzegovina (2006).

It appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles, or information and communication technology sectors.

Industrial Property Enforcement

Mechanisms for enforcement of industrial property rights are:

Court Protection of Industrial Property

A holder of industrial property rights can file the following lawsuits: lawsuit due to infringement of industrial property right (“Infringement Action”); lawsuit for challenge of patent, industrial design, or trademark (“Challenge Action”); and lawsuit for recognition of authorship (“Authorship Recognition Action”).

In the event of an industrial property right infringement, the Infringement Action may be filed and the plaintiff may request termination of the infringement, destruction of the infringing objects and infringing tools and equipment, reimbursement of pecuniary damages, and publication of the court decision at the expense of the defendant. The Infringement Action may be filed by an applicant, the right holder, user of the geographical indication or a holder of the exclusive right relating to infringed right, within five years from the day the infringement occurred. At the request of the plaintiff, the court may order a provisional measure by which an infringement of the right should be avoided. In addition, the court may decide to secure evidence of the probable infringement. The request for granting a provisional measure or for securing evidence should be accompanied by evidence that the infringement is made or is about to be made. The procedure on the request is urgent.

An inventor, his/her heir or other legal descendant may file the Challenge Action with the competent court requesting that the court declare him/her as the patent holder if the patent has been granted in the name of a person other than the inventor, heir or other legal descendant. The author of an industrial design, his/her heir or other legal descendant may file the Challenge Action with the competent court requesting that the court recall the industrial design, provided that the industrial design has been granted in the name of a person who is not the industrial design author, heir or other legal descendant. A natural person or a legal entity which uses the mark, registered as a trademark in the name of another person regarding the same or similar goods and/or services, for marking his/her goods and/or services in the market, may file the Challenge Action with the competent court requesting that the court declare him/her as the trademark holder, provided that he/she proves that the mark was generally known as the mark used for marking his/her goods and/or services before the defendant had even filed the trademark application, within five years from the date when the trademark was entered into the appropriate register.

An inventor or author of an industrial design may file an Authorship Recognition Action with the competent court requesting that the court state this in all documents regarding the patent or industrial design. In addition, he/she may request publication of the court decision at the expense of the defendant and remuneration of the moral damages suffered. This action may be filed throughout whole period of the patent or the industrial design duration. After death of the inventor or author, the action may be filed by the heirs.

- Protection of the Industrial Property before the Customs Authorities

At the request of a holder of the industrial property right who makes it credible that his/her right would be infringed by import of certain goods, the customs authorities may order inspection of the goods by the importer (or representative) and seizure, putting out of market, or destruction of the goods. The customs authorities are obliged to notify without delay the importer of the goods and the person to whom

the goods belong about the measures taken. However, if the right holder does not initiate the appropriate legal proceedings within seven days, the customs authorities will recall the measures taken.

– Penal Policy Regarding the Industrial Property

The Law on Industrial Property regulates liability for criminal offences (monetary fines or imprisonment up to five years) and petty offences (monetary fines).

IPRs Authorities

There are two IPRs authorities in Bosnia and Herzegovina, namely the Institute for Intellectual Property (the “Institute”) and the Administration of Bosnia and Herzegovina for protection of Plants Health (the “Administration”).

IPRs Transfer and Licensing

The holder of a patent, trademark, or industrial design can transfer his/her right entirely or partially. The transfer needs to be in written form and it is legally binding for third parties as of its inscription in the register.

The agreement on licensing can be concluded with respect to the use of a patent, industrial design, or trademark. Any provision of the agreement on licensing limiting the user of the license in a way which is not based on the right described in the agreement would not be valid. The license is inscribed in the register and published in the *Official Gazette*; if not inscribed in the register, it is not legally binding for third parties.

In addition, the Court of Bosnia and Herzegovina is exclusively competent for issuing compulsory licenses at the request of the interested party, if the patent holder does not use protected invention or if it is not enough for fulfilling the needs of the domestic market and if he/she refuses to conclude the license agreement. The compulsory license cannot be granted if the patent holder proves the existence of legal reasons justifying not using the invention, or using the invention to an insufficient extent. The compulsory license cannot be exclusive and it lasts only as long as the reasons for granting last.

Patent and Technical Improvements

Patent

The regulatory framework for patent protection is established by the Law on Industrial Property (2002).

Requirements for Protection

An invention can be protected by a patent if it is new, involves an inventive step, and is industrially applicable. An invention is considered new if it does not represent the state of art (the state of art represents everything that has been made publicly available in the world, in written or verbal form, by use or in any other way, before the patent application filing date).

An invention has an inventive step if an expert cannot find the solution to a problem in an obvious way, based on the state of art.

An invention is industrially applicable if the subject of the invention is technically possible and if it can be produced or used in any area of industry.

In addition, certain creations are not considered to be inventions, even if they meet the abovementioned requirements. These creations are discoveries, scientific theories, mathematics methods, aesthetic creations, plans and methods for conducting mental acts, playing games or doing business, computer programs, and presentation of information.

Patent Granting Procedures

The procedure for patent registration is initiated by filing an application with the Institute. Separate patent applications should be filed for each invention (nevertheless, registration of more inventions can be requested by a single application if such inventions are connected to each other in a way that represents a unique inventive concept). Upon the applicant's request, the application may be transferred to an application for design registration (the transferred application retains the date of filing of the first application). Exceptionally, the applications of domestic natural persons and legal entities concerning the inventions significant for the defence or security of the country (secret inventions) should be submitted to the competent Internal Affairs Ministries (the "Ministries"). If the Ministries determine that the subject of a patent application is not a secret invention, the application will be forwarded to the Institute which will continue the proceedings. Secret inventions can be exploited exclusively by the Ministries and patents for secret inventions shall not be published. Secret inventions can be patented abroad but only upon authorisation of the Ministries.

After filing, the Institute examines whether the patent application fulfils all required elements. If there are no omissions in the application and fees have been paid, the application will be published in the Official Journal at least 18 months after submission, or as of the date the patent was claimed.

After publication of an application, the Institute grants the patent, provided that applicant has paid the expenses for issuing the Patent Certificate and Patent Specification. The patent will be entered in the Register. Nine years after the application filing, the patent owner or the holder of the exclusive right over the patent is obliged to submit to the Institute evidence that the patented invention fulfils all conditions for patent protection; otherwise, the patent will cease to be valid. On the basis of this evidence, the Institute will issue a decision by which it determines that the conditions for patent protection are fulfilled (completely or partially; if these conditions are fulfilled partially, the Institute will accordingly limit further term of patent claims) or a decision by which prior registration of the patent will be annulled.

In addition, an international patent application may also be filed with the Institute further to (PCT) ("PCT Application"). The PCT Application may be filed with the Institute as a receiving office (if an applicant is a natural person who is a national of BIH or a legal person whose principle place of business is in BIH) or as a designated or elected office (regarding PCT applications in which BIH has been, further to PCT, designated or elected for the granting of a national patent). If the Institute is acting as a designated or elected office, the PCT application should be filed with the Institute within 34 months from the date of priority and should be published in the Official Journal 18 months after the filing date of the application or the claimed date of priority.

Scope and Term of Patent Protection

A patent provides its holder with certain exclusive rights. If the subject of the patent is product: prohibiting third parties from creating, using, offering for sale, placing on the market, or importing a protected product without authorisation. If the subject of the patent is a procedure: prohibiting third parties from using the procedure, offering for sale, or importing a product created by the procedure without authorisation.

Nevertheless, there are certain limitations to these exclusive rights, such as acts done with regard to private and non-commercial use of patented invention. Furthermore, if a protected product is placed on the market in the territory of BIH by the patent owner or with the patent owner's consent, the person coming into possession of such a product may use and dispose of it freely (*exhaustion of patent owner rights*).

In addition, a patent has no effect against a person acting in good faith who has, before the date of priority, already started exploiting a protected invention in production in the territory of BIH or has made all necessary preparations to initiate such use (*right of prior user*). However, that person is entitled to continue exploiting the invention exclusively for production purposes, in his/her own plant or in the plant of another person for his/her own needs, and cannot assign the right to exploitation of the invention to another person, except together with the enterprise or part of the enterprise in which the preparation for use or the use of the invention has taken place.

A shortened term patent can be acquired by entering it into the Register. While a patent lasts for 20 years from the application filing date, a shortened term patent lasts 10 years from the application filing date, provided that prescribed fees for maintaining the right are paid. A patent can be extended for up to five years upon the expiry of the 20-year period, but only in exceptional cases; if a state of war or similar extraordinary circumstances has been declared. Prolongation lasts as long as such circumstances last, or if the subject-matter of a patent is a product or a process which requires, prior to initiation of its commercial use, certain legally regulated procedures for issuing an approval (in which case, prolongation lasts as long as such procedure lasts). The holder of a shortened term patent may relinquish his/her right by filing a written statement with the Institute, in which case his/her right will cease to be valid on the first day after the day the statement was submitted.

Patent Annulment

Decisions on shortened term patent registration may be annulled at any time during the term of its protection, provided that, at the time of passing the decision, the requirements for shortened term patent registration have been fulfilled. Stated procedure may be initiated *ex officio* or upon the request of an interested party or the State Prosecutor.

Technical Improvement

The Law on Industrial Property does not stipulate provisions regarding technical improvements, but it stipulates that provisions of previous law still apply. Technical improvement is considered to be every rationalisation of the work accomplished by a change of common technical assets and procedures in all phases of the work process, by which certain improvement has been made (such as an improvement in product quality, the savings in material and energy, a better employment of machinery and installations).

Technical improvements cannot be patented but they can be protected by a decision on acceptance of the technical improvement issued by the company where the author of the technical improvement works (the "Author"). The Author is obliged to notify, in writing, the company where he/she works and made the technical improvement, about the technical improvement. On the basis of such notification, the company is obliged to examine the technical improvement within three months and to notify the Author, in writing, whether it accepts it. If so, the company is obliged to start using the technical improvement within one year. If the company does not accept the improvement, the Author is entitled to offer the technical improvement to another company. The Author is entitled to remuneration for the use of the technical improvement for a period of up to five years from the day it was first used.

Trademark

The regulatory framework for trademark protection is established by the Law on Industrial Property (2002) which, as indicated above, governs protection of all industrial property rights in BIH.

Prerequisites for Trademark Registration and Reasons for Exclusion of Protection

Any mark can be used if it can be graphically represented and is appropriate for distinction of goods or services of a market participant compared to goods and services of other market participants. All circumstances, and especially time and the extent of use of a mark in BIH, will be considered in order to estimate if a certain mark is adequate for distinction of goods or services in the market.

A mark cannot be protected by a trademark: if the mark is in contravention with the public order or morals; if it cannot be graphically represented; if it is not adequate for distinction of goods or services in the market; if it contains only a mark which reflects the type, quality, quantity, purpose, value, names of places, *i.e.*, geographical origin of the products; if it is usual in everyday speaking or trade practice; if it represents the model needed for certain technical results; if it can deceive the public; if it contains state or other public cognisance, flag, or emblem; if it contains official marks for guaranty of quality, national, or religious symbol; if it is the same or similar as an earlier trademark for the same type of goods or services; if it infringes copyright or other industrial property rights; or if it is a well-known trademark in BIH within the sense of article 6bis of the Paris Convention and article 16, paragraph 3 of TRIPS.

Trademark Registration Procedure

Under the Law, an application for trademark registration must be filed with the Institute (using a separate application for every trademark that is to be registered). The Institute examines the application and whether the mark fulfils the requirements to be registered as a trademark. If all the requirements are fulfilled, the Institute will pass a decision on trademark registration and, after entering it in the trademarks register, issue a Certificate on Trademark.

In addition, an application for international registration of the mark can also be submitted to the Institute which will forward it to the World Intellectual Property Organization (WIPO).

Scope and Term of Trademark Protection

Regarding the scope of trademark protection, a trademark holder has the exclusive right to mark all the goods and/or services in the market for which the trademark has been registered, as well as to use the “R” mark in order to inform the public that this mark is a registered trademark.

The trademark lasts for 10 years as of the day when the application is submitted. It can be renewed an unlimited number of times, by submitting a request for trademark renewal to the Institute and paying the prescribed renewal fee every 10 years.

Trademark ceases to exist in the following cases: upon expiry of the 10-year term for which it was registered if the trademark holder does not file the request for renewal and does not pay the fee; if the trademark holder renounces the right on trademark; if the trademark holder does not use the same trademark for five years continuously; court decision or decision of competent authority; or if a collective trademark is being used contrary to the act on collective trademark. In the case where the rights of a trademark holder cease to exist due to the fact that he/she did not pay prescribed fees, the trademark holder has exclusive right to file the request for new registration of the trademark, within one year from the day when the trademark ceased to be valid.

Trademark Annulment

Decisions on trademark registration and international trademark registration for BIH can be annulled if it becomes clear that at the time when the decision was passed, the requirements for trademark registration had not been fulfilled, or after the decision was passed, the trademark became a generic term for the goods or services for which it was registered. The annulment procedure can be initiated at any time during the trademark's term of protection, and it can be initiated *ex officio* or upon the request of interested party or the State Prosecutor.

Industrial Design

The regulatory framework for protection of industrial designs is established by the Law on Industrial Property (2002) which, as indicated above, governs protection of all industrial property rights in BIH.

Under the Law, the procedure for recognition of an industrial design is initiated by filing an application with the Institute. The application may request recognition of one or more (up to 100) designs.

The Institute examines the application and considers that the application is complete if it contains all the prescribed elements, including fees and procedural costs. If the Institute determines that the application is not complete, it will invite the applicant to make it complete within 90 days or the application will be denied. If the application fulfils the requirements, the decision will be published in the Official Journal. Following the decision on the industrial design recognition and inscription in the appropriate register, the Institute issues the Certificate on Design to the right holder.

An application for industrial design can be converted to a patent application at any point until the termination of the registration procedure, provided that the applicant pays the prescribed fee and the procedural costs. In such case, a patent application retains the date of an industrial design application.

Industrial design confers on its holder the exclusive right to prevent any third party not having his/her consent to make, sell, or import the products that appear like the design or are incorporated in a product which is a copy of the design or predominantly represents a copy of the design, provided that such actions have been carried out for the commercial purposes. However, there are certain limitations of exclusive rights conferred by industrial design, that is, certain acts which the right holder cannot forbid to the third parties. These include acts done privately and for non-commercial purposes, and acts done for purpose of public notification or education, if these acts are in accordance with good business practice and are not causing any damage to the right holder.

Industrial design lasts for 10 years from the application filing date, provided that prescribed maintenance fees are paid.

Decisions on industrial design recognition may be annulled at any time during the term of protection if it is determined that, at the time of passing the decision, the requirements for industrial design recognition had not been fulfilled. The annulment procedure may be initiated *ex officio* or at the request of an interested party or the State Prosecutor.

Geographical Indications

The regulatory framework for protection of geographical indications is also established by the Law on Industrial Property (2002).

Under the Law, in order to register a geographical indication for the territory of BIH, an application should be filed with the Institute. An application may be filed by the associations of natural persons and

legal entities, chambers, municipalities, local communities, or state authorities. Filing fees and procedural costs are filed along with the application. The application form is signed and sealed by the applicant. In addition, the application should be accompanied by the rules containing particulars of the geographical indication regarding its appearance and its use (the “Rules”).

The Institute examines whether the application fulfils all the requirements. If the Institute notes that there are omissions, the applicant has 90 days to remedy them before the Institute denies the application.

Once the application has been approved and the fees and procedural costs have been paid, the Institute will pass a decision on geographical indication registration. Geographical indication will be entered in the Register and published in the Official Journal. No fees are to be paid for maintenance of geographical indication.

Geographical indication is a collective right which may be used by all participants in the market which manufacture and place on the market the goods to which the indication relates, in accordance with the Rules. Use of geographical indication is forbidden if a translation of the geographical indication was used or if the geographical indication contains a marking such as “type”, “style”, or “imitation”, as well as if the goods do not origin from the territory to which the indication relates even if authentic origin of the goods is stated.

Duration of geographical indication is not limited. However, it will cease to be valid if it is erased from the registry at the request of the competent state authorities.

Plant Varieties

The regulatory framework for protection of new plant varieties is established by the Law on Protection of New Plant Varieties in Bosnia and Herzegovina.

Under the Law, a person entitled to protect a new plant variety is the improver. The holder of the stated right can be a citizen of BIH, other natural person with permanent residence in BIH, or legal entity whose registered seat is in BIH. Foreign natural persons and legal entities enjoy equal rights as domestic natural persons and legal entities, under condition that such protection is stipulated by international agreements and conventions ratified or signed by BIH.

The procedure for protection of a new plant variety begins with filing an application with the Administration of Bosnia and Herzegovina for Plant Health Protection (the “Administration”). The Administration examines the application and fees. If the application is incomplete, or if the fee has not been paid, the Administration invites the applicant to correct the application within 30 days or it will be denied. If the application is complete, the applicant receives the certificate and the application is entered into the register of applications and published in the *Official Journal of the Administration*.

After examining the formal content of an application, the Administration examines whether the plant variety is new and if the improver is eligible for improver’s rights. If at this point it determines that the requirements for obtaining the improver’s rights are not fulfilled, the application will be denied.

If the application fulfils the requirements, the next step is professional assessment of the plant variety. If it is determined, based on professional assessment, that the plant variety fulfils prescribed requirements, the Administration issues the decision on protection of respective plant variety, which is published in the Official Journal of the Administration.

The improver’s rights can be terminated upon request of the rights holder. In addition, a decision on protection of the plant variety may be annulled by the Administration in certain cases (such as an

application for a plant variety that is not new, or an improver's right assigned to a person who is not eligible).

Any person who violates protected plant variety or a plant variety applied for protection, must pay for damages and the person whose rights have been violated can request a termination of the violation. The lawsuit due to violation of respective rights can be filed a maximum of five years after the violation has occurred.

With respect to the penal policy, persons acting contrary to the Law on Protection of New Types of Plants in Bosnia and Herzegovina are liable for an offence and monetary fines as the sanctions.

Copyright and Related Rights

The regulatory framework for protection of copyright and related rights is established by the Law on Copyright and Related Rights (2002).

Copyright

Under the Law, a work of authorship is protected by copyright as of the day it was created and its protection is not conditional upon any kind of formalities, such as its registration. An author enjoys both moral and pecuniary rights with respect to his/her work of authorship. An author is the only person to utilise his/her work of authorship, although others can utilise it with the author's permission and upon payment of appropriate remuneration. Other persons can be entitled to utilise the work based on authorship agreement or inheritance.

Work of authorship is protected during the author's lifetime and 70 years after death. In the case of joint authorship, the 70-year term begins when the last co-author dies. When the author is anonymous or works under a pseudonym, or when a legal entity is the holder of pecuniary rights with regard to the work of authorship, the 70-year term starts as of the year of publishing.

Related Rights

Related rights governed by the Copyright Law of Bosnia and Herzegovina are the following:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Broadcasting Organisations.

Performer Rights last for 50 years as of the year which follows the year of the performance.

Rights of Phonogram Producers last for 50 years as of the year which follows the year when the phonogram was published or recorded.

Rights of Radio Broadcasting Organisations last for 50 years as of the end of the year of broadcasting.

Copyright and Related Rights Enforcement

A person whose copyright or related right has been infringed is entitled to ask for protection regulated by the Law on Copyright and Related Rights, as well as damage remuneration regulated by the Law on

Contracts and Torts. Upon the plaintiff's request, the judge may pass a decision for the defendant to stop the infringement, to retrieve the condition prior to infringement, to destroy illegally produced copies of the work of authorship (as well as the equipment used to create such copies), or to pass the decision on publication of the court decision at the defendant's cost. When infringement is conducted with intention or by negligence, the plaintiff may request from the defendant remuneration in the amount up to two times the contractual or usual license fee he would have obtained if the work of authorship has been used legally, irrespective of whether the infringement caused any actual damage or not. In addition, a court may adjudge pecuniary remuneration for the author in the case of infringement of moral rights, based on general provisions of the Law on Contracts and Torts, irrespective of remuneration of pecuniary damage and even if there is no pecuniary damage.

At the request of the authorised person (the holder of the respective right who makes it credible that his/her copyright or related right is or will be infringed), the court can determine a temporary injunction (such as temporary seizure or removal from the market of objects with which the infringement has been made, or objects created as the consequence of the infringement, or which can serve as proof that infringement has been made, or termination of activities which caused the infringement or which could cause the same).

There is also a mechanism of protection of intellectual property rights at the state border conducted by the customs authority. Customs officials have the responsibility to inform intellectual property rights' holders on possible export or import of goods by which such holders' rights would be infringed. If the rights holder makes it credible that his/her rights will be infringed, the customs authority may order the goods to be retained and inform the rights holder as well as the person authorised to exploit such goods. If no objection is filed within 14 days from the day the notification is received, the customs authority will order seizure of temporary retained goods.

Liability for criminal offences (monetary fines or imprisonment up to five years) and for petty offences (monetary fines) is governed by relevant legislation.

Court Practice

The courts competent for resolving disputes related to the infringement of IPRs are the municipal courts in the Federation of Bosnia and Herzegovina and the Republic of Srpska (commercial departments), as well as the Court of Bosnia and Herzegovina. There have been approximately 10 cases of IPR infringement brought in front of stated courts and they mostly refer to trademark infringement.

The first instance proceedings lasts around six months and the second instance proceedings last around two to three years. The criminal proceedings last approximately two to three years.

Penal policy in cases of IP rights infringement appears mild as judges tend to impose monetary fines on offenders. For example, in one case of trademark infringement and unfair competition, with respect to the unauthorised use of a well-known trademark relating to 8 362 pairs of running shoes, the Court of Bosnia and Herzegovina passed a decision adjudging the offender to monetary fine in the amount of approximately EUR 1 500.

International Treaties

1. In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are in force in Bosnia and Herzegovina:
2. Convention Establishing the World Intellectual Property Organization (WIPO Convention , 1967, as amended 1979) - 1992;

3. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act, 1971) -1992;
4. Madrid Agreement Concerning the International Registration of Marks (1891) - 1992;
5. Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (1957) - 1992;
6. Patent Cooperation Treaty (PCT, Washington, 1970) - 1996;
7. Universal Copyright Convention (Geneva Text, 1952) - 1993;
8. Universal Copyright Convention (Paris Text 1971) - 1993;
9. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971) - 2009;
10. Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974) - 1992;
11. Paris Convention for the Protection of Industrial Property (1883) - 1992;
12. Locarno Agreement Establishing an International Classification for Industrial Designs (1968) - 1992;
13. Strasbourg Agreement Concerning the International Patent Classification (1971) – ratified 2008, entered into force 2009;
14. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) - 2009;
15. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989) - 2009;
16. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs (as adopted in Geneva on 2 July 1999) - 2008;
17. Trademark Law Treaty (1994) – 2006.

On the other hand, Bosnia and Herzegovina has not yet ratified the following conventions or agreements:

1. WIPO Copyright Treaty (Geneva, 1996);
2. WIPO Performances and Phonograms Treaty (Geneva, 1996);
3. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement). This Agreement is not subject to ratification, but incorporation of its provisions in the national legal system is a condition for WTO membership (Bosnia and Herzegovina is not a member of WTO);

4. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961);
5. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973);
6. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967);
7. Patent Law Treaty (2000);
8. International Convention for the Protection of New Varieties of Plants (1961).
9. Nairobi Treaty on the Protection of the Olympic Symbol Party (1981).

Taking into consideration that CEFTA was signed on 22 December 2006 and came into force in Bosnia and Herzegovina on 22 November 2007, it is important to note five newly ratified conventions: Phonogram Convention, Strasbourg Agreement, Budapest Treaty, Madrid Protocol (all ratified 2009) and Geneva Act of the Hague Agreement (ratified 2008), as indicated above.

CROATIA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Croatia

This chapter reviews the legal framework in Croatia for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

Intellectual property rights in Croatia are regulated by six main, IPR-specific laws and a series of secondary regulations. The laws are:

- Patent Law (2003);
- Trademark Law (2003);
- Industrial Design Law (2003);
- Law on Geographical Indications and Designations of Origin of Products and Services (2003);
- Law on Protection of Topographies of Semiconductor Products (2003);
- Law on Copyright and Related Rights (2003).

Therefore, the following forms of IPRs are protected in Croatia:

- Patents
- Trademarks
- Industrial Design
- Indications of Geographical Origin
- Topographies of Semiconductor Products
- Copyright
- Related rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Videogram Producers
- Rights of Radio Broadcasting Organizations
- Rights of Publishers
- Rights of Database Producers.

In addition, certain aspects of IPR enforcement are governed by the following regulations:

- Food Act (provisions relating to geographical indications and designations of origin);

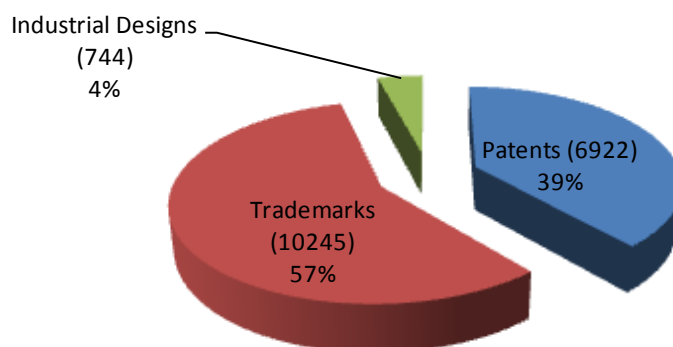
- Vine Act (provisions relating to geographical indications);
- Trade Act (provisions relating to unfair competition with respect to intellectual property rights);
- Consumer Protection Act (provisions relating to unfair business practice with respect to intellectual property rights).

It appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles, or information and communication technology sectors.

IPRs Authority

The state authority with respect to the intellectual property rights in Croatia is the State Intellectual Property Office of the Republic of Croatia (the “IP Office”). Figure 3 provides a breakdown of IP applications filed with the Croatian IP office in 2008.

Figure 3. Applications Submitted in 2008 (including International Applications)



Source : Croatian IP Office, Annual Report 2008.

Patent

The regulatory framework for patent protection is established by the Patent Law.

Requirements for Patent Protection

Under the Law, the right to be a patent holder belongs to the inventor or his/her legal successor. If the invention has been created by more than one inventor, they have collective patent right.

A patentable invention can be any invention from a technical area which is new, involves an inventive step and can be applied to an industry. A patent can also be granted for inventions relating to products containing biological material, procedures used to produce (or process or use) such biological material and biological material isolated from a natural environment or produced by technological procedures.

Discoveries, scientific theories and mathematical methods, computer programmes, aesthetic creations and presentation of information are not patentable. In addition, the following inventions are excluded from patent protection: inventions concerning animal breeds or plant types, inventions concerning the human body and the simple discovery of one of its elements, inventions concerning diagnostic or surgical methods and treatment methods practiced directly on humans or animals, as well as inventions contrary to public order or morality.

Patent Granting Procedure

The procedure for patent registration is started by filing an application with the Croatian IP Office. It can be filed by the inventor or his/her successors. Once a patent application is filed, the IP Office examines whether it fulfils formal requirements and whether it is eligible for publication. If the application fulfils all the formal requirements, it is published in the *Official Gazette* of the IP Office at least 18 months after the filing date, *i.e.* priority date.

Six months after publication in the *Official Gazette*, the applicant may submit to the IP Office either: a request for a patent grant based on substantial examination of the patent application, or a request for a patent grant without substantial examination of the patent application (*consensual patent*). The type of request determines further steps. Figure 4 provides a breakdown of patent applications filed with the competent authority in Croatia in 2008.

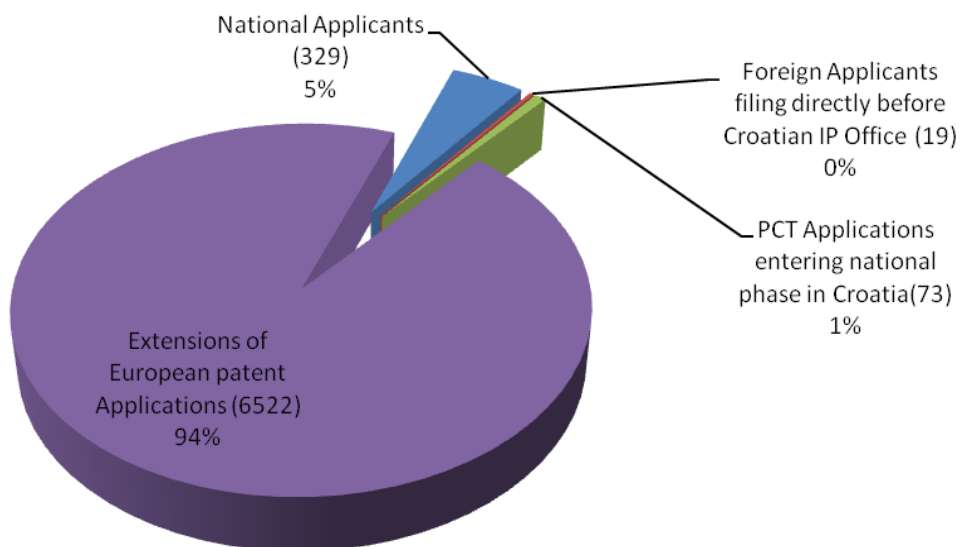
Scope and Term of Patent Protection

The patent holder is entitled to use the protected invention. Without his/her approval, it is forbidden for any other person to make, offer for sale, use, import or export a product made according to the invention; to apply the procedure which is the subject of the invention; or to offer for sale, use, import or export a product directly produced based on the procedure which is the subject of the invention.

The scope of exclusive rights of a patent holder is determined by the patent requests which have been accepted in the patent recognition procedure.

A patent lasts for 20 years as of the filing date of the patent application. A consensual patent expires 10 years after the patent application filing date.

Figure 4. Patent Applications Structure by Applicant in 2008



Source : Croatian IP Office – Annual Report 2008.

Patent Licensing and Transfer

The right to use a protected invention can be ceded through an agreement on licensing. A patent can be subject to a total or partial transfer. The agreement on licensing and agreement on transfer are concluded as stipulated by the Law on Contracts and Torts, with the consent of all rights holders.

Patent Annulment

A patent may be declared null and void at any time at the request of any natural or legal person or a State Attorney, if the patent has been granted for subject matter which may not be protected by a patent, for an invention which (on the filing date of the patent application) was not new or did not include an inventive step, for an invention which is not applicable to industry, for an invention which is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, for subject-matter extending beyond the content of the patent application, or on behalf of a person not entitled to patent protection for the invention.

Patent Enforcement

Civil law protection of patents makes it possible to file a lawsuit for determining the right to patent protection if a patent application has been filed by a person not entitled to such a right or, in case of a jointly created invention, by a person who is not the sole person entitled to such a right.

It is possible to file a lawsuit for infringement of the inventor's moral right. The inventor is entitled (through a civil action before the court) to request that his/her name be entered on the patent application and all the documents issued for the patent, as well as in the appropriate registers, if the person mentioned in the application is not the inventor.

It is also possible to file a lawsuit due to patent infringement. This lawsuit may be initiated within three years from the day of learning of the infringement and the infringer, but not more than five years from the day on which the infringement was committed.

In addition, the Patent Law stipulates that any legal entity which acts contrary to the provisions of the Patent Law will be liable for misdemeanour and fined up to approximately EUR 13 630, and the responsible person in the legal entity will be fined up to approximately EUR 1 365. Any individual will be fined up to approximately EUR 1 090 for misdemeanour.

Trademark

The regulatory framework for protection of trademarks is established by the Trademark Law.

Prerequisites for Trademark Protection

The Trademark Law applies to individual, collective and guaranty trademarks. A mark which can be protected as a trademark is any mark which can be graphically represented, especially words (including personal names, paintings, letters, numbers, shapes or packaging of products, three-dimensional shapes, colours and combinations of all aforesaid marks), provided that they are appropriate for distinguishing the products or services of one entrepreneur from the products and services of other entrepreneurs.

Trademark Registration Procedure

Under the Law, a trademark registration procedure is launched by filing a trademark application with the IP Office, *i.e.*, in order for a trademark to be protected, it has to be registered. Any natural person or

legal entity may be an applicant for trademark registration. For foreign trademark applicants, legal representation is obligatory.

After receiving the application, the IP Office examines its formal completeness, *i.e.*, regularity, as well as any obstacles for trademark registration. If a mark can be registered and the examination is successfully passed, the application will be published.

Within three months from the publication date, any third party owning an earlier trademark, company name, copyright or other relevant right may file an objection against the published application on the grounds of identity or similarity of marks and identity or similarity of goods and services, or based on a similar reputed trademark, even when there is no similarity of goods and services. However, if no objection is filed and registration fees for the first 10 years of protection are paid, a trademark will be registered.

Scope and Term of Trademark Protection

Registered trademark provides a trademark holder with the exclusive rights to the trademark. The trademark holder has the right to prevent all third parties from using in the market without permission: any mark which is the same or similar to the trademark for marking the same goods or services for which the holder uses it, any mark which could mislead consumers based on the similarity of the marks, any mark which is the same or similar to the trademark (even if such mark is not used for the same goods or services as the holder's trademark) when such trademark enjoys a reputation in Croatia and when the use of such mark benefits from the reputation of the trademark. At the same time, the trademark holder can also forbid: marking products or their packaging with the respective trademark, offering for sale products marked with the respective trademark, exporting or importing products marked with the respective trademark, or using the trademark in business documents and advertising.

The trademark holder has these rights towards third parties as of the date when the trademark registration was published.

Once a trademark is registered, trademark protection lasts for 10 years as of the date of filling the application. The registration can be renewed an unlimited number of times, for a period of 10 years each, provided that the trademark holder files the renewal request with the IP Office before the expiry of the registration or within a six-month grace period.

Licensing and Transfer of Trademarks

The trademark holder can transfer the trademark to other persons, in total or partially. Upon the request of one of the parties, transfer of the rights is registered and published in the IP Office *Official Gazette*.

A trademark can be the subject of a license, for all or some of the products or services for which it has been registered and for the entire territory of Croatia or its part. A license can be exclusive or non-exclusive. The owner of a non-exclusive license can initiate proceedings because of a trademark infringement only upon the consent of the trademark holder. The owner of an exclusive license can initiate proceedings because of a trademark infringement if the trademark holder (after official notification) does not initiate proceedings. Upon the request of one of the parties, the license is registered and published in the IP Office *Official Gazette*.

Trademark Annulment

The procedure for declaring a trademark invalid may be initiated *ex officio*, at the request of the state attorney or at the request of an interested person. Where the grounds for refusal of trademark registration,

trademark revocation or for a declaration that a trademark is invalid exist for only some of the goods or services for which the trademark has been applied for or registered, registration refusal, revocation or the declaration that a trademark is invalid shall cover those goods or services only. In addition, any trademark which has not been in genuine use in Croatia for five years as of the date of its registration (without adequate reason for such non-use) may be revoked upon the request of any third party.

Trademark Enforcement

A holder of a registered trademark has certain exclusive rights, based on which he/she may prevent third parties from using an identical or similar sign for marking goods or services identical or similar to those goods or services for which the registered trademark is protected. In the case of trademark infringement, a lawsuit may be filed with the competent court. Prior to initiating court proceedings, a request for preliminary injunction may be filed as well. If rights have been infringed or threatened to be infringed, the trademark holder may, by filing the lawsuit, require that the competent court establish the existence of the infringement of a trademark, prohibit the committed or intended infringement of a trademark, ensure elimination of a condition caused by the committed infringement of a trademark, order the defendant to divulge the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution, order compensation for damage and publish the court decision at the expense of the defendant.

In addition, according to the Trademark Law, any legal entity acting contrary to the provisions of the Trademark Act will be punished for the misdemeanour by a fine up to approximately EUR 13 630, and the responsible person in the legal entity will be fined up to approximately EUR 1 365. An individual will be fined up to approximately EUR 1 090.

Industrial Design

The regulatory framework for protection of industrial design is established by the Industrial Design Law. Legal protection of a design is dual, since it can be protected by an industrial design (in accordance with the Industrial Design Law) as of the moment of its registration, and by copyright (in accordance with the Law on Copyright and Related Rights) as of the moment of its creation.

Under the Industrial Design Law, four requirements must be fulfilled in order to register an industrial design. A design must be new, have individual character, must not look like a product that is solely dictated by its technical function, and must not be contrary to public order or morality. A design is considered to be new if no identical designs were made publicly available prior to filing the application for industrial design registration, or prior to the date of priority if the priority is claimed, with the exception of disclosure made by the author within 12 months before the application filing date. A design is considered to have individual character if the overall impression it produces on the user is different from the overall impression produced by any other design which has been publicly available before filing the application for registration of the industrial design, or (if priority is claimed) before the priority date.

The IP Office examines only the formal application. Once the registration procedure is complete, a holder of the right can ask for the design certificate to be issued.

The holder of an industrial design has the exclusive right to use it and to prevent any third party from using it without authorisation.

The protection provided by industrial design registration lasts for up to 25 years and it has to be renewed every five years. It is not possible to file an objection during the registration process. Nevertheless, once the design is registered, it can be invalidated.

Geographical Indications and Designations of Origin

The regulatory framework for protection of geographical indications and designations of origin is established by the Law on Geographical Indications and Designations of Origin of Products and Services.

Under this Law, geographical indications of origin and designations of origin of products and services are being protected through the administrative proceedings conducted by the IP Office. A decision passed in these proceedings is final and no appeal can be filed against it, but an administrative dispute can nevertheless be initiated.

After a registration application is filed, the IP Office examines the formal and substantive content of the application. If the application fulfils all required elements, the IP Office will publish it. If there are no objections to the application, the IP Office will pass a decision on protection of geographical indications of origin and designations of origin of products and services and inscribe it in the respective registers.

The right to use geographical indications last for 10 years from the date of entry in the register of authorised users and this right can be renewed for unlimited number of times.

Topographies of Semiconductor Products

The regulatory framework for protection of topographies of semiconductor products is established by the Law on Protection of Topographies of Semiconductor Products.

As governed by the Law, topographies of semiconductor products are registered by the IP Office. No appeal can be filed, but an administrative dispute can be initiated.

During the registration procedure, the IP Office examines the application and whether it fulfils all the prescribed requirements; it then passes a decision on registration of the topography. The topography is inscribed in the register of topographies and the information from the register is published in the *Official Gazette* of the IP Office. Nevertheless, an applicant may indicate certain information in the application as “trade secret” and in that case, such information is not made publicly available (except for the needs of court dispute resolution).

Application for registration of topography cannot be filed more than two years following the date of the first commercial exploitation of the topography.

Exclusive rights conferred by the protected topography come into existence on the date when the topography is commercially exploited for the first time anywhere in the world, or on the date when the application for registration is filed with the IP Office, whichever is earlier.

The protection lasts for 10 years following the end of the calendar year in which the exclusive rights come into existence. If the topography is not commercially exploited anywhere in the world, any exclusive rights expire within 15 years from its first fixation or encoding, unless application for registration is filed within that period.

Copyright and Related Rights

The regulatory framework for protection of both copyright and related rights is established by the Law on Copyright and Related Rights (2003) (the “Copyright Law”).

Copyright

Under the Copyright Law, copyright belongs to a natural person who created the work of authorship and no registration procedure is necessary for obtaining respective rights. Works of authorship, *i.e.*, works subject to related rights, are considered to be published when they are made publicly available with the consent of the right's holder.

Copyright lasts for the author's lifetime and 70 years after death, regardless of the date of publication.

Copyright protection does not include: ideas, procedures, methods of operation, mathematical concepts; discoveries; and legal texts or similar official texts published for the purpose of providing official information to the public.

Copyright includes moral, economic and other rights of an author. An author has exclusive rights of distribution, reproduction, communication of the work to the public and alteration of the work.

If the work of authorship is created during work for an employer, while conducting work obligations or under the instructions of the employer, the contract on employment determines whether the employer has the right to utilise the work of authorship: copyright belongs to the author without limitations, unless the law, the contract of employment or other act regulating employment relations stipulates otherwise. However, the employee has created computer software in conducting his/her regular work, under the employer's instructions, the employer is exclusively authorised to utilise all economic rights of the software, unless otherwise stipulated by the agreement.

Foreign natural persons and legal entities have the same protection with respect to their works of authorship as the nationals of the Republic of Croatia or entities with their principal seat of business in the Republic of Croatia, in accordance with relevant international agreements or on the basis of actual reciprocity.

Related Rights

Related rights governed by the Croatian Copyright Law are the following:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Film Producers
- Rights of Broadcasters
- Rights of Publishers
- Rights of Databases' Producers.

Rights of Performers

Include moral rights (such as the right to their name, right to object to any changes to their performance, etc.) as well as commercial rights (including the right to authorise or prohibit reproduction of their performance, right for remuneration for recording and renting of the performance, etc.). The commercial rights of the performer last for 50 years after the performance.

Rights of Phonogram Producers

Include the exclusive right of reproducing, distribution and making available their phonograms, as well as the right to remuneration for public borrowing of phonograms (public libraries), broadcasting emission of phonograms and reproducing of phonograms for private use. The rights of phonogram producers last for 50 years after creation (publishing).

Rights of Film Producers

Include the exclusive right of the producer for reproducing, distributing, public broadcasting and making it publicly available, as well as the right to remuneration for public borrowing of videograms and for reproducing of videograms for private use. The right of film producers lasts for 50 years as of the first videogram creation.

Rights of Broadcasters

Include the exclusive right to rebroadcasting by wire or wireless means, fixing broadcasts, reproduce fixed broadcasts and distributing fixed broadcasts (except the rights of rental and lending), communicating broadcasts to the public through payment of an admission and making publicly available fixed broadcasts. The rights of broadcasters run for 50 years as of the date of the first broadcast, irrespective of whether it is by wire or wireless means.

Rights of Publishers

Include their right to remuneration for any reproduction of their written editions for private and other personal use. This right runs for 50 years as of the date of the lawful publication of the work.

Rights of Databases' Producers

Includes the exclusive right to reproduce or to authorise reproduction of the database, distribute copies of the database, make the database available to the public and communication the database to the public in other ways. The rights of a producer of a database run for 15 years from the date of the completion of the making of the database. If the database is lawfully disclosed during this period, the rights run for 15 years from the first disclosure.

Court Practice

In Croatia, court proceedings resulting from the infringement of intellectual property rights are led by the commercial courts in Osijek, Rijeka, Split and Zagreb. Criminal proceedings are led by the municipal courts, the offence courts conduct the offence proceedings and administrative courts decide on administrative disputes against the decisions of the IP Office. There is a second instance in every proceeding (as of 1 June 2008, before the IP Office) and the Supreme Court stays the final instance for an appeal.

There is no precise statistic with respect to the number of court cases initiated due to intellectual property rights infringement in Croatia. According to information from the publication *Measurement of the Infringements of the Intellectual Property Rights* of the Croatian IP Office, the total number of proceedings

brought before the Croatian commercial courts due to the infringement of trademarks, patents and industrial design during 2007 is 1089. According to the same source, during the same year, 146 administrative disputes were initiated before the administrative court.

In addition, according to the information of the Ministry of Internal Affairs, there were 1172 denunciations for criminal offences of infringement of industrial property and unauthorised use of company name during the period between 1998 and 2008; 1165 of them were solved.

According to the sources, it can be concluded that the most infringed IP right is copyright, closely followed by the infringement of trademarks.

The duration of civil court proceedings depends on various factors, such as whether the proceeding is temporarily stopped until the IP Office passes its decision (which is crucial for the respective court case), as well as on the court, *i.e.*, the judge who is leading the case. Therefore, it is very hard to predict the duration of court proceedings initiated due to the infringement of IP rights. In general, however, it can be said that rather simple proceedings can last one to three years approximately. Monetary fines are most often adjudicated in these cases.

International Treaties

In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are ratified in Croatia:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention, 1967, as amended 1979) – 1991;
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971) – 1991;
3. WIPO Copyright Treaty (Geneva, 1996) – 2002;
4. WIPO Performances and Phonograms Treaty (Geneva, 1996) – 2002;
5. Madrid Agreement Concerning the International Registration of Marks (1891) – 1991;
6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) – 1991;
7. Patent Cooperation Treaty (PCT, Washington, 1970) – 1998;
8. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement) – this Agreement is not subject to ratification, but incorporation of its provisions in national legal system is a condition for WTO membership (Croatia has been a member of WTO since 2000);
9. Universal Copyright Convention (Geneva Text, 1952) – 1992;
10. Universal Copyright Convention (Paris Text 1971) – 1992;
11. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) – 2000;

12. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971) – 2000;
13. Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974) – 1991;
14. Paris Convention for the Protection of Industrial Property (1883) – 1991;
15. Locarno Agreement Establishing an International Classification for Industrial Designs (1968) – 1991;
16. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) – 2000;
17. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989) – 2004;
18. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967) – 2004;
19. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs (as adopted in Geneva on 2 July 1999) - 2004;
20. Patent Law Treaty (PLT, 2000) - 2005;
21. Trademark Law Treaty (TLT, 2000) – 2006;
22. Nairobi Treaty on the Protection of the Olympic Symbol Party (1981) – 2004;
23. Strasbourg Agreement Concerning the International Patent Classification (1971) – 2000;
24. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973) – 2006 and
25. International Convention for the Protection of New Varieties of Plants (UPOV, 1961) – 2001.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

The former Yugoslav Republic of Macedonia

This chapter reviews the legal framework in the former Yugoslav Republic of Macedonia for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

Intellectual property rights' legislation in the Former Yugoslav Republic of Macedonia ("FYRM") consists of the following laws, which govern both industrial property rights and copyright and related rights:

- Industrial Property Law (2009);
- Law on Copyright and Related Rights (1996, amended in 1998, 2002, 2005 and 2007);
- Law on Protection of Topographies of Integrated Circuits (1998, amended in 2006);
- Plant Variety Law (2000).

Accordingly, the following forms of IPRs are protected in FYRM:

- Patent
- Trademark
- Industrial Design
- Geographical Indications and Appellations of Origin
- Copyright
- Related Rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Film Producers
- Rights of Stage Works Producers
- Rights of Radio and TV Organizations
- Rights of Publishers
- Topographies of Integrated Circuits
- Plant Varieties.

It appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles, or information and communication technology sectors in this area of law.

On the other hand, it should also be noted that FYRM has adhered to and ratified main international treaties covering the field of IP rights, listed at the end of this chapter under "International Treaties."

IPRs Enforcement

In the case of infringement, a holder of any of the intellectual property rights governed by relevant FYRM IP legislation is entitled to protection of a particular right, by filing a lawsuit before the relevant court.

For civil and penal procedures, the court of first instance is Basic Courts. For administrative procedures initiated by complaints against decisions of the State Office of Industrial Property (SOIP), it is the Administrative Court.

Infringement is any unauthorised use, availability, restriction, imitation, association, rights harassment and others contrary to the provisions of the Law on Industrial Property and the Copyright Law.

A lawsuit may be filed by the applicant for protection of the right, holder of the right, holder of the exclusive license, authorised user of the geographical indication or the authorised user of a collective and certified trademark.

IPRs Authorities

Competent state authorities dealing with IP rights are the SOIP (the relevant state authority dealing with procedures of recognition, maintenance and protection of industrial property rights and the Copyright Agency (one of a few non-governmental organisations which deal with the protection of copyright and related rights).

Industrial Property Rights

The majority of industrial property rights (patent, trademark, industrial design, geographical indications and appellations of origin) are governed by the Industrial Property Law (2009).

Under this Law, industrial property rights may be both assigned (entirely or partially) by the applicant or the right holder, and licensed. In both cases, the respective transaction should be governed by the relevant agreement (assignment/license agreement) which has to be in writing and duly signed and certified.

Patent

The regulatory framework for patent protection is established by the Industrial Property Law (2009).

The Industrial Property Law governs the following main areas in the field of patents: requirements for granting patents (patentability requirements), patent-granting procedure, scope and term of patent protection, and compulsory licensing.

Patentability Requirements

As governed by the Law, a patent protects any invention in the field of technology characterised by its novelty, inventive step and industrial applicability. A patent also protects the invention of a product composed of or containing biological material, or a method for obtaining, processing and using a biological material.

An invention shall be deemed novel if it is not covered by the state of art (anything available to the world public) by use or in any other manner, prior to the date of filing of the patent application. An invention shall be deemed as having an inventive step if for the expert in the field, the subject of the

invention does not arise from the prior state of the art. Finally, an invention shall be deemed applicable to industry, if it can be made or used in any kind of industry (including agriculture).

However, certain inventions are explicitly excluded from the granting procedure: inventions relating to the creation of new animal or plant type varieties, and biological procedures for creating animals and plants; surgical and diagnostic procedures or treatments of live humans or animals, except for an invention that relates to a product, especially a matter or a compound for application to one of these procedures; and inventions whose application is contrary to the public order or moral.

Patent-Granting Procedure

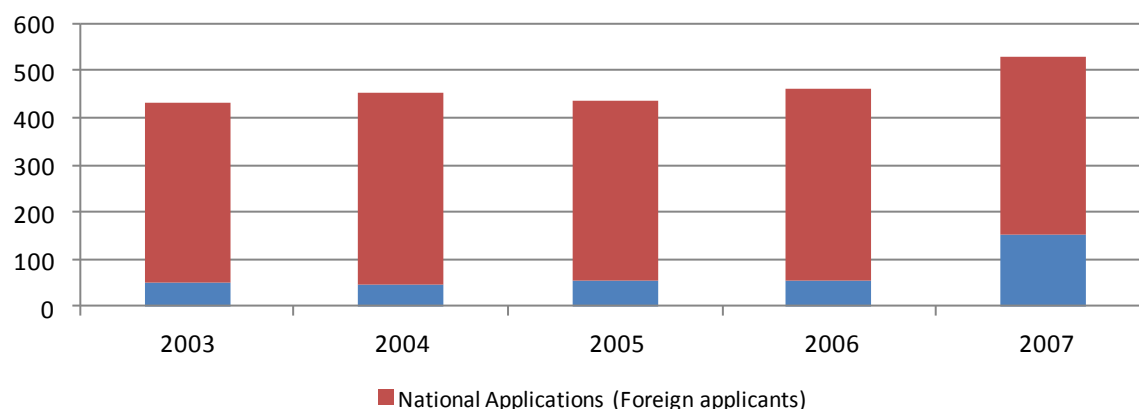
The procedure for granting a patent is initiated by filing a patent application with the SOIP by an inventor or his/her legal successor, or in the case of a joint work, by all the joint inventors or their legal successors. This procedure gives priority to the applicant over any other person who might later file an application for the same invention. Additionally, a priority right may equally be awarded to a person who had exhibited an invention at a recognised international exhibition fair (either in FYRM or in any other member state of the Paris Union), by filing a request with an application right of priority within 90 days of the closing of the exhibition.

In general, protection of only one invention can be sought by a single patent application. Nevertheless, a single patent application may contain more than one invention if such inventions are connected in a way as to present one inventor's concept.

In order to be deemed formally complete, a patent application should contain the following: request for grant of a patent (including a clear indication that grant of patent is required, invention's name reflecting the essence of the invention, and information on the applicant and the inventor), description of invention (clear and precise, so that an expert in the field is able to apply it), patent claim(s) identifying the item for which the protection is requested (included in a clear manner in the description of the invention), an abstract of the essence of the invention and technical information, a drawing (if required), proof of payment of the filing fee, and translation into Macedonian language, in the event that the application was filed in a foreign language.

An application for patent protection filed with the SOIP is formally examined in order to verify any shortcomings (if so, the applicant must correct them within 60 days) before officially setting out the filing date of the application. Once filed, the patent application is entered in the register of patent applications. The applicant pays the fee for the patent publication within 30 days, and the decision on the granting of the patent is published in the Official Bulletin within 90 days. The patent certificate is issued by the SOIP within six months of the decision granting the patent. Figure 5 provides a breakdown of patent applications filed with the competent authority in the former Yugoslav Republic of Macedonia in the period from 2003 to 2007.

Figure 5. Patent Application Structure by Applicant 2003 - 2007



Source : 2008 Annual Report - State Office of Industrial Property of the former Yugoslav Republic of Macedonia.

Scope and Term of Patent Protection

Registering a patent grants its holder the following exclusive rights: using the protected invention in production, bringing items manufactured according to the protected invention to the market and disposing of the patent. Such protection also grants its holder with the right to forbid third parties from using the protected invention in production or in trade, and from offering and delivering without prior consent products with a significant element of the invention.

However, there are certain exceptions to the exclusive rights conferred by a patent on its holder. Namely, the patent holder cannot exclusively: use the patent for personal and non-commercial purposes, undertake research and development of the subject of the protected invention, and direct individual preparation of medicine in pharmacies on the basis of a single medical recipe and related procedures.

A patent is valid for 20 years from the date the application is filed. There can be an extension of up to five years through a request for a supplementary patent certificate, if the subject matter of the patent is a medical product, product for plant protection or a process through which they are produced.

Compulsory Licensing

A compulsory license is not exclusive. It can be awarded to a third party when the patent holder does not use the invention, or uses it in a scope which is insufficient to the needs of the national market and refuses to enter into a license agreement, or sets unmarketable conditions for entering into such a contract.

A request for a compulsory license may not, however, be granted within four years following the date of filing of the patent application.

Additionally, this kind of license will not be issued if the patent holder proves that there are legal constraints which justify the fact that invention protected by a patent has not been used or has been insufficiently used.

Trademark

The regulatory framework for legal protection of trademarks is established by the Industrial Property Law (2009).

Trademark protection governs: prerequisites for trademark protection and types of trademarks, trademark registration procedure, and scope and term of trademark.

Prerequisites for Trademark Protection and Types of Trademarks

As governed by the Law, a trademark protects distinguishable signs used for marking goods and services, in particular words, letters, numerals, pictures, drawings, combinations of colours and three-dimensional forms (including shapes of goods or their packaging), as well as various combinations thereof. In other words, the capacity of a mark to distinguish goods and services of one undertaking from the goods and services of another undertaking in the market, is an essential prerequisite for protection of a respective mark by a trademark.

Besides individual trademarks, the Law also governs collective trademarks (*i.e.*, marks intended for collective designation of the goods or services put on the market by an association of legal and natural right-owners), and certification trademarks (*i.e.*, marks used by several companies under the supervision of the certification trademark owner, which protect the quality, origin, way of production and other joint characteristics of goods or services of those companies).

Trademark Registration Procedure

In order to obtain a trademark, the applicant initiates a registration procedure by filing a trademark application with SOIP; this may be initiated by a natural or legal person. The registered trademark holder or the trademark applicant may also file an international trademark application before the World Intellectual Property Organization through SOIP. Figure 6 provides a breakdown of trade registrations filed with the competent authority in the former Yugoslav Republic of Macedonia in the period from 2003 to 2007.

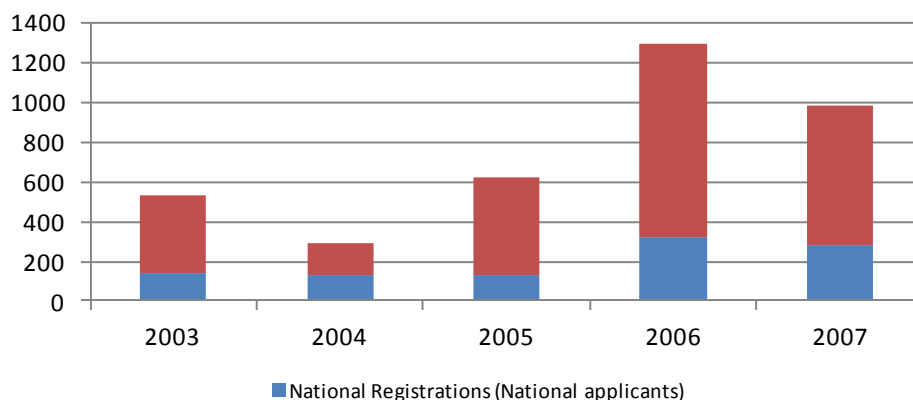
The trademark application should include: a request for granting of a trademark, data regarding the applicant, the mark for which the protection is requested, and a list of the goods and services for which the protection is being requested. In addition, an application for recognition of a collective trademark should be accompanied by a general act or contract for the collective mark, including: the name of the firm or applicant, the name of the authority or right-owner authorised to represent the applicant, provisions about the appearance of the mark and the products or services to which the particular mark refers, provisions about who has the right to use the collective mark and the circumstances of such use, provisions about the rights and obligations of the users of the collective mark in case of infringement, provisions about the measures and consequences in case of infringement, and provisions about the measures and consequences in case of non-respect of the act or contract. An application for a certification trademark should be accompanied by rules for use of the certification mark, containing provisions about the quality and other characteristics of the goods or services. Additionally, the owner of the right to a certification mark may not use that mark for marking products and services that he/she puts on the market.

Furthermore, a trademark application may, upon request of the applicant, be divided into several applications during the trademark-granting procedure, broken down according to the proposed list of goods and services.

Filing the trademark application grants the applicant priority right over any other applicant filing a trademark application for an identical or similar sign or identical or similar goods or services at a later date. Furthermore, any legal or natural person who had duly filed an application within any state that is a member of the Paris Union or the World Trade Organization is also granted a priority right in FYRM, within six months of the date of filing the first application. The trademark right itself is acquired only following the application procedure, formal examination by the SOIP, the decision to grant the right and

entry of the trademark into the trademark register, as long as no objection has been filed against the application within 90 days of the publication date. The applicant can then receive a trademark certificate issued by the SOIP, no later than six months as of the date of publication in the *Official Gazette*.

Figure 6. Trademarks Registration Structure by Applicant 2003 - 2007



Source : 2007 Annual Report - State Office of Industrial Property of FYROM.

Scope and Term of Trademark

The trademark holder is granted exclusive rights for the use of the trademark within the scope of activities for which it is registered, including the use of the “R” mark. The trademark cannot be used by others without prior authorisation.

A trademark is issued for a period of 10 years from the date of filing of the trademark application. A trademark may be renewed an indefinite number of times for 10-year terms, provided the request for renewal is filed by the applicant. In order to be valid, the trademark must be used with respect to the goods and/or services for which it has been granted.

Industrial Design

The regulatory framework for legal protection of industrial designs is established by the Industrial Property Law (2009).

The Law protects an industrial product’s appearance in whole or in part, determined by its characteristics such as lines, contours, colours, shape, texture and the materials which the product is made of or ornamented with (including its decorations), due to their individuality and novelty.

In the section on industrial design, a number of issues are governed: requirements for industrial design protection, industrial design registration procedure, scope and term of protection, and third-party rights conferred by the industrial design.

Requirements for Industrial Design Protection

A design, in order to be protected by an industrial design right, has to fulfill the following conditions: novelty and inventiveness; consistent with public order and morality; representing a technical plan or a scheme; exclusively representing cartographic or photographic work; containing the state or other public coat of arms; containing or imitating a figure or name of a historical or deceased famous person; and containing or imitating the name, shape or other recognisable part of a protected cultural inheritance.

An industrial design is novel when an identical design has not yet become available to the public prior to the date of filing of the application for acknowledgement of that particular design; there has not been a claim for a priority right prior to the date of the claimed priority right; or no application has been previously filed for acknowledgment of an identical design; and finally, the design differs from others in unessential parts.

Industrial design has individuality of character when the total impression it makes to informed users differs from the total impression that any other design makes to users, and that has become available to the public prior to the date of filing of the application for an industrial design or if a priority right was claimed.

Any designs exclusively determined by the technical functions of the product, and/or any designs contained within a product which in order to be operational has to be mechanically connected to or placed inside another product are excluded from the industrial design protection.

Industrial Design Protection Procedure

A request for industrial design protection is launched by filing an application with the SOIP. (A request can also be made for international industrial design registration.) The design is said to be available to the public if it has been published, exhibited, used in trade or otherwise discovered prior to the date of filing, or the date of priority right, if claimed.

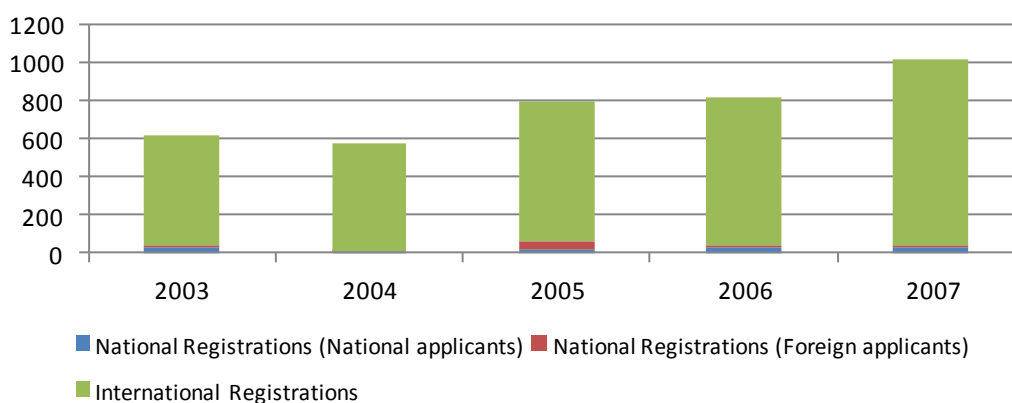
Filing the industrial design protection application with the SOIP acknowledges the priority right of the applicant and prevents the design from becoming available to the public by publishing, exhibition or use in trade.

A complete application includes a request for recognition of the right to industrial design, data regarding the applicant and a representation of the design for which the protection is requested.

SOIP has a formal role. It examines the application and, in the case of any irregularities or omissions, invites the applicant to correct it within 60 days. If the application is complete, the applicant pays publication fees (within 30 days) and the design registration is published within 90 days of payment.

Once the registered is published, an objection can be filed by any interested third party having legal grounds within 90 days. SOIP then requests payment of recognition and maintenance fees for the period of five years. Upon payment, SOIP issues a decision on recognition of industrial design. Figure 7 provides a breakdown of industrial design registrations filed with the competent authority in the former Yugoslav Republic of Macedonia in the period from 2003 to 2007.

Figure 7. Industrial Design Registrations Structure by Applicant 2003 - 2007



Source : 2007 Annual Report, State Office of Industrial Property of the former Yugoslav Republic of Macedonia.

Scope and Terms of Protection

The scope of industrial design protection is determined by the characteristics of the design itself. Protection covers the design to the extent to which it makes an overall impression to the customer. Protection confers moral rights, which exclusively belong to the author of the design; and exclusive rights, which belong to the holder of the industrial design and which prevent third parties from using it without prior consent.

If a license or pledge or any similar right has been registered on behalf of a third party, the holder of an industrial design may not resign from his/her right without prior written consent. Additionally, the third party is to be notified of any related obligations, such as payment fees or securing of rights for other parties.

Industrial design protection is valid for five years from the date of filing, and can be extended for a total of 25 years of protection. Requests for extension have to be made during the last year of validity of each five-year term (or exceptionally, no more than six months after the expiration of each term), upon payment of additional fees.

Geographical Indications and Appellations of Origin

The regulatory framework for legal protection of geographical names by geographical indications and appellations of origin is established by the Industrial Property Law (2009).

The following issues are governed: protection requirements, registration procedure, and scope and term of the rights.

Protection Requirements

Under the Law, geographical name is subject to protection of both geographical indication and appellation of origin. “Geographical indication” is the geographical name of the country, the region or place indicated on the product, with quality, reputation or other characteristics that may be essentially attributed to the geographical origin. “Appellation of origin” is the geographical name of the country, region or place indicated on the product originating from a certain area and having a quality and particular

characteristics conditioned by the geographical environment (including the natural and human factors) and the production, processing and preparation (which are entirely carried out in the region of origin).

The requirement for the protection of geographical indication of a product is that the production and/or preparation procedure is carried out in that place of origin. In addition, those geographical names that do not meet the requirements for protection as appellations of origin may be protected as geographical indications.

Appellation of origin may not protect the name of place of origin originally used for products of that place of origin, which after long use had become generic. Additionally, with the exception of wines and other alcoholic drinks, a product may be indicated with an appellation of origin, even if the raw materials for its production originate from a wider area or out of the area of processing, provided that the defined area for raw materials production is limited or there are special conditions for raw materials production, and the traditional method of production (*i.e.*, the human factor) is crucial for the quality and special characteristics of the product.

Registration Procedure

An application for protection of geographical name contains a request for protection of geographical name with special designation whether protection is of appellation of origin or geographical indication. An application is filed with SOIP. It includes a study of the special characteristics of the product, carried out by an institution that meets the regulation requirements adopted by the director of SOIP.

For protection of a name of place of origin for products with geographical indication (*i.e.*, appellation of origin), the geographical name and type of the product is inscribed in the register of protected geographical names. The right to use a protected geographical name is the result of a decision for protecting the right and inclusion in the register of users of protected geographical names.

SOIP conducts a formal examination of an application. If elements are missing, the applicant has 30 days to rectify the application. If the application still does not meet the requirements for protection of the geographical name, SOIP informs the applicant in writing and calls the applicant within 90 days. If the applicant provides an explanation and payment of fees within 30 days, the registration procedure is successfully closed.

Scope and Terms of the Rights

The user of a protected geographical name has the right to use it exclusively for indicating a product for which registration was requested. The use of the registered geographical name applies to packaging, advertising and other materials relating to business, as well as for use in export or import. Registration also gives the right to label a given product with the following terms: “Appellation of origin controlled” and “Geographical indication controlled.”

Once protected, a geographical name is valid for an indefinite period of time. Its right of use is accorded to the applicant for a period of five years as of the date of the decision, and may be renewed an indefinite number of times for periods of five years, upon filing a request for renewal during the final year of validity of each five-year period.

Revocation of the Right to Use a Protected Geographical Name

A decision granting the right to use a protected geographical name may be revoked if it is established that the requirements for protection provided for by the Law have ceased to exist. In the case of revocation, the burden of proof that there are sufficient grounds for the use of this right falls upon the legal user of the

protected geographical name. A decision granting the right to use a protected geographical name may be revoked *ex officio* or at the request of an interested party or a public prosecutor.

Topographies of Integrated Circuits

The regulatory framework for legal protection of topographies of integrated circuits is established by the Law on Protection of Topographies of Integrated Circuits (1998).

The Law governs protection requirements, registration procedure, and the scope and term of the rights conferred.

Protection Requirements

Under the Law, a topography of integrated circuit represents a three-dimensional disposition of the elements, where at least one is active. Intermediates in the integrated circuits are the final or intermediate form of any product intended to perform an electronic function where there are elements (at least one of them being active) and at least one of the intermediates is established in the material. Topography of integrated circuit is designed for commercial exploitation by sale, rental, lease or any other method of commercial distribution following its manufacture.

The right to protection of topography applies to its creator (or creators if there is more than one).

Protection can be granted only if the topography of integrated circuit is a result of the inventor's intellectual creation and if, at the time of its creation, it was not generally known among other topography creators and integrated circuit producers.

Registration Procedure

An application for registration includes the name of the applicant and the creator, images relating to the respective topography (accompanied by an explanation of their sequences), an abstract of the characteristics of the electronic function or functions used in the circuit and (if the topography had already been commercially exploited) a written statement regarding the date of first commercial exploitation.

A request for protection of topographies of integrated circuits is made by filing an application with SOIP within two years of the first use of the topography for commercial purposes, or within 15 years of its creation, if it had not been used commercially.

Scope and Term of the Rights

The holder of a protected topography is entitled to exclusive rights of commercial exploitation, including the right to authorise or prohibit the reproduction by any means or in any form, as well as to sell, import or otherwise distribute a protected topography.

Topography registration is valid for 10 years as of the filing date or the date of its first commercial use.

Copyright and Related Rights

The regulatory framework for legal protection of both copyright and related rights is established by the Law on Copyright and Related Rights (1996).

Copyright

Under the Law, a work of authorship is an individual and intellectual creation from literature, science, the arts and other domains of creation, regardless of the type, manner and form of expression.

In order to be established and recognised, a copyright does not need to be registered. If, nevertheless, the author decides to deposit his/her work of authorship, he/she should do so by filing a request with the Copyright Agency, which issues the Certificate of Registration. No examination of the submitted copyright work is performed by the Copyright Agency. All depositions of foreign works should be made in the language of the original work.

Copyright lasts during author's life and continues for additional 70 years following death. For joint authorships, the 70-year period starts on the date of death of the last living author. For subsequent publishing of work, the 70-year period starts on the date of publication of the final sequence. Finally, for anonymous or works under pseudonym, this period starts on the date of publication of the work.

Authors enjoys exclusive moral rights (such as the right to the first publication of their works or the right to be recognised as the author) and rights of exploitation of their works (including the right to use the work, and to allow or forbid its usage by third parties, in particular its reproduction, distribution, public performance, broadcasting and other forms of exploitation explicitly governed by the Law).

Related Rights

Related rights governed by the Law on Copyright and Related Rights are the following rights:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Film Producers
- Rights of Stage Work Producers
- Rights of Radio and TV Organizations
- Rights of Publishers.

Rights of Performers

This category includes artists, singers, musicians and other persons who perform works of authorship or folklore works, and other persons explicitly governed by the Law. This includes exclusive rights, moral rights (e.g., the right to be named as the performer) and pecuniary rights (e.g., the right to authorise or prohibit reproduction of recordings of performances on phonograms and videograms). The rights of performers last for 50 years after the performance date, or if a recording of the performance was lawfully published within 50 years, this period commences on its first publication date.

Rights of Phonogram Producers

This category consists of exclusive pecuniary rights over produced phonograms (e.g., the right to prohibit or permit its reproduction, rental or distribution). These rights last for 50 years after the phonogram's production. If, however, the phonogram has been lawfully published within 50 years, the term starts to run from the first publication.

Rights of Film Producers

This category consists of exclusive pecuniary rights with respect to produced film (e.g., the right to reproduction, distribution, rental and public presentation of videogram). The term of these rights is 50 years after production completion, but if the videogram has been lawfully published within 50 years, the term starts to run from first publication.

Rights of Stage Work Producers

This category (natural or legal persons which have organised and paid for production of the broadcast) includes exclusive pecuniary rights with respect to the stage work (e.g., the right to prohibit or permit its use for reproduction of its recordings on phonograms or videograms or their distribution). These rights last for 20 years from the date of the first public performance of the stage work.

Rights of Radio and TV Organisations

This category includes exclusive pecuniary rights with regard to their broadcasts (e.g., the right to prohibit or permit use of respective broadcasts for recording or distribution of their recordings). These rights last for 50 years after first broadcast of respective works.

Rights of Publishers

These are exclusive rights over publication of the works of authorship which last for 25 years from the work's lawful publication.

Transfer of Copyright and Related Rights are (with the exception of moral rights) contained within the same transferable rights. If a transfer is made on the basis of an agreement, such agreement should be in writing in order to be legally binding.

Court Practice

The courts competent for IPR enforcement are the Basic Courts. Nevertheless, judicial practice is still (further to information obtained informally by legal practitioners in FYRM) relatively moderate, and there has not been any significant case law in the past years (there is, nevertheless, no publicly available information or analysis which would substantiate this point). In any case, it is trademark that is most often the subject of disputes.

International Treaties

In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are in force in the Former Yugoslav Republic of Macedonia:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention 1967, as amended 1979), ratified by Macedonia in 1991;
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971), ratified by Macedonia in 1991;
3. WIPO Copyright Treaty (Geneva, 1996), ratified by Macedonia in 2004;
4. WIPO Performances and Phonograms Treaty (Geneva, 1996), ratified by Macedonia in 2005;

5. Madrid Agreement Concerning the International Registration of Marks (1891), ratified by Macedonia in 1991;
6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), ratified by Macedonia in 1991;
7. Patent Cooperation Treaty (Washington, 1970), ratified by Macedonia in 1995;
8. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement);
9. Universal Copyright Convention (Geneva Text, 1952), ratified by Macedonia in 1997;
10. Universal Copyright Convention (Paris Text 1971), ratified by Macedonia in 1997;
11. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961), ratified by Macedonia in 1998;
12. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971), ratified by Macedonia in 1998;
13. Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974), ratified by Macedonia in 1991;
14. Paris Convention for the Protection of Industrial Property (1883), ratified by Macedonia in 1991;
15. Locarno Agreement Establishing an International Classification for Industrial Designs (1968), ratified by Macedonia in 1991;
16. Strasbourg Agreement Concerning the International Patent Classification (1971), ratified by Macedonia in 2003;
17. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), ratified by Macedonia in 2002;
18. Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989), ratified by Macedonia in 2002;
19. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967), ratified by Macedonia in 1997;
20. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, (as adopted in Geneva on 2 July 1999), ratified by Macedonia in 1997.

On the other hand, the Former Yugoslav Republic of Macedonia has not yet ratified the following conventions or agreements:

1. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (adopted on 12 June 1973, and amended on 1 October 1985).

2. Patent Law Treaty (adopted in Geneva on 1 June 2000).
3. Trademark Law Treaty (adopted in Geneva on 27 October 1994).
4. Nairobi Treaty on the Protection of the Olympic Symbol Party (adopted in Nairobi on 26 September 1981).
5. International Convention for the Protection of New Varieties of Plants (adopted on 2 December 1961, as revised in Geneva on 10 November 1972, and 23 October 1978).

REPUBLIC OF MOLDOVA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Republic of Moldova

This chapter reviews the legal framework in the Republic of Moldova for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

The Republic of Moldova's legislation governing intellectual property rights' protection and enforcement consists of eight laws and a series of secondary regulations governing both industrial property rights and copyright and related rights. These laws are:

1. Law on Protection of Inventions (2008)
2. Law on Protection of Industrial Design (2007)
3. Trademark Law (2008)
4. Law on Protection of Geographical Indications, Appellations of Origin and Traditional Specialities Guaranteed (2008)
5. Law on Protection of Plant Varieties (2008)
6. Law on Protection of Topographies of Integrated Circuits (2000)
7. Law on Broadcasting of Copies and Phonograms (2003)
8. Law on Protection of Copyright and Related Rights (1995).

Accordingly, the forms of IPRs protected by the Republic of Moldova's legislation are as follows:

1. Patent
2. Industrial Design (and Utility Models)
3. Trademark
4. Geographical Indications, Appellations of Origin and Traditional Specialities Guaranteed
5. Plant Varieties
6. Topographies of Integrated Circuits
7. Copyright
8. Related Rights
9. Rights of Performers
10. Rights of Phonogram Producers
11. Rights of Broadcasting and Cable Distribution Organisations.

It appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles or information and communication technology sectors in this area of law.

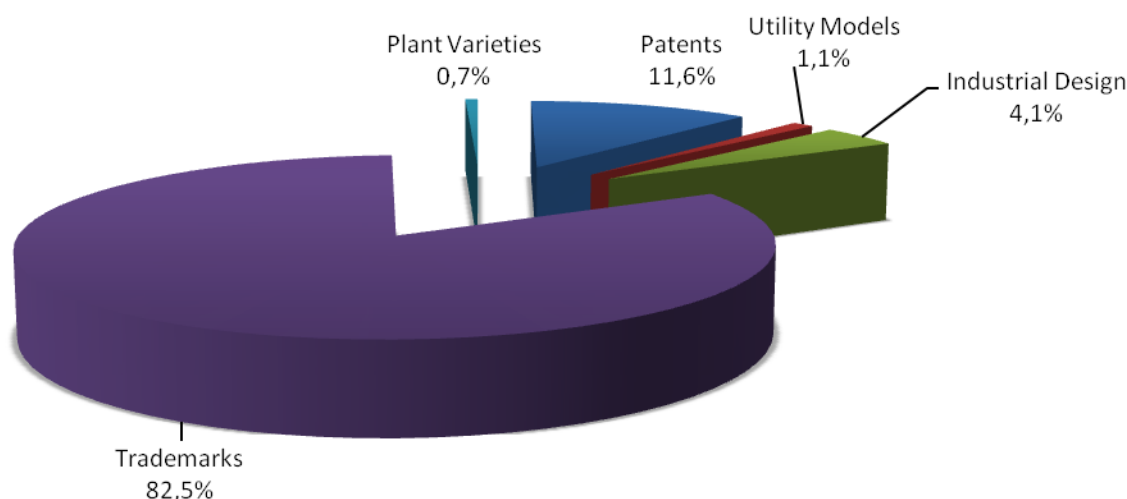
IPRs Authority

The State Agency on Intellectual Property (AGEPI) is the state authority dealing with IPRs in the Republic of Moldova (the “IP Office”). Its decisions can be appealed and the authority competent for passing decisions on filed appeals is the Appeals Board within the IP Office. Decisions of the Appeals Board can be contested before the court, as indicated within the section “Court Practice” below. It should be also mentioned that, besides the Appeals Board, the Specialized Arbitration in industrial property matters is also permanently acting with the IP Office.

Industrial Property Rights

As identified above, the industrial property rights governed by relevant legislation of the Republic of Moldova are: patent, trademark, industrial design, utility models, geographical indications, appellations of origin and traditional specialities guaranteed, topographies of integrated circuits and plant varieties. Figure 8 provides a breakdown of all industrial property rights registered in 2008.

Figure 8. Industrial Property Rights Registration in 2008



Source : The Republic of Moldova’s IP Office – 2008 Annual Report.

Patent

The regulatory framework for patent protection, including enforcement mechanisms, is established by the Law on Protection of Inventions (2008) (the “Inventions Law”). This Law introduces three types of protection, namely patent, short-term patent and supplementary protection certificate (available for patents for medicinal products or phytopharmaceutical products for which a marketing authorisation has been granted). The Inventions Law also governs that, besides the national patents, the rights conferred by the Eurasian patents shall be recognised and protected in the Republic of Moldova.

Requirements for Protection

Under the Inventions Law, statutory requirements for granting both patent and short-term patent are novelty, inventive step and industrial applicability. However, an inventive step is interpreted differently in the case of a patent and a short-term patent. Namely, from the perspective of a requirement for obtaining a patent, an invention is considered to have an inventive step if (taking into consideration the state of the art)

it is not obvious to a person skilled in the appropriate art. From the perspective of a requirement for obtaining a short-term patent, an invention is considered to have an inventive step if it provides a technical or practical advantage.

However, certain creations are excluded from patent protection, even if they fulfil these requirements. Such creations are: discoveries, scientific theories and mathematical methods; esthetical creations; schemes, rules and methods for performing mental acts, playing games or doing business; computer programmes; and presentations of information.

Moreover, the Inventions Law explicitly stipulates that the following inventions cannot be protected by a patent: inventions contrary to public order or morality (such as, for example, processes for cloning human beings or use of human embryos for industrial or commercial purposes), inventions that concern animal breeds, plant varieties and essentially biological processes for plant or animal production (with the exception of inventions which concern microbiological processes and products resulting from such processes) and the human body, at any stage of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene. In addition, protection by a short-term patent is not available to the inventions concerning biological material and chemical or pharmaceutical substances and/or processes.

Patent-Granting Procedure

A patent registration procedure should be initiated before the IP Office by filing a patent application. This application can be filed either by the inventor or a third party. If the applicant is not the inventor or he is one of multiple inventors, an application should contain the applicant's statement by which he/she identifies the inventor(s) and indicates the source of his/her right to patent.

Under the Inventions Law, a patent application should include the following elements: a request for patent protection, a description of the invention, one or more patent claims, drawings referred to in the claim description, an abstract of the invention (a short summary of the invention's essence, providing technical information) and authorisation (if the application is filed by an authorised representative). One patent application relates to one invention or to a group of inventions linked in a way to form a single general inventive concept (*unity of invention* principle). In addition, a proof of payment of the filing fee should be submitted as well.

A formal and preliminary examination of the application establishes whether the application complies with all formal requirements governed by the Law. Once any errors or omissions have been remedied by the applicant within the time limit specified by the IP Office, the application's publication shall follow (18 months from the application filing date or earlier, if the applicant files such request). Within 30 months of the application filing date, the applicant requests a substantial examination (this kind of examination is not a part of a short-term patent-granting procedure). The IP Office will then grant or refuse a patent. If it decides to grant a patent, a mention will be published in the *Official Bulletin* of the IP Office. Within six months of publication, any person may file an objection, which the IP Office will examine within three months. The IP Office will then either revoke its decision on the patent grant or reject the opposition. An appeal may be filed with the Appeals Board of the IP Office and an appeal may be filed against a decision of the Board with the competent court, within two months of the decision.

The Law stipulates that a patent application can be converted to a short-term patent application and *vice versa*.

Scope and Term of Patent Protection

A patent provides its owner with exclusive rights to exploit the invention, as well as to prohibit such exploitation by any third party which is not authorised to exploit the invention (*e.g.*, the patent owner is entitled to forbid any third party to sell, export, import or stock the product obtained directly by the process that is the subject matter of the invention). The scope of the patent's owner exclusive rights is determined by the terms of the patent claims.

However, although rights conferred by a patent are exclusive rights, there are certain exceptions to such exclusivity (certain acts which the patent owner cannot forbid to the third parties):

1. Acts representing exploitation of the patent for private and non-commercial purposes;
2. Acts carried out for experimental purposes relating to the protected invention's subject matter;
3. Acts representing individual preparation of a medicine in a pharmacy, on the basis of a medical prescription or related acts;
4. Acts representing use of the protected invention if a person who undertakes such acts had, in good faith and within his/her economic activities, exploited the respective invention or had made real and serious preparations for such exploitation in The Republic of Moldova, prior to the patent application's filing date (*right of the prior user*).

In addition to the limitations stated above, the Inventions Law also governs a limitation relating to certain vehicles in international traffic (the "Vehicles Limitation"). The Vehicles Limitation means that the patent owner cannot forbid use of the protected invention: on board any foreign vessel of any state party to the international conventions in the field of inventions to which The Republic of Moldova is also party, provided that such vessel is temporarily or accidentally in the waters of The Republic of Moldova, and that the invention is used exclusively for the needs of the vessel; and in the construction or operation of foreign aircraft or other means of transport of any state party to the international conventions in the field of inventions to which The Republic of Moldova is also party, or in the manufacture of spare parts for such vehicles provided that they temporarily or accidentally enter the territory of The Republic of Moldova.

The term of patent protection is 20 years and the short-term patent is six years from the patent application's filing date, with annual fees.

Patent Licensing and Transfer

The rights deriving from a patent application and from a granted patent can both be licensed or transferred (in total or partially) by a written contract. In addition, the licensing/transfer should be registered by the IP Office in order to apply to third parties.

The Inventions Law also governs the cases in which a compulsory license may be granted in The Republic of Moldova provided that the license is always a non-exclusive license and that the court is the competent authority.

Patent Revocation and Surrender

A patent may be revoked at any moment during its validity term (it may be revoked even after termination of the rights conferred by a patent) on the grounds explicitly governed by the Law (*e.g.*, if the subject matter of the patent is not patentable) and in the procedure stipulated by the Law. This procedure may, in general, be initiated by any person and it is carried out before the court.

A patent owner may surrender his/her own patent by submitting a written declaration to the IP Office.

Patent Enforcement

Under the Inventions Law, the rights conferred by either a registered patent or a patent application can be enforced in the *court proceedings for infringement of rights*. Such proceedings may be initiated by a patent owner/applicant, or any other person entitled to use the patented invention (particularly licensees) or any other person entitled to represent the right holder. At the request of the party who initiated the proceedings, the court will order the infringer to pay the rights holder damages to compensate for the injury suffered due to infringement, provided that the infringer engaged in the infringing activities knowingly (or with reasonable grounds to know).

The Law also governs the *court proceedings for a declaration of non-infringement of rights* which can be initiated by any interested person willing to establish that the economic operations which he/she performs (or has prepared to perform) do not prejudice the rights conferred by the patent/patent application. These proceedings may be initiated against the patent owner or the beneficiary of an exclusive license. However, the patent's validity cannot be challenged.

Trademark

The regulatory framework for legal protection of trademarks is established by the Law on Trademarks (2008).

Prerequisites for Trademark Protection

Under the Trademark Law, any sign or combination of signs capable of graphic representation that allow distinction of the goods/services of one natural or legal person from similar goods/services of another natural or legal person may be protected by a trademark. This capability is a main prerequisite for trademark protection.

Trademark Registration Procedure

In order to obtain trademark protection, an application should be filed with the IP Office. The application must be filed on the prescribed form, together with a proof of payment of the prescribed filing fee and power of attorney if the applicant is represented by a patent attorney (for example, representation by a patent attorney registered by the IP Office is obligatory when the applicants are foreign persons).

The IP Office examines the application within two months, to determine whether it contains all the necessary elements and complies with the Law. If so, the application will receive the date and number of the regular national deposit. Within three months from the deposit date, the application will be published in the *Official Bulletin* of the IP Office. After the application's publication, the following actions may be initiated against a registration of trademark: any person may file an observation on the necessity to refuse registration of a particular trademark, and any interested person (*e.g.*, the owner of an earlier trademark) may file (for a fee) an opposition requesting refusal of a particular trademark registration.

The next phase within a trademark registration procedure is to examine whether any absolute or relative grounds for refusal, filed observations or oppositions exist. This examination is carried out within six months from the date of the application's publication. If the IP Office establishes that the legal requirements for registration of trademark are fulfilled, as there are no justifiable grounds for registration refusal, it will register the trademark and issue a Certificate on Registration to the applicant. However, any person may oppose the registration and if the IP Office finds that such opposition is grounded, it will pass a decision on the trademark registration rejection.

Scope and Term of Trademark Protection

A registered trademark provides its owner with the exclusive right to use the trademark and to take legal action against any person using the trademark without authorisation.

Once registered, a trademark lasts for 10 years, but it can be renewed for unlimited number of times, provided that the required fees are paid.

Industrial Design

The regulatory framework for legal protection of industrial design is established by the Law on Protection of Industrial Designs (2007).

Under the Law, industrial design protection applies to an external, two-dimensional or three-dimensional appearance of the product or part of the product, determined by its visual characteristics (such as lines, colours, texture or materials).

The statutory requirements for registration of an industrial design are novelty and individual character. Registration of this right is not possible if a design has only a technical function or if it is contrary to public order or morality.

In order to register an industrial design, an application should be filed with the IP Office. The application is subject to formal examination to determine whether it contains all the elements it should contain under the Law. If it does, and the fee has been paid, the IP Office registers the industrial design and issues a Certificate of Registration.

However, registered industrial design is not the only type of intellectual property right protection in the Republic of Moldova. Namely, besides an industrial design registered on the basis of a national application filed with the IP Office, and an international industrial design registered in accordance with the Hague Agreement on International Registration of Industrial Designs, there is also a non-registered industrial design legally protected without filing an application, provided that it became public in accordance with the Law.

The scope of rights differs for registered and non-registered industrial design. Namely, a registered industrial design's owner has the exclusive right to the design exploitation (which includes manufacture, import, export and marketing of the products into which the design is integrated), and the right to prohibit exploitation by an unauthorised third party. On the other hand, a non-registered industrial design's owner has the exclusive right to prohibit its exploitation only when use results from copying the protected industrial design.

The term of rights conferred by an industrial design also differs for registered and non-registered industrial design. Namely, the maximum possible duration of a registered industrial design is 25 years from the application filing date, while a non-registered industrial design's protection lasts for three years from the date when it became public.

In addition, it should be noted that the rights conferred by an industrial design are transferable both by an agreement (a license or an assignment contract) and by testament or legal inheritance.

Geographical Indications, Appellations of Origin and Traditional Specialities Guaranteed

The regulatory framework for legal protection of geographical indications, appellations of origin and traditional specialities guaranteed is governed by the *Law on Protection of Geographical Indications, Appellations of Origin and Traditional Specialities Guaranteed* (2008).

Under the Law, “geographical indication” identifies the goods originating from a certain geographical area provided that a quality, reputation or other characteristics of such goods are essentially attributable to their geographical origin and provided that their production and/or processing and/or preparation is carried out in the designated geographical area. “Appellation of origin” designates a certain geographical area as well as a historical designation, used to describe the natural characteristics of a product which derives from the natural and/or ethnographic factors specific to the area. “Traditional speciality guaranteed” represents a traditional agricultural or food product compared with other similar agricultural or food products, provided that its specificity is recognised by the registration in accordance with the Law.

In addition, with respect to appellations of origin, it should be noted that they can be registered only by natural or legal persons performing their activities within the respective geographical area. Once registered (which is confirmed by a Certificate of Registration by the IP Office), they are permanent. However, they can be annulled at any time in cases specified by the Law (*e.g.*, if the products cease to have the specified, characteristic quality).

Nevertheless, according to data published by the IP Office, no applications for appellation of origin registration have been filed in 2009 so far, and there were only three applications filed in 2008. Throughout the period from 1993 to 2008 only seven rights were granted out of 829 which filled for application, of which two were for national applicants and five for foreign applicants.³

Plant Varieties

The regulatory framework for legal protection of plant varieties is established by the Law on Protection of Plant Varieties (2008).

Under the Law, new plant varieties are protected by a patent (the “Plant Variety Patent”). This patent offers legal protection certifying a variety, an authorship of the breeder (who is entitled to remuneration for his/her work relating to the variety’s creation), and the exclusive right of the patent owner to use the variety and to prohibit any use by unauthorised third parties. The scope of the rights conferred by the Plant Variety Patent is determined by the sum of the variety’s essential characteristics, as specified by the applicant.

The right to obtain the Plant Variety Patent belongs to the breeder or his/her successor. If the same variety is created or discovered and developed independently by two or more persons, the right to patent protection belongs to the first person who has filed a patent application with the IP Office.

The Plant Variety Patent is available to the varieties belonging to all plant genera and species. According to the Law, a plant variety shall be patentable only if it is new, distinct, uniform and stable. It should be designated by a denomination in compliance with the legal requirements.

³ Republic of Moldova’s IP Office-Statistics for Appellations of Origin from 1993 to 2008.

In order to obtain the Plant Variety Patent, a patent application is filed on a prescribed form with the IP Office (one application per variety). It should include particulars of the breeder and the applicant, denomination of the variety proposed by the applicant, required for its identification and a description of the variety or the technical questionnaire completed by the applicant. The application is filed with a proof of payment of the prescribed fee and, if applicable, the power of attorney, photos and other documents stipulated by the Law. An application is then subject to formal, preliminary and substantive examination. If it passes, the IP Office enters the particulars into the Register of Patent Applications and publishes the information in its *Official Bulletin*.

The IP Office then provides a copy of the application documents to the State Commission carrying out the testing of its compliance with distinctness, uniformity and stability. For testing purposes, the applicant provides the State Commission with the required seeds and propagating material and pays the prescribed fee.

If the new variety complies with the patentability requirements, the State Commission provides the IP Office with a report and the IP Office passes a decision to grant the Plant Variety Patent.

If there is no opposition filed against the decision to grant a patent, the IP Office issues a patent and the applicant pay the prescribed patent issuance and maintenance fee.

The patent owner holds the exclusive right on the patent and on the variety protected by the patent, authorising him/her to exploit it (on the condition that it does not infringe the rights of other patent owners), to use it and to prohibit third parties from unauthorised acts specified by the Law (*e.g.*, production or reproduction, selling or marketing). Respective rights are transferable, either by an assignment/license contract or by testamentary succession.

The term of the patent depends on the variety type, as follows: with respect to the varieties of trees, fruit trees and grapevines, the patent is valid up to 30 years from the date of granting the patent; and with respect to all other species, the patent is valid up to 25 years. The patent term may be extended for five years, at the request of the patent owner. In order to maintain the right, the patent owner pays annual maintenance fees.

The plant variety patent may be invalidated by the court, in whole or partially, at the request of an interested person (such request may be filed at any time during the patent term), if it establishes that when the patent was issued, the variety did not fulfil the patentability requirements or the patent had been granted to an unauthorised person.

Moreover, if the patented plant variety is not exploited or is insufficiently exploited, the judicial authorities may grant compulsory, non-exclusive licenses for use of this variety.

According to data published by the IP Office, eight applications for plant varieties by national applicants have been filed, while nine patents (six for national owners and three for foreign owners) have been granted in 2009. From 2000 to 2008, 219 applications were filed while 32 were approved.

Topographies of Integrated Circuits

The regulatory framework for legal protection of topographies of integrated circuits is established by the Law on Protection of Topographies of Integrated Circuits (2000).

The procedure for registration of topography of integrated circuits is launched by filing an application with the IP Office. The application should include a request for registration (containing particulars of the applicant and agent, if any, and the topography's creator, as well as the name and intended use of the

topography and dates of the topography's creation/first commercial exploitation), proof of payment of the filing fee and power of attorney (if an application is filed by the applicant's agent). The application can be filed whether the particular topography was commercially used prior to the application filing or not.

The application, is examined, as well as the requirements for granting protection (whether it is a result of the creator's intellectual effort and whether it was not well-known among the creators of topographies and manufacturers of integrated circuits, at the time of its creation). If all of the conditions are met, the IP Office grants the right, registers it in the official Register of Topographies and publishes it in the *Official Bulletin*.

The topography's owner has the exclusive right to use the protected topography, as well as the right to judicial protection in the case of infringement by any third party. In addition, the owner is entitled to use a marking in the form of a capital letter "T".

However, there are also certain exceptions to exclusivity of the rights conferred by the registered topography (for example, if the registered topography is manufactured for private and non-commercial or evaluation, analysis, research and educational purposes). In addition, the court may, under the conditions specified by the Law, issue a compulsory license enabling use of the protected topography.

Protection of topography lasts for 10 years from the application filing date or from the day it was commercially used for the first time, whichever comes first.

Protection is available not only to natural persons and legal entities residing in the Republic of Moldova, but also to foreign natural persons and legal entities under the international treaties to which the Republic of Moldova is party or on the basis of the reciprocity principle.

Copyright and Related Rights

The regulatory framework for legal protection of both copyright and related rights, including mechanisms for enforcement, is established by the Law on Protection of Copyright and Related Rights (1995) (the "Copyright Protection Law"). Due to the fact that copyright and related rights are intellectual property rights established by creation, registration is not required for establishment of any of these rights. Nevertheless, registration is available through the National Copyright Agency. It can be useful since it may, in the case of a dispute, constitute authorship for the court in the absence of proof to the contrary.

Copyright

The subject matter of copyright is a work of authorship. Under the Copyright Protection Law, a work of authorship represents an original intellectual creation, expressed in any material form adequate for reproduction, created in the domain of literature, science and art (such as, for example, books and other literary works, musical works, photographic works, computer programs).

Certain creations are, however, explicitly excluded from the copyright protection, as follows: official documents (such as, for example, laws or court decisions) and the official translations thereof, state emblems and official signs (such as, for example, flags), expressions of folklore, and the daily news and simple facts.

Copyright provides its holder (the author of the work) with the following exclusive rights:

- Moral rights: right to recognition of authorship, right to be designated in relation to use of the work, right to protection of the work's integrity, right to protection of reputation and right to disclosure, and

- Commercial rights: rights to economic exploitation of the work, for example right to authorise or prohibit reproduction of the work, distribution of copies, translation of the work, presentation to the public, etc.

Commercial rights are all transferable, on an exclusive or non-exclusive basis, by the author's written agreement as specified by the Law.

There are certain limitations to the exclusivity of rights conferred by copyright. Free use, such as quotation in articles or studies provided that it, per extract, does not exceed 400 words, is allowed without authorisation of the author and without fee.

The term of copyright validity is, generally, the author's lifetime plus 50 years after death. If the author is not known (in the case of anonymous and pseudonymous works), a 50 year-term runs from the moment of the work's publication, calculated from 1 January of the year following the year of the work's publication. Once the term expires, a work of authorship falls into public domain and becomes free for use. (However, moral rights conferred by copyright last perpetually.)

Related Rights

The related rights governed by the Copyright Protection Law are:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Broadcasting and Cable Distribution Organisations.

Rights of Performers

This category includes exclusive, moral and economic rights relating to their performances: the right to be named, the right to protection of their reputation and the right to exploit the performances, as well as the right to authorise or prohibit certain acts explicitly governed by the Law (*e.g.*, recording of a performance, reproduction and broadcasting of a recorded performance, distribution of the original and copies of the performance recorded on a phonogram). Economic rights of performers last for 50 years after the first performance date, but their moral rights (the right to be named and the right to protection of a performer's reputation) last perpetually.

Rights of Phonogram Producers

This category includes the exclusive right to phonograms' exploitation, which means the right to authorise or prohibit certain acts explicitly governed by the Law (*e.g.*, reproduction of phonograms, distribution of their copies, adaptation of phonograms). These rights last for 50 years from first publication of a phonogram, or if it has not been published, from its first recording.

Rights of Broadcasting and Cable Distribution Organisations

This category includes the exclusive right to broadcasts' exploitation, which means the right to authorise or prohibit certain acts explicitly governed by the Law (*e.g.*, recording of a broadcast, its reproduction or communication to the public). These rights last for 50 years from the date of broadcasting or cable transmission of respective programmes by the rights' holders.

The terms of their validity are calculated from 1 January of the year following the year in which the event occurred. In addition, all of these rights are subject to certain statutory limitations, meaning that there are cases in which the works can be used without their holders' authorisation, without or with payment (*e.g.*, works can be used, without any authorisation and without payment, for educational purposes or scientific research as an illustration in the form of short extracts, or they can be used by natural persons for personal purposes without any authorisation but with payment of remuneration).

Enforcement of Copyright and Related Rights

Under the Copyright Protection Law, holders of copyright and related rights are entitled to judicial protection of their rights in the case of infringement. The Law explicitly governs which actions are considered as violations of its rules and provisions (*e.g.*, circumvention of technical means of copyright and related rights protection). During the court proceedings, holders of rights may make claims, including claims for payment of damages and surrender of revenues obtained through infringement. Under the Law, persons infringing either copyright or related rights are subject to civil, administrative and criminal sanctions.

Court Practice

With respect to IP matters, the following issues are subject to the court jurisdiction in the Republic of Moldova:

- Appealing of decisions issued by the Appeals Board of the IP Office
- Acknowledgement of trademarks as well-known
- Cancellation of trademarks due to their non-use
- Issues related to unfair competition
- IPRs infringements
- Issue of compulsory license regarding patents.

Judicial practice in the area of IPRs is evolving in the Republic of Moldova. For example, 32 trademark cases and 11 patent cases were completed in 2008. According to information on court cases published on the Internet site of the Republic of Moldovan IP Office (although it is not confirmed whether such information includes all court cases or only a sample), there were 27 trademark cases (2001 to 2007) and only two patent cases (2006 and 2007). The most frequent court cases are those related to trademarks.

With respect to the claims introduced in the court proceedings by the plaintiffs, it should be mentioned that if the subject of such claims is compensation for moral damages, the usual practice of the Republic of Moldovan courts is to decrease the claimed sum by three to five times.

The duration of the court proceedings depends on various factors, mainly the complexity of the dispute, and may be completed within three months, or may take as long as five years.

International Treaties

In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are in force in the Republic of Moldova:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention, 1967, as amended 1979) – in force as of 1991;
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971) – in force as of 1995;
3. WIPO Copyright Treaty (Geneva, 1996) – in force as of 2002;
4. WIPO Performances and Phonograms Treaty (Geneva, 1996) – in force as of 2002;
5. Madrid Agreement Concerning the International Registration of Marks (1891) – in force as of 1991;
6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) – in force as of 1997;
7. Patent Cooperation Treaty (Washington, 1970) – in force as of 1991;
8. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO) – this Agreement is not subject to ratification, but incorporation of its provisions in a national legal system is a condition for WTO membership (the Republic of Moldova became a member of WTO in 2001);
9. Universal Copyright Convention (Geneva Text, 1952) – in force as of 1997;
10. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) – in force as of 1995;
11. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971) – in force as of 2000;
12. Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974) – in force as of 2008;
13. Paris Convention for the Protection of Industrial Property (1883) – in force as of 1991;
14. Locarno Agreement Establishing an International Classification for Industrial Designs (1968) – in force as of 1997;
15. Strasbourg Agreement – in force as of 1998;
16. Vienna Agreement – in force as of 1997;
17. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) – in force as of 1991;
18. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989) – in force as of 1997;
19. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs (as adopted in Geneva on 2 July 1999) - in force as of 2003;

20. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967) – in force as of 1994;
21. Patent Law Treaty (2000) – in force as of 2005;
22. Trademark Law Treaty (2000) – in force as of 1996;
23. Nairobi Treaty on the Protection of the Olympic Symbol Party (1981) – in force as of 1991;
24. International Convention for the Protection of New Varieties of Plants (1961) – in force as of 1998.

On the other hand, only one of the conventions listed in Annex 7 of CEFTA, the Universal Copyright Convention (Paris Text 1971), has not yet entered into force in the Republic of Moldova.

Taking into consideration that CEFTA was signed on 22 December 2006 and came into force in the Republic of Moldova on 26 July 2007, it is important to note one newly ratified convention, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974), in force as of 28 October 2008.

MONTENEGRO: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Montenegro

This chapter reviews the legal framework in Montenegro for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

In accordance with the *Decision on Declaration of Independence* of 3 June 2006, Montenegro continued to apply relevant IP laws previously enacted as laws of the former State Union of Serbia and Montenegro. In addition, Montenegro enacted several new laws later, therefore the current regime of IP protection incorporates the following laws, all formulated in compliance with the relevant international conventions, as well as with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and EU standards and each one dealing with the particular form of IPRs:

- Law on Patents (2008)
- Law on Trademarks (2004)
- Law on Geographical Origin Markings (2008)
- Law on Protection of Topography of Integrated Circuits (2004)
- Law on Designs Legal Protection (2004)
- Law on Copyright and Related Rights (2004).

Accordingly, these laws protect the following forms of IPRs:

- Patent
- Trademark
- Geographical Origin Indications
- Topographies of Integrated Circuits
- Industrial Design
- Copyright
- Related rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Videogram Producers
- Rights of Broadcast Producers
- Rights of Database Producers
- Rights of the First Publisher of a Free Work

In addition, protection, enforcement and certain other aspects of IPRs are regulated by:

- Law on Implementation of Regulations Governing Intellectual Property Rights Protection (2005) (the “Law on Implementation”);
- Law on Optical Disks (2007);
- Customs Law (2002, amended 2006);
- Criminal Code (2003, amended 2006);
- Law on Liability of Legal Entities for Criminal Offences (2007) and
- Law on Contracts and Torts (1980).

Furthermore, it appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles or information and communication technology sectors in this area of law.

On the other hand, Montenegro is a contracting party to relevant international conventions, in accordance with the list of treaties Montenegro accepted as binding in its Declaration deposited to the World Intellectual Property Organization (WIPO) (more within the section “International Treaties”).

IPRs Enforcement

The Law on Implementation regulates the authority of relevant inspectorates, in cases of establishing infringement of IPRs (either *ex officio* or at the request of the right holder), to seize the goods which represent the object or means of infringement and to temporarily forbid the performance of infringing activities. The right holder should be notified of the infringement immediately and will be obliged to initiate relevant court proceedings within 15 days. In addition, the Customs Law (along with the Regulation on Dealing of Customs Authorities with the Goods under Reasonable Doubt of Infringing IP Rights) enables IP rights’ owners to request the suspension of import procedure from the Customs Authorities, in cases of reasonable doubt that the IP infringing goods are being imported.

Each of the specific IPR laws mentioned above prescribes civil remedies, as well as monetary fines for violations of respective IPRs. Fine amounts are determined in the Law on Implementation in range of EUR 1 000 to EUR 30 000 for legal entities and EUR 150 to EUR 3 000 for responsible persons in legal entities. The Trademark Law stipulates that, in the case of intentional infringement of a trademark, the injured party may, instead of remuneration of the pecuniary damage, request from the infringing party compensation of up to three times the usual license fee for the use of the trademark.

In addition, the Criminal Code provides that, in the case of severe infringements of IPRs, infringing parties could face a prison sentence of up to five years. A special chapter of the Code is devoted to criminal offences against intellectual property, such as violation of rights of author and performer, unauthorised use of work of authorship or other work protected by related rights, violation of patent rights and unauthorised use of another’s design. Trademark and geographical origin markings’ infringement are regulated in special articles, outside this chapter. Also, the Law on Liability of Legal Entities for Criminal Offences (2007) introduces the possibility of liability of legal entities for criminal offences, prescribing the sanctions for such acts in the form of a monetary fine or even termination of a legal entity, conditional sentence or security measure (such as prohibition to perform certain business or other activities).

IPRs Authority

The Intellectual Property Office opened on 28 May 2008 represents the competent state authority dealing with IPRs (the “IP Office”). The relevant government regulations provided continuity of rights arising from the certificates of rights issued by the IP Office of the former State Union of Serbia and Montenegro (and later the Serbian IP Office), as well as from the applications filed before these offices. Namely, rights arising from patent, petty patent, trademark, design or topography application that had not yet been decided on 28 May 2008 are valid in Montenegro as of their filing dates before these offices (or their priority dates), provided that the applicant filed a request for registration of those rights before the IP Office of Montenegro prior to 28 May 2009. The decisions of the IP Office are final; no appeal is allowed, but it is possible to initiate an administrative dispute against them before the competent court.

Nevertheless, although the IP Office formally started to work, the applications are still not being processed; at this moment they are merely being accepted and duly recorded.

Patent

The regulatory framework for patent protection is established by the Law on Patents (2008). It regulates the protection of inventions from any field of technology by patent.

Patentability Requirements

In order to obtain protection, an invention must be new, involve an inventive step and be susceptible to industrial application. The subject matter of an invention can be a product or a procedure (including the products consisting of or containing biological material or the procedure used to produce process or use such material, etc.).

The Law stipulates that the following should not be regarded as inventions:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- plans, rules and procedures for performing intellectual activities, playing games or doing business;
- computer software;
- presentation of information; and
- the human body and its elements (including partial sequences of genes, unless isolated from the human body or produced by a technical process).

Additionally, certain inventions are barred from patentability, such as:

- inventions of which the commercial use would be against public order or morality (such as processes for cloning of human beings, etc.);
- inventions concerning methods for treatment by surgery, diagnostic or therapy methods practiced directly on the human or animal body, except products or substances for use in any of these methods (therefore, drugs are patentable);

- a plant or animal variety, or an essentially biological process for the production of a plant or an animal, with the exception of certain types of this process (such as biotechnological or microbiological processes, etc.).

Patent-Granting Procedure

The procedure for patent registration is launched by filing an application with the IP Office. The right to file the application (and eventually obtain the patent) belongs to the inventor or his/her successor in title or (in certain cases set forth in the Law) to his/her employer or his/her successor in title. The application will then be subjected to formal examination to determine if it contains all the elements prescribed by the Law. In order to be accorded a date of filing, the application must contain:

- an indication that a patent is being sought,
- information about the applicant, and
- a description of the invention and at least one patent claim (even if it does not fulfil the conditions required by the Law).

Once the application has been accorded a date of filing, the IP Office examines whether it meets all the requirements for publication of application specified by the Law: if the filing fee has been paid, if it was filed through an authorised representative (if the applicant is a foreign person), etc. If so, the application is published in the *IP Gazette* 18 months after the application filing date. It is possible to request that the application be published earlier, but not less than three months after the filing date. However, a patent application (filed by a national applicant) concerning an invention of significance for the defence and security of Montenegro will be filed before the Ministry of Defence, will be considered a secret and will not be published. If a patent is granted, the Ministry of Defence or the Ministry of Internal Affairs shall have the exclusive right to use and dispose of a secret invention. The inventor is entitled to single lump-sum compensation.

By publishing the patent application, the patent is granted, followed by its registration in the official register of the IP Office, publication of the granted right in the *IP Gazette* and the issuance of a Patent Certificate to the patent owner. Therefore, in Montenegro there is no substantial examination of an invention subject to a patent application, unless a proposal for revocation of decision on patent recognition is filed with the competent court after the right is granted.

Scope and Term of Patent Protection

A patent entitles its owner to exclusive commercial exploitation of the protected invention (production, use, marketing, etc.), as well as to initiate court proceedings against anyone who uses the invention without authorisation. The inventor also possesses the moral right to request to be recognised as the inventor and for his/her name to be indicated in the patent application and related documents.

However, there are specific limitations to the exclusivity of the rights conferred by a patent (certain cases in which third parties are allowed to use the patented invention, without infringing the owners' rights), such as:

- consumption of right;
- usage of patented invention in personal non-commercial purposes or in purposes of research or individual drug preparation in a pharmacy, and placing it in the market based on a single prescription;

- right of prior user acting in good faith who already started exploiting the protected invention in production before the date of priority of the patent application;
- limitations in order to facilitate international traffic; and
- compulsory license, compulsory license in the public interest and compulsory license in favour of plant breeders.

Regarding the term of patent protection, a patent lasts for 20 years following the date of filing the application, provided the yearly administrative fees are paid.

In addition, the Law specifies that foreign persons are entitled to patent protection in accordance with international conventions or (in their absence) reciprocity, provided that they are represented by an authorised representative (listed in the relevant Register of Representatives kept by the IP Office) or a domestic lawyer in the process.

Licensing and Transfer of Patents

A patent, the right to file an application and the rights conferred by an application can be transferred, in whole or partially, by a contract or by inheritance. These rights (except the right to file an application) can be licensed as well. The contract governing such transfer or license should be in a written form in order to be legally binding, and the transferred or licensed right should be recorded in the Patent Register of the IP Office, at the request of either party, in order to legally apply to third parties.

Patent Annulment

At any time during the term of patent, the competent court may declare it null and void, following the suit of an interested person, if it establishes that legal requirements were not fulfilled (for example, if the subject matter of protection is not an invention or it falls under the category of inventions excluded from protection; if the invention was not new, did not involve an inventive step or was not industrially applicable on the date of filing the application, etc.).

Trademark

The regulatory framework for trademark protection is established by the Trademark Law (2004) which regulates the manner of acquisition and protection of marks used in trade of goods and services.

Prerequisites for Protection and Types of Trademarks

Under the Trademark Law, any mark that is used to distinguish goods or services in trade and that can be graphically presented may be protected by a trademark. Such capability is a main prerequisite for trademark protection.

- There are three types of trademarks:
- individual trademark
- collective trademark (a trademark of a legal person representing a certain type of association of manufacturers or providers of services, which may be used by members of that association)
- Warranty trademark (a trademark that is used by several companies under the supervision of a trademark holder, as a warranty of quality, geographic origin etc.)

Trademark Registration Procedure

In order to obtain protection for a trademark, an applicant must register it before the IP Office. The registration procedure is initiated by filing an application whose elements are prescribed by the Law. The right to protect the trademark belongs to natural or legal persons in the business of manufacturing or trading with goods or services. Mandatory elements of the trademark application are the request for trademark protection, the appearance of the mark that is the subject of the application, and a list of the goods and services for which the trademark is to be registered (in accordance with the Nice Classification).

The IP Office determines whether the application contains all the necessary elements. If so, the competent officer examines whether the applied mark fulfils the legal requirements for registration. Protection shall not be granted if the mark is, for example:

- contrary to moral or public order;
- not distinguishable enough;
- represented by a shape determined exclusively by the nature of the product;
- customary for designating certain goods or services;
- capable of creating confusion in commerce with respect of origin, quality and other characteristics of the goods or services;
- identical or similar to a protected mark of another person for identical or similar goods or services, if that similarity may lead to confusion in commerce;
- identical or similar to a mark for identical or similar goods or services, which is well-known in Serbia;
- a reproduction or imitation of a famous trademark.

Grounds for Refusal of Trademark Protection and Trademark Annulment

Non-fulfilment of any of the legal requirements, as identified above, is grounds for refusal of trademark protection.

Accordingly, if a trademark is registered despite the fact that some of the legal requirements had not been fulfilled at the time of trademark registration, that is grounds for the trademark's annulment, either at the initiative of any interested party or the State Prosecutor, or *ex officio* by the IP Office, at any time during the term of trademark protection.

Scope and Term of Trademark Protection

A granted trademark is a monopoly right which gives its owner the exclusive right to use the trademark on goods and services to which it is related (as well as to dispose of it, such as by license agreement) and to prohibit others from unauthorised use of an identical or similar mark in relation to identical or similar goods or services, if this could cause confusion in commerce. The Law, therefore, entitles the owner to use the trademark, but it also prescribes a special sanction in case the trademark is not used for more than five years without reason. The trademark can then be cancelled by the IP Office, on request from an interested party.

A trademark lasts for 10 years, but it can be renewed for unlimited number of times, provided that the required fees are paid. Upon registration, the IP Office issues a Certificate of Trademark to its owner and publishes the granted right in the *IP Gazette*.

Licensing and Transfer of Trademarks

Both registered trademark and trademark applications can be transferred, in whole or in part, by a written contract or by inheritance. These rights can be licensed as well. On the other hand, collective and warranty trademarks cannot be transferred or licensed. The transferred or licensed right should be recorded in the Trademark Register of the IP Office (at the request of either party) in order to apply to third parties.

Indications of Geographical Origin

The regulatory framework for legal protection of the indications of geographical origin is established by the Law on Indications of Geographical Origin (2008).

This Law regulates the protection of two types of markings: name of origin and geographical indication. Name of origin is a geographical name of a country or a region, designating the product that originates from there, whose quality or special characteristics are determined by that specific geographical environment and whose production is completely carried out in that limited area. Geographical indication is a mark that identifies certain goods as goods from that country or a region, whereas their quality, reputation or other characteristics can be attributed to that territory. Geographical origin indication can also be a mark which is not an administrative geographical marking of a country, region or locality, but which became well-known through continuous usage in commerce as a traditional marking for products from that area, or if it is a historical marking of that area.

Certain markings are excluded from protection by the Law, such as:

- markings contrary to moral or public order;
- markings which may lead to confusion in commerce regarding their nature, origin, quality etc. because of their appearance or contents;
- markings representing the correct name of country or region of origin, but which create a false idea for consumers that the product originates from a different country or region;
- markings which became customary for certain products, due to continuous usage, etc.

The procedure for acquiring protection is carried out before the IP Office, and is divided into two phases: registration of geographical origin indication, and registration of recognition of status of an authorised user of a geographical origin indication.

A geographical origin indication application can refer to a single marking only (one name of origin or geographical indication) and to a single product. Authorised applicants are:

- domestic natural or legal persons who produce the designated products in that specific area;
- associations of mentioned persons, associations of consumers, chambers of commerce and state bodies;
- foreign natural or legal persons, provided that the geographical indication marking is registered in their country of origin, in accordance with international treaties.

The elements of the application are prescribed by the Law:

- request for protection of geographical origin marking (including information on the applicants, geographical marking, type of product, proof that the fee has been paid etc.),
- geographical area description,
- information about the products' specific characteristics, and
- indication of an organisation authorised to control the quality of the products.

Once the geographical origin marking is registered, the authorised applicant (the applicant who filed the geographical origin marking application, or any other natural or legal person who, in a certain geographical area, manufactures the products that are being marked with that geographical area marking) can file an application for recognition of status of authorised user of geographical origin marking. This application must contain the following elements:

- request for recognition of status of authorised user of the geographical origin marking,
- proof of performance of certain activities in the geographical area, and
- proof of quality control performed on the products by an authorised organisation.

Both registrations are published in the *Official Gazette* of the IP Office. While the duration of registered geographical origin indication is not limited, the duration of status of an authorised user lasts for five years, but can be renewed (with payment of fees) for an unlimited number of times, as long as the name of origin (or the geographical indication) to which it relates lasts.

Authorised users are exclusively entitled to use the registered geographical origin marking to designate the products to which that marking relates, as well as to use the marking "controlled name of origin." This includes the right to use the mark on labels, packaging, catalogues, business correspondence, import and export of products marked with that marking, etc.

Geographical origin indications cannot be transferred or licensed, due to the specific connection that exists between them on one side and the certain geographical area and authorised user on the other.

Under the Law, the IP Office will declare the registered geographical origin indication, as well as the decision on recognition of status of authorised user of geographical origin indication, null and void if it establishes that legal requirements were not fulfilled (*e.g.*, if the marking is against moral or public order, if it may lead to confusion in commerce). Also, registered geographical origin indication will be cancelled by the IP Office, upon request of an interested person, if its protection ceases to be valid in the country of its origin. Finally, an interested person can file a suit for cancellation of registered geographical origin indication with the competent court if the indication becomes generic or customary for certain products.

Topographies of Integrated Circuits

The regulatory framework for legal protection of the topographies of integrated circuits is established by the Law on Protection of Topography of Integrated Circuits (2004), which is one of the current Montenegrin IP laws originating from the time when Montenegro used to be a part of the State Union of Serbia and Montenegro. The Law is fully harmonised with the TRIPS Agreement and EU standards.

However, as in Serbia, economic and technology standards are still trailing far behind legislative standards: the IP Office in Montenegro is yet to receive the first topography of integrated circuits application.

The procedure for registration of topography of integrated circuits is launched by filing an application with the IP Office. The application can be filed within two years from the date the topography was first commercially used or within 15 years of its creation, if it was not commercially used. The formal aspects of the application are examined, as well as the requirements for granting protection (whether it is a result of a creator's intellectual effort and whether it was not well-known among the creators of topographies of integrated circuits at the time of its creation). If all the conditions are met, the IP Office will grant the right, register it in the official register of topographies and publish it in the *IP Gazette*, as well as issue a Certificate on Topography to the owner.

The topography owner has the exclusive right to use the protected topography, including the right to copy it, manufacture integrated circuits containing the topography, import, market or commercially exploit a copy of the topography or integrated circuits containing it.

Protection of topography lasts for 10 years from filing the application or from the day it was commercially used for the first time, whichever comes first.

Applications (filed by a national applicant) of topographies of significance for the defence and security of Montenegro are filed before the Ministry of Defence, are considered a secret and are not published. If a topography certificate is granted, the Ministry of Defence or the Ministry of Internal Affairs has the exclusive right to use and dispose of a secret topography. The creator is entitled to single lump-sum compensation.

Registered topographies can be transferred by a written contract or by inheritance, as well as licensed. The transferred or licensed right should be recorded in the Topography Register of the IP Office, at the request of either party, in order to apply to third parties.

Industrial Design

The regulatory framework for legal protection of industrial design is established by the Law on Designs Legal Protection (2004).

This Law regulates the protection of a design owner's exclusive right to commercially exploit the design and to forbid unauthorised copying or imitation by others. It introduces the term "design" instead of earlier used terms ("patterns" and "models") and extends the protection from the previously prescribed 15 years to 25 years.

Under the Law, a design represents a two-dimensional or three-dimensional appearance of the product or its part, determined by its visual characteristics (*e.g.*, lines, colours, texture, materials) as well as their combination.

A design can be protected only if it is new and if it possesses individual character.

Certain designs are excluded from protection by Law, such as:

- designs whose publication or usage is against public order or morality;
- designs which infringe the intellectual property rights of others;

- designs consisting of a country's (or other) public coat of arms, flag or symbol; a country's or international organisation's name or short name; religious or national symbols(unless authorised).

The procedure for registering a design is launched by filing an application with the IP Office. The application should include the request for design protection, a description of the design and a two-dimensional representation of the design.

The IP Office examines whether the requirements for protection are fulfilled. If so, after the fee is paid for the first five years, the IP Office will issue a Certificate on Design, enter it into the Register and publish it in the *IP Gazette*.

The owner of a design is exclusively entitled to exploit the design commercially and to forbid third parties from doing the same. In addition, the design's author has the moral right to request to be recognised as such and to have his/her name appear in the design application and related documents.

Both registered design and design application can be transferred, in whole or partially, by a written contract or by inheritance, as well as licensed. The transferred or licensed right should be recorded in the Design Register of the IP Office, at the request of either party, in order to apply to third parties.

Furthermore, the IP Office may declare the decision on design recognition null and void (following the request of an interested person or state attorney) if it establishes that legal requirements were not fulfilled (*e.g.*, if the design was not new or if it does not possess individual character). A proposal for design annulment is to be filed with the IP Office, together with the evidence substantiating the claims from the proposal. The owner of the design is forwarded the copy of application for annulment, together with the evidence, and is requested to reply within 30 days. If the IP Office establishes that the design annulment proposal is justified, it declares the design null and void. It will be considered that the design has never had any of the design protection effects, excluding the effects of final court decisions regarding design infringement, as well as concluded agreements regarding transfer of rights or license (which are valid to the extent of their previous execution, provided the design owner had entered into the agreement in good faith).

The Law stipulates that foreign persons are entitled to design protection in accordance with international conventions or (in their absence) reciprocity, provided that they are represented by an authorised representative (listed in the relevant Register of Representatives kept by the IP Office) or a domestic lawyer in the procedure before the IP Office.

Copyright and Related Rights

The regulatory framework for legal protection of both copyright and related rights is established by the Law on Copyright and Related Rights (2004).

This Law provides protection of rights of the authors of works of authorship (such as literary, scientific and artistic works), as well as related rights (right of performers, right of the first publisher of a free work, rights of producers of phonograms/videograms/ broadcasts/databases). Unlike industrial property rights (patents, trademarks, geographical origin markings, topographies of integrated circuits and designs), protection of either copyright or related rights does not necessitate registration of the work before the IP Office. The work of authorship enjoys protection from the day of its creation without any formal requirements.

Copyright

Under the Law, a work of authorship represents an author's original intellectual creation, expressed in a certain form. For copyright protection purposes, the value of the work is irrelevant, as well as its size, purpose, contents, way of manifestation or permissibility of public communication.

An author is a natural person who has created the work. The Law presumes that the author is a person whose name or pseudonym is stated on copies of the work, or is referred to on the occasion of publication of the work, until proven otherwise (with the exception of film producers).

The protection of copyright does not apply to general ideas, principles and instructions included in a work of authorship. In addition, the following do not constitute a work of authorship: laws, other regulations, official materials of state bodies and bodies performing public functions, and their official translations; and submissions and other documents presented in the administrative or court proceedings.

Although works of authorship do not need to be registered, authors have an option to deposit their works within the IP Office, which simplifies proving the authorship in the case of a dispute. The IP Office does not review the content of the work of authorship, but simply performs the act of deposition.

Regarding the scope of the rights conferred by copyright, the author has moral and pecuniary rights regarding his/her work of authorship. The author's moral rights are:

- to be recognised as the author of the work;
- for his/her name to be indicated on each copy of the work or to be quoted at each public communication of that work;
- the right of disclosure of the work;
- the right of protection of the work's integrity, and
- the right to oppose unbecoming exploitation of the work.

In addition, regarding the pecuniary rights, an author is exclusively entitled to commercially exploit his/her work. (Specific forms of exploitation are listed within the Law.) The author is entitled to remuneration for the exploitation of the work by others as well, unless otherwise provided by the Law or a contract. In addition, an author has certain rights towards the owner of his/her work of authorship, such as the right of access to a copy of the work if necessary for the reproduction of that work, etc.

The Law also prescribes several limitations of copyright. In some cases, a disclosed work of authorship may be reproduced and communicated to the public without the author's permission and without paying remuneration, such as:

- for the purposes of conducting an official procedure before a court or other state bodies;
- in the scope of informing the public on current events through press, radio and television;
- short excerpts from the disclosed works may be reproduced if used for non-commercial purposes in the field of education, examination or scientific research;
- for archival and non-commercial purposes of public libraries, educational institutions, museums, etc.; or

- any natural person may reproduce a disclosed work for personal non-commercial purposes, with certain exceptions (including computer programmes, constructed works of architecture).

In certain situations a work of authorship may be reproduced without the author's permission, but with the obligation to pay the remuneration (public license), such as:

- for educational or scientific research purposes of the state bodies, educational institutions and public libraries; or
- articles published in mass media may be reproduced, marketed or in any way communicated to the public by other mass media, provided that such articles relate to current economic, political or religious issues and that such activity is not explicitly forbidden by the author.

The author's pecuniary rights last throughout his/her lifetime and 70 years after death, when they entitle the successors to commercially exploit their ancestor's work. However, moral rights are not limited in time. Then 70 years after the author's death, the associations of authors and relevant institutions in the fields of science and arts are entitled to protect the author's moral rights. Deposition of the work before the IP Office does not influence the length of an author's rights in any way.

The protection of foreign authors and their works is based on international treaties ratified by Montenegro or (in their absence) on reciprocity between Montenegro and the author's country, with the exception of the foreign author's moral rights, which enjoy protection regardless of said conditions.

Related Rights

Related rights governed by the Montenegrin Law on Copyright and Related Rights are the following rights:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Videogram Producers
- Rights of Broadcast Producers
- Rights of Database Producers
- Rights of the First Publisher of a Free Work

Rights of Performers

This category includes persons who engage personally in the performance of works which do not have to be protected works of authorship which includes exclusive rights: moral rights (for example, the right to be recognised as the performer) and pecuniary rights (for example, the right to authorise or prohibit the marketing or rental of recordings of a performance). Pecuniary rights of performers last for 50 years after the performance date, but their moral rights last perpetually.

Rights of Phonogram Producers

This category includes natural or legal persons who have organised and paid for production of the phonogram which include exclusive pecuniary rights (such as the right to prohibit or permit reproduction of the phonogram or rental of the phonogram copies). These rights last for 50 years after the phonogram's production. If, however, the phonogram has been lawfully published or communicated to the public within that time, the term starts at first publication (first communication to the public).

Rights of Videogram Producers

This category includes natural or legal persons who have organised and paid for production of the videogram which include exclusive pecuniary rights (such as the right to prohibit or permit reproduction of the videogram or rental of the videogram copies), as well as the right to oppose the videogram's exploitation in an altered form if it can jeopardise their justified economic interests. The term is the same as it is for the rights of phonogram producers.

Rights of Broadcast Producers

This category includes natural or legal persons who have organised and paid for production of the broadcast) include exclusive pecuniary rights (such as the right to prohibit or permit any third party to record the broadcast or to re-broadcast it or to rent the copies of the broadcast's recording). These rights last for 50 years from the date of the first broadcasting.

Rights of Database Producers

This category includes natural or legal persons who have created a database by substantial investment in obtaining, verifying or presenting a database's content, taking into account that a database is defined as a collection of independent works, data or other materials arranged methodically and individually accessible by electronic or other means which include exclusive pecuniary rights with regard to the database (including the right to prohibit or permit any third person to reproduce the database or to market or rent its copies or its substantial parts). These rights last for 15 years after the database is complete. If, however, the database has been lawfully disclosed within that time, the term starts to run from the first disclosure. In addition, this term can be extended for another 15 years if substantial changes occur in the selection or arrangement of the database contents.

Rights of the First Publisher of a Free Work

Are the rights of any person who, after the author's pecuniary rights protection expires, for the first time lawfully publishes or communicates to the public a previously unpublished work. These rights are equal to the author's pecuniary rights and they last for 25 years from the work's first publication or first public communication.

Court Practice

The courts competent for disputes concerning IPRs are the commercial courts (if the parties in dispute are legal entities) and the basic courts (if the parties are natural persons).

IPR protection and enforcement in Montenegro is evolving and judicial practice in this area is still in its early phase. At this stage it is difficult to make any conclusions with respect to such practice or the duration of court proceedings. Publicly available data is difficult to obtain regarding court practice. The IP Office is yet to start processing the applications received following its formation (28 May 2008), which is

often a condition for efficient court protection of IP rights, since the courts hesitate to decide who is the rightful owner of the pending right in dispute and prefer to wait for the decision of the IP Office.

International Treaties

Montenegro is a contracting party to relevant international conventions, in accordance with the list of treaties Montenegro accepted as binding as of 3 June 2006 in its Declaration deposited to World Intellectual Property Organization (WIPO) on 4 December 2006 and other declarations of succession. In terms of the conventions listed in Annex 7 of CEFTA, the following conventions are in force in Montenegro:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention , 1967, as amended 1979);
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act, 1971);
3. WIPO Copyright Treaty (Geneva, 1996);
4. WIPO Performances and Phonograms Treaty (Geneva, 1996);
5. Madrid Agreement Concerning the International Registration of Marks (1891);
6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957);
7. Patent Cooperation Treaty (Washington, 1970);
8. Universal Copyright Convention (Geneva Text, 1952);
9. Universal Copyright Convention (Paris Text 1971);
10. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961);
11. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971);
12. Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974);
13. Paris Convention for the Protection of Industrial Property (1883);
14. Locarno Agreement Establishing an International Classification for Industrial Designs (1968);
15. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977);
16. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989);

17. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967);
18. Trademark Law Treaty (1994);
19. Nairobi Treaty on the Protection of the Olympic Symbol Party (1981);

On the other hand, Montenegro has not yet ratified the following conventions or agreements:

1. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement) – this Agreement is not subject to ratification, but incorporation of its provisions in national legal system is a condition for WTO membership (Montenegro is not a member of WTO, but its legislation nevertheless incorporates provisions of the TRIPS Agreement);
2. Strasbourg Agreement Concerning the International Patent Classification (1971);
3. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973);
4. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, as adopted in Geneva on 2 July 1999;
5. Patent Law Treaty (2000);
6. International Convention for the Protection of New Varieties of Plants (UPOV, 1961).

UNMIK/KOSOVO: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

UNMIK/Kosovo

This chapter reviews the legal framework in UNMIK-Kosovo for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

Legislation of UNMIK/Kosovo which governs intellectual property rights' protection and enforcement consists of four laws governing both industrial property rights and copyright and related rights, as follows:

- Patent Law (2004)
- Law on Industrial Design (2005)
- Trademark Law (2006)
- Law on Copyright and Related Rights (2006).

Accordingly, the forms of IPRs protected by respective legislation are as follows:

- Patent
- Industrial Design
- Trademark
- Copyright
- Related Rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Film Producers
- Rights of Broadcasters
- Rights of Databases' Producers
- Rights of Publishers.

In addition, it appears that there are no particular IP laws relating solely and exclusively to textiles, automobiles, or information and communication technology sectors in this area of law.

IPRs Authority

The authority dealing with IPRs in UNMIK/Kosovo is the Intellectual Property Office of Kosovo (the "IP Office"). Its work commenced on 19 November 2007. So far, it has been only receiving applications for registration of industrial property rights governed by relevant IP legislation.

Patent

The regulatory framework for patent protection, including enforcement mechanisms, is established by the Patent Law (2004).

The Patent Law governs the following main areas relating to patents: requirements for granting a patent (patentability requirements), patent-granting procedure, scope and term of patent protection, licensing and transfer of patents, patent annulment and cancellation, and enforcement of the rights conferred by a patent.

Patentability Requirements

Under the Patent Law, the statutory requirements for granting a patent are novelty, inventive step and industrial applicability. In other words, an invention (which may be, or may relate to, a product or a process) can be protected by a patent if it is new, involves an inventive step and is industrially applicable. The subject matter of an invention protected by a patent may be a product or a process.

An invention is considered to be new if it does not form part of the state of art (the state of art includes everything made available to the public, anywhere in the world, prior to the date of a particular patent application filing, as well as the content of all applications filed in UNMIK/Kosovo with the filing date preceding the date of a particular patent application filing, provided that such applications are published). An invention is considered to involve an inventive step if, taking into consideration the state of the art described above, it is not obvious to a person skilled in the appropriate art. An invention is considered to be industrially applicable if it can be made or used in any kind of industry including, in particular, handcraft, agriculture, fishery and services.

However, even if they can fulfil these patentability requirements, certain creations are excluded from patent protection. Such creations are: discoveries, scientific theories and mathematical methods; esthetical creations; schemes, rules and methods for performing mental acts, playing games or doing business; computer programs; and presentations of information.

Moreover, the Patent Law explicitly stipulates that the following inventions cannot be protected by a patent: inventions the exploitation of which would be contrary to public order or public morality (such as, for example, processes for cloning human beings or the use of human embryos for industrial or commercial purposes); inventions which concern animal breeds, plant varieties and essentially biological processes for plants' or animals' production with the exception of the inventions which concern non-biological and microbiological processes and products resulting from such processes; the human body, at any stage of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene; and inventions which concern diagnostic or surgical methods or methods of treatment practiced directly on the human or animal body, except for the products used in such methods.

Patent-Granting Procedure

For the purpose of obtaining a patent, registration should be initiated before the IP Office by filing a patent application. This application can be filed either by the inventor or another individual provided that, if the applicant is not the inventor, the legal ground for filing the application is indicated.

A complete patent application should include a request for patent protection (it should include an indication that patent recognition is required, the name and other particulars of the applicant, the inventor and the agent, if any, and the title of the invention), a description of the invention, patent claims (one or more, taking into account that they may be independent or dependent, with independent claims containing new and essential characteristics of a particular invention, drawings referred to in the claims' description

(only if they are necessary for understanding the invention), an abstract of the invention providing technical information and proof that the application fee was paid. One patent application relates to one invention or to a group of inventions linked in a way to form a single general inventive concept (*unity of invention* principle).

The application is then examined, and any errors or omissions must be remedied by the applicant within the time limit specified by the IP Office. The patent application is published at least 18 months after the application filing date (nevertheless, if the applicant requests earlier publication, it may be published as early as three months after it is filed). Within six months of the publication date, the applicant can file a request for patent recognition. The IP Office records the patent in the Patent Register and issues a certificate of the grant and a copy of the patent specification. Within 10 years from the application filing date, the applicant files written evidence that the invention fulfils all patentability requirements envisaged by the Law. Otherwise, it shall be deemed that the patent and the application have never provided any of the rights which, under the Law, are conferred by a patent.

Scope and Term of Patent Protection

Patent constitutes a property right and provides its owner with exclusive rights to exploit the patented invention, as well as to prohibit exploitation by any third party which does not have consent (as such, the patent owner is entitled to forbid to any third party any making, offering for sale, using, selling, exporting, importing or stocking for such purposes the product carried out in accordance with the invention). The scope of the patent's owner exclusive rights is determined by the patent claims which are accepted in the patent-granting procedure.

However, there are certain exceptions to the exclusivity of rights conferred by a patent (or certain acts which the patent owner cannot forbid to the third parties):

- acts representing exploitation of the patent for private and non-commercial purposes;
- acts carried out with the objective of research and development and for experiments relating to the protected invention's subject matter;
- acts representing preparation of a medicine in a pharmacy on the basis of an individual medical prescription and related acts;
- acts representing exploitation of the product subject to the protected invention if a person who undertakes such acts had, in good faith and within his/her economic activities, exploited or manufactured respective product or had made real and serious preparations for such exploitation in UNMIK/Kosovo, prior to the patent application's filing date (*right of the prior user*).

In addition to the limitations described above, the Patent Law also governs limitations relating to the patents in the field of biotechnology (the "Biotechnology Limitation"), and limitations relating to vehicles in international traffic (the "Vehicles Limitation"). More precisely, the Biotechnology Limitation means that the patent owner's exclusive rights do not extend to biological material obtained from the propagation or multiplication of the biological material placed on the market of UNMIK/Kosovo by the patent owner or with his/her consent, provided that the material obtained in such manner is not subsequently used for propagation or multiplication. The Vehicles Limitation means that the patent owner is not entitled to forbid use of the protected invention in the construction or equipment of a vehicle used in international traffic (vessel, aircraft or land vehicle) which belongs to any of the member states of the Paris Union or the WTO, provided that such a vehicle is temporarily or accidentally in UNMIK/Kosovo and that the product serves exclusively for the purposes of that vehicle.

The term of patent protection is 20 years from the patent application's filing date. In order to maintain validity of the patent, it is necessary to pay annually, the administrative fees and procedural charges, for the third and every subsequent year counting from the application filing date.

Patent Licensing and Transfer

Both granted patent and the rights conferred by a published patent application can be licensed or transferred, in total or partially, by a contract (as stipulated by the Patent Law). If the subject in a contract is a joint patent, the consent of all its owners is necessary.

In the case of a patent transfer, the contract governing the transfer should be written in order to be legally binding and a change in ownership introduced by such an agreement should be recorded in the Patent Register of the IP Office in order to apply to third parties. In any case, the transfer of a patent/patent application does not affect rights acquired by third parties prior to the date of transfer.

The Patent Law also governs the conditions under which non-voluntary (compulsory) license may be granted. It may be granted by the competent court in UNMIK/Kosovo in one of the following cases: if the patent owner does not use the patented invention or does not use it sufficiently (unless the patent owner provides legitimate reasons to justify non-exploitation or insufficiency of exploitation of the patented invention); if an owner of some other patent or a plant variety right cannot use its right without infringing the patent to which the request for issuing a compulsory license relates (the "First Patent"), provided that the invention subject to the other patent or the plant variety right involves an important technical improvement of considerable economic significance in comparison with the First Patent; and if the patented invention's exploitation is necessary in extremely urgent situations (such as, for example, national security, food supply or public interest protection in the field of health) or for remedying a practice determined after judicial or administrative proceedings to be anticompetitive. In any case, a compulsory license may be granted on the condition that the person requesting it has tried to obtain authorisation to use the patented invention from the patent owner under reasonable commercial terms and conditions, but has not succeeded. Additionally, a compulsory license is always a non-exclusive license and the patent owner is to be notified of its issuance in the shortest possible term.

Patent Annulment and Cancellation

Regarding patent annulment, a patent may be declared null and void at any moment during its term, on the basis of a proposal of any natural person or legal entity or a State Attorney, in the cases explicitly governed by the Patent Law (for example, if the patent has been granted for an invention which is not industrially applicable or for an invention which at the moment of filing the application was not new or did not include an inventive step). The proposal for patent annulment is to be filed with the IP Office, together with the evidence substantiating the claims. The filed proposal will be sent by the IP Office to the patent owner who will have a chance to respond within the time limit specified by the IP Office (in general, 30-60 days). If the IP Office establishes that the patent annulment proposal is justified, it will declare the patent null and void; it will be considered that respective patent has never had any of the patent protection effects governed by the Patent Law.

Regarding patent cancellation, this mechanism is available for inventions concerning viable biological material. Namely, a patent granted for such an invention can be cancelled at any moment during its term if it established that the biological material deposited in the authorised institution does not exist anymore or is not available to the public anymore or that its availability to the public was discontinued. The patent cancellation procedure is initiated and carried out in the same manner as the patent annulment procedure. However, unlike a patent annulment, a patent cancellation takes effect only for the future.

Patent Enforcement

The Patent Law envisages civil protection as a mechanism for undertaking patent enforcement actions. Protection is achievable by filing a lawsuit with the competent court, taking into account that there are two types of these lawsuits. The lawsuit for the establishment of patent protection rights can be filed by the inventor or his/her successor in the case when a patent application has been filed by the person not entitled to the patent protection (or, in the case of the jointly created invention, by the person who is not the only person entitled to the patent protection). The patent infringement lawsuit can be filed against any person infringing the patent, by the patent owner (the applicant of the published patent application, or the holder of an exclusive license over respective rights), taking into account that the term for filing this lawsuit is three years from the day of finding out about the infringement and the infringer, and at the latest, within five years from the day when the infringement was made.

In addition, the Patent Law stipulates that any legal entity which acts in contravention to the rules envisaged by the Patent Law (*e.g.*, if it produces or sells or imports the products made in accordance with the patented invention) will be liable for a misdemeanour and fined up to EUR 5 000, while a responsible person in such a legal entity will be fined up to EUR 1 000. A natural person will be liable for a misdemeanour as well and fined in the amount of up to EUR 800.

Industrial Design

The regulatory framework for legal protection of an industrial design, including enforcement mechanisms, is established by the Law on Industrial Design (2005).

The Law on Industrial Design governs the following main areas relating to designs: requirements for industrial design registration, the procedure for industrial design registration, the scope and term of protection conferred by an industrial design, licensing and transfer of designs, annulment of industrial design, and enforcement of the rights conferred by an industrial design.

Requirements for Industrial Design Registration

Under the Law on Industrial Design, the design represents the external shape of a product (the whole product or its parts) which derives from the product's characteristics, in particular its shape, material, colour and text.

The statutory requirements for obtaining an industrial design are novelty and individual character of a design. A design is new if it is not identical to any of the designs made available to the public prior to the date of filing the application for industrial design registration. A design has an individual character if the overall impression which the consumers have when they see the design differs from their impression left by any other design which was made available to the public prior to the date of filing the application for industrial design registration.

The Law on Industrial Design specified the designs which cannot be protected (such as designs made in contravention to the public order or morality, or designs the characteristics of which are conditioned by the product's technical characteristics). Furthermore, the reasons for which an application for industrial design registration will be refused or annulled are also specified by the Law (for example, if the requirements for industrial design registration are not fulfilled or if a person who submitted an application for industrial design registration is not entitled to registration).

Procedure for Industrial Design Registration

The procedure for industrial design registration is launched by filing an application with the IP Office.

In order to be considered as formally complete, an application for industrial design registration should include: the application form; information on the applicant and on the agent, if the application was filed by the agent (as with all other industrial property rights, if the applicant is a foreign natural person or legal entity, the application cannot be filed by him/her directly, but only by the agent recognised as the authorised representative for protection of respective industrial property right by the IP Office); presentation of the design provided that it is suitable for reproduction; the product mark where the design is applied; and proof of payment of the application fee.

The IP Office then examines whether it complies with all formal requirements and whether the requirements for industrial design registration (novelty and individual character) are fulfilled. If so, then the IP Office issues a decision on industrial design registration.

Scope and Term of Protection Conferred by Industrial Design

Industrial design constitutes a property right and provides its owner with exclusive rights for exploitation of the registered design and with the right to prohibit its usage by any third party without consent.

1. However, there are certain actions which third parties can undertake freely (*i.e.*, which the industrial design holder cannot forbid). Such actions, representing the exceptions to exclusivity of the rights conferred by the industrial design, are as follows:
2. use of the registered design for private and non-commercial purposes;
3. actions undertaken for research purposes;
4. reproduction of the registered design with the purpose of citation and education, on condition that such usage complies with good business practice principles and that it does not cause any damage with respect to the registered design regular use;
5. use of the registered design by a person who started using the design or had made preparations for such use in UNMIK/Kosovo, prior to the design application's filing date (*right of the prior user*).

In addition to the limitations listed above, the Law on Industrial Design also governs limitations relating to certain vehicles in international traffic (the "Vehicles Limitation"). The rights conferred by the design owner cannot be realised in relation to: aircraft equipment registered in another country when they temporarily enter the territory of UNMIK/Kosovo, spare parts for those aircraft when they have to be imported to UNMIK/Kosovo for the purpose of repairing the aircraft, and repairs.

The term of industrial design validity is 25 years from the date of filing the registration application. In order to maintain validity of the industrial design, the right must be extended every five years and administrative fees paid.

Industrial Design Licensing and Transfer

The rights conferred by an industrial design may be licensed and transferred on the basis of a written contract. Moreover, both license and transfer of the registered design should be registered before the IP Office in order to apply to third parties.

Industrial Design Annulment

An industrial design may, at any moment during its term and after its term expires, be declared null and void, on the basis of a proposal of any person authorised by the Law to file such proposal or by the public prosecutor or by the IP Office itself, for the reasons explicitly governed by the Law on Industrial Design (for example, if the IP Office establishes that requirements for industrial design registration have not been fulfilled when the design application was filed).

Industrial Design Enforcement

Under the Law on Industrial Design, legal protection of a registered design can be realised in a civil law procedure by filing a lawsuit with the competent court. There are two types of these lawsuits. The lawsuit for recognition or transfer of the registered design can be filed by a person entitled to request industrial design registration in the case when the design was applied for registration or registered by a person not authorised for registration (within three years from the day of the design application's publishing, provided that the court verifies that the unauthorised person did not have good intent). The design infringement lawsuit can be filed by the design owner against any person infringing the registered design within three years from the day of finding out about the infringement and the infringer, and at the latest, within five years from the day of the infringement.

In addition, the Law on Industrial Design stipulates that any legal entity which acts in contravention to the rules envisaged by this Law (*e.g.*, if it produces, sells, imports or uses products which contain the design) will be liable for an offence and fined in the amount up to EUR 5 000, while a responsible person in such a legal entity will be fined up to EUR 1 000 and a natural person will be liable for an offence as well and fined up to EUR 800.

Trademark

The regulatory framework for legal protection of a trademark, including enforcement mechanisms, is established by the Trademark Law (2006).

The Trademark Law governs the following main areas relating to trademarks: prerequisites for trademark registration, types of trademarks and grounds for refusal of the protection; trademark registration procedure; scope and term of protection conferred by a trademark; licensing and transfer of trademarks; cancellation, revocation and annulment of trademarks; and enforcement of the rights conferred by a trademark.

Prerequisites for Trademark Registration, Types of Trademarks and Grounds for Refusal of Protection

Under the Trademark Law, any mark which is capable of distinguishing the goods or services of one undertaking from those of other undertaking may be protected as a trademark. Nevertheless, if a mark consists only of a shape, it cannot be protected as a trademark if this shape is necessary for obtaining a technical result, if it results from the nature of the concerned goods or if it provides substantial value to the concerned goods. Accordingly, the main prerequisite for trademark protection is the capability of a mark to make a distinction of the goods/services compared to other goods/services of the same or similar type.

The Trademark Law introduces three types of trademarks: individual trademarks, collective trademarks and certification trademarks. In addition, the Law introduces the category of commercial designations as a separate category (without, however, specifying any rules applicable exclusively to commercial designations), stipulating that company symbols (signs used in the course of business as a name, firm name or special designation of an undertaking) and titles of work (names or special designations of printed publications, cinematographic/musical/dramatic or related works) can be protected by this kind of designation.

Regarding grounds for trademark refusal, there are absolute and relative grounds, both explicitly governed by the Trademark Law. For example, if the marks applied for registration are not capable of being presented graphically or if they are against public order and morality or if they lack distinctiveness, the characteristics of these marks represent absolute grounds for refusal. On the other hand, if a mark applied for registration is identical with or similar to an earlier filed or registered trademark (provided that the goods/services for which protection is sought are identical with or similar to the goods/services for which the earlier trademark is applied for registration/registered and provided that, due to this similarity, there is a reasonable likelihood of consumer confusion), such a situation represents one of the relative grounds for refusal of trademark registration. However, it should also be noted that, under certain circumstances explicitly governed by the Trademark Law, some of the absolute grounds, even though they do exist, will not represent an obstacle for trademark registration. On the other hand, the existence of a relative ground will always cease to represent an obstacle for trademark registration if the owner of the earlier right consents, in writing, to trademark registration of the mark.

Trademark Registration Procedure

The procedure of trademark registration is launched by filing an application with the IP Office.

A trademark application should include: particulars of the applicant and of the authorised trademark agent registered by the IP Office, if the application was filed by the agent; representation of the trademark; a list of goods/services for which protection is sought; a statement that the trademark is used for marking the goods/services subject to the application or that the applicant has a *bona fide* intention for such usage; in the case of collective or certification trademark, the terms governing usage of such a trademark; and proof of payment of the prescribed application fee.

If all prerequisites for trademark registration are fulfilled and there are no grounds, either absolute or relative, for refusal of trademark registration, the IP Office publishes the application in its Official Bulletin. Within three months of the publication date, any person can file opposition against the application provided that a statement of the opposition grounds is consisted within the written notice of opposition. If no opposition is filed or if it is filed but is not successful), the IP Office will register the trademark and issue a Certificate of Registration.

Scope and Term of Trademark Protection

A trademark provides its owner with exclusive rights for its usage and with the right to prohibit such usage by any unauthorised third party. Accordingly, any unauthorised use of a registered trademark (or a mark which is confusingly similar to the registered trademark) constitutes a violation of the registered trademark.

However, there are certain actions which third parties can undertake freely, as they are not considered as a registered trademark's violation if undertaken without a trademark owner's authorisation:

1. use by a third person of his/her own name or address;

2. use with the purpose of describing the type, quality, value, geographical origin, time of production or any other characteristic of goods or services;
3. use necessary to indicate the intended purpose of particular goods or services, particularly accessories or spare parts, on the condition that such use is made in good faith and carried out in accordance with good business practice principles;
4. use of the unregistered mark within the area where it has been used prior to the registration date of the trademark or prior to the registered trademark use by its owner or other authorised person.

In addition, the exhaustion of the rights conferred by a registered trademark is also governed explicitly by the Trademark Law. A trademark is exhausted if it is used in relation to the goods which have been placed on the market in UNMIK/Kosovo or the European Union under trademark, either by the trademark holder or by a person who had consent. Nevertheless, the trademark owner will, even in this situation, be entitled to oppose the trademark's further use if he/she has a legitimate reason to believe that the condition of the goods marked with the trademark have been changed or damaged after being placed on the market.

The term of trademark validity is 10 years from the date of filing the application. This term may be extended an unlimited number of times as long as the fees are paid.

Licensing and Transfer of Trademarks

Both the registered trademark and the trademark application may be licensed and transferred, in whole or partially. Such transfer/licensing has to be in a written form in order to be legally binding. Additionally, both transfer and licensing of a trademark registered or applied for registration should be registered before the IP Office in order to apply to third parties. (Neither transfer nor licensing shall affect licenses previously granted, if any, to third parties.)

Cancellation, Revocation and Annulment of Trademarks

A trademark owner may voluntarily cancel registration of his/her trademark, in whole or in part. The trademark owner's exclusive rights over the trademark then cease to exist.

The cases in which a trademark may be revoked, in whole or partially, are explicitly governed by the Trademark Law, as follows: if the trademark has not been genuinely used by its owner or a person authorised by its owner, in UNMIK/Kosovo (taking into account that the trademark is considered used in UNMIK/Kosovo even if it is used only for marking the goods intended for export out of UNMIK/Kosovo), within five years from the date of publishing its registration in the Official Bulletin on the condition that there is no justified reason for non-use; if the registered trademark has not been used for an uninterrupted period of five years on the condition that there is no justified reason for non-use; if the trademark has become a common name for the products/services for which it is registered, due to inactivity of its owner; and if the trademark is capable of misleading consumers at the market. Any person may file a request for trademark revocation filed either with the competent court or the IP Office.

Regarding trademark annulment, any person may file a request for trademark annulment, in whole or partially, either with the competent court or the IP Office. The circumstances under which the trademark was registered are grounds for filing a request for trademark annulment (although there might have been grounds for its refusal at the time of its registration).

Trademark Enforcement

Under the Trademark Law, legal protection of a registered trademark can be ensured through a civil law procedure before the competent court. Namely, it is governed by the Law that a registered trademark's owner is entitled, in the case of a trademark infringement, to take any judicial remedy available to the proprietors of other types of property. Such remedies include court order for removal of the marks offending the trademark from the concerned goods or material (the "Infringing Objects") or, if such removal is not feasible, order for destruction of the Infringing Objects; and court order for surrender of the Infringing Objects to the trademark owner or other person designated by the court. On the other hand, the Trademark Law also governs certain remedies in the case of ungrounded threats of infringement proceedings (including a claim for damages due to loss suffered by the threats).

In addition, the Trademark Law stipulates that any legal entity which acts in contravention to the rules on trademark use, as envisaged by this Law (*e.g.*, if it sells or distributes goods marked with a registered trademark it does not own), will be liable for an offence and fined up to EUR 5 000 while a natural person will be fined up to EUR 1 000. Nevertheless, it should be noted that the persons acting in contravention to the rules will be liable for an offence only if they have undertaken respective activities with the intent of gaining material benefit or causing loss to another.

Copyright and Related Rights

The regulatory framework for legal protection of both copyright and related rights, including mechanisms for these rights enforcement, is established by the Law on Copyright and Related Rights (2006) (the "Copyright Law").

Copyright and related rights are the intellectual property rights established by the mere fact of a work of authorship. In other words, unlike the industrial property rights as identified above (patent, industrial design, trademark) that require a procedure before the IP Office, registration is not a prerequisite for establishment of either copyright or any related rights.

Copyright

The subject matter of copyright is a work of authorship. Under the Copyright Law, a work of authorship is an original intellectual creation, expressed in any form, from the domain of literature, science and art (such as, for example, lectures and other spoken works, books, newspapers and other written works, musical works, photos and other photographic works, computer programs, technical drawings and other presentations of technical, educational or scientific nature). In addition, an unfinished work of authorship, the title of a work of authorship and components of a work, are subject to copyright protection as well, under condition that they, by themselves, represent original intellectual creations.

Certain creations are, however, explicitly excluded from the copyright protection, as follows: ideas, principles, instructions, procedures, discoveries and mathematical concepts; laws and other regulations, and their official translations, as well as all other official materials including those made available to the public for informational purposes; international agreements; official materials and publications of public authorities; acts in administrative and court procedures; expressions of folklore; and daily news and other information which represent, by their nature, usual press reports.

Copyright provides its holder (the author of the work of authorship is the original holder of copyright) with the following exclusive rights:

- moral rights (right to the first disclosure, right to recognition of authorship, right to integrity of the work and right to withdrawal),
- commercial rights (right of use including a set of various rights such as right of reproduction, right of distribution, right of public performance, right of public presentation, broadcasters and satellite transmission, right of audiovisual adaptation, etc.) and
- other rights (such as the right of an author to access, under certain conditions, the original or a copy of his/her work which is in the possession of another person or the right of an author to certain, equitable remuneration when his/her work is made available for use, through public establishments, without intention of achieving economic benefit).

These rights, with the exception of the moral rights, are all assignable (however, it is not permitted to assign commercial rights conferred by copyright with respect to all future works of an author or with respect to as yet unknown means of the work's use). Assignment may be limited as to its extent, territory and/or time, and can be exclusive or non-exclusive. All agreements and other legal transactions on the assignments must be in writing.

It should also be noted that there are certain limitations to exclusivity of the rights conferred by copyright, or certain cases when works of copyright can be used without authorisation of the author and without obligation to pay a copyright fee (*free use*, for example, if use of a work of authorship is needed in order to ensure the proper performance of administrative, parliamentary or judicial proceedings, or if the purpose behind the use of a work of authorship is to make it available for the benefit of people with a disability to the extent required by the specific disability); or without authorisation of the author but with payment of the fee (*statutory licenses*, for example, reproduction and secondary emission of broadcast is allowed, upon remuneration, in hospitals, prisons and similar social institutions).

The term of copyright validity is the author's lifetime and 70 years after death, but if the author is not known (in the case of anonymous and pseudonymous works), a 70 year-term runs from the moment of the work's lawful disclosure. In any case, after expiration of the term, a work of authorship falls into public domain and becomes free for use. However, certain moral rights conferred by copyright (such as the right to recognition of authorship and the right to integrity of the work) last perpetually.

Related Rights

Related rights governed by the Copyright Law are the following rights:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Film Producers
- Rights of Broadcasters
- Rights of Databases' Producers
- Rights of Publishers.

Rights of Performers

This category includes persons who act, sing or otherwise perform works of authorship or expressions of folklore which include exclusive rights: moral rights (e.g., the right to have their name, pseudonym or other mark indicated when their performance is used) and commercial rights (e.g., right to authorise or prohibit the reproduction of their performance on phonograms and videograms or to authorise or prohibit the public transmission of a live performance). Commercial rights of performers last for 50 years after the performance date, but their moral rights last perpetually.

Rights of Phonogram Producers

This category includes persons or legal entities who take the initiative and are responsible for the first fixation of the sounds or the sounds' representations which include exclusive rights to authorise or prohibit exploitation (reproduction, distribution, rental, making available to the public and adaptation) of their phonograms. These rights last for 50 years after the fixation is made. If, however, the phonogram has been lawfully published or communicated to the public within the stated period, the term starts to run from the first publication (first communication to the public).

Rights of Film Producers

This category includes persons or legal entities who take the initiative and are responsible for the first fixation of an audiovisual work or a sequence of moving images) include exclusive rights to authorise or prohibit the exploitation (i.e., reproduction, distribution, rental, making available to the public and adaptation) of their videograms. The term is the same as it is for the rights of phonogram producers.

Rights of Broadcasters

This category includes legal entities which first take the initiative and are responsible for producing a broadcast which include exclusive rights to authorise or prohibit the exploitation (fixation, reproduction of the fixations, rebroadcasting, secondary emission and making available to the public) of their broadcasts. These rights last for 50 years from the date of the first broadcasting.

Rights of Makers of Databases

This category includes legal entities which take the initiative and are responsible for the substantial investment required for obtaining, verifying or presenting a database's content, taking into account that a database is defined as a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means which include exclusive rights to authorise or prohibit the exploitation (by reproducing, distributing, renting, making available to the public or other communication to the public) of their databases. These rights last for 15 years after database completion. If, however, the database has been lawfully disclosed, the term starts to run from first disclosure.

Rights of Publishers

This category includes rights to special remuneration for 50 years from the date of first publication. Moreover, a person who publishes or communicates to the public a work which has never been published before and which is a part of public domain is entitled to legal protection equal to the protection conferred by economic and other rights of the author, within 25 years from the date of first publication/communication to the public. In addition, the same rights belong to the publisher of a scientific edition of a work in which the copyright expired (provided that the edition is substantially different from

all known editions of the work), taking into account that rights in this case last for 30 years from the date of first publication.

Enforcement of Copyright and Related Rights

Under the Copyright Law, holders of both copyright and related rights are entitled to judicial protection of their rights in case of infringement. During the court proceedings, holders of these rights may make various claims, as explicitly prescribed by the Law, including claims for recovery of both material damages (actual damages and lost profit) and non-material damages (in the case of infringement of the author's or the performer's moral rights).

Moreover, certain additional measures for protection of copyright and related rights are envisaged by the Law, as follows: deposition of the works of authorship/works subject to related rights with the IP Office, protection at the border by customs authorities (including the possibility to stop the import of infringing goods), order by the competent court of a person related to rights' infringement to provide information and documents relating to infringement.

Finally, the Copyright Law also introduces a liability for criminal offences and economic misdemeanours for persons acting in contravention to this Law. Sanctions are fines or imprisonment up to eight years (in the case of criminal offences) and fines in the amount of up to EUR 50 000 for legal entities and up to EUR 10 000 for natural persons (in the case of misdemeanours).

Court Practice

The courts entitled to resolve IPR disputes in UNMIK/Kosovo are the Municipal Courts. However, although a competence of these courts is formally established and although IP laws do envisage various enforcement mechanisms, all such mechanisms are currently (further to informal discussion with the law practitioners active in UNMIK/Kosovo) non-functional and there is no court practice (*i.e.*, there are no IP cases concluded by the courts so far).

International Treaties

In terms of the conventions listed in Annex 7 of CEFTA, none of these conventions have been ratified so far by UNMIK on behalf of Kosovo in accordance with UNSCR 1244/99.

SERBIA: OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

Serbia

This chapter reviews the legal framework in Serbia for intellectual property rights (IPRs) noted in Article 37 of CEFTA 2006, which include: patents, trademarks, industrial designs, geographic indications, topographies of integrated circuits, copyright and related rights. The chapter also provides a review of recent court practice.

IPR Overview

Regulatory Framework

The regulatory framework for IPR protection in Serbia consists of one set of specific laws enacted in last five years, each one dealing with a particular form of IPRs, which are harmonised to a large extent with relevant international conventions, as well as with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and EU standards.

Specific IPR laws in Serbia are:

- Law on Patents (2004);
- Law on Trademarks (2004);
- Law on Indications of Geographical Origin (2006);
- Law on Protection of Topography of Integrated Circuits (2004);
- Law on Designs Legal Protection (2004);
- Law on Copyright and Related Rights (2004).

Therefore, the following forms of IPRs are protected in Serbia:

- Patent
- Trademark
- Indications of Geographical Origin
- Topographies of Integrated Circuits
- Industrial Design
- Copyright
- Related rights
- Rights of Performers
- Rights of Phonogram Producers
- Rights of Videogram Producers
- Rights of Broadcast Producers
- Rights of Database Producers
- Rights of the First Publisher of a Free Work

In addition, enforcement of IPRs is regulated in two specific laws:

- Law on Special Powers for the Purpose of Intellectual Property Rights Efficient Protection (2006) (the “Special Powers Law”), and
- Law on Organization and Competence of the State Authorities for Fighting High-Tech Crime (2005) (the “Law on High-Tech Crime”).

Furthermore, certain aspects of IPRs are governed by provisions found in general laws, such as:

- Law on Contracts and Torts (1980)
- Criminal Code (2005) and
- Customs Law (2003)

However, there are no particular IP laws relating solely and exclusively to textiles, automobiles or information and communication technology sectors in this area of law.

On the other hand, it should be noted that ratified international conventions, being an integral part of Serbian legal system, are applied directly in Serbia. Serbia has ratified the vast majority of major conventions relating to IPR (more within the section “International Treaties”).

IPRs Enforcement

The Law on Special Powers prescribes the competence of relevant Inspectorates and the Republic Broadcasting Agency to, in establishing infringement of IPRs (either *ex officio* or at the request of the right holder), seize the goods which represent the object or means of infringement and temporarily forbid the infringing activities. The suspected offender shall be warned that, unless he/she takes the necessary steps within 15 days, the goods will be taken and destroyed. The obvious advantage of these measures is the possibility of rapid reaction of administrative bodies in the protection of IPRs, which is a vital addition and often a condition for successful IP protection in courts. The right holder will be notified of the infringement immediately and will be obliged to initiate relevant court proceedings within 15 days. The relevant inspectorate takes samples for evidence and examination, and files an appeal before the public prosecutor or administrative offence bodies.

Customs Law indicates that Customs Administration will stop the customs procedure and detain the goods (either *ex officio* or at the request of the right holder) in case of suspicion of IPRs infringement by import, export or transit of such goods. If the detention of goods was unjustified, the right holder will have to compensate the injured party if the goods were detained at his/her request. The importer, rights holder and competent state authority for IP protection are to be notified of the suspected infringement immediately.

Each of the specific IPR laws mentioned prescribes civil remedies, as well as fines for violations of respective IPRs. Fine amounts are determined in the Law on Special Powers in the range of EUR 1 070 to EUR 32 160 for legal entities and EUR 105 to EUR 2 140 for responsible persons in legal entities. Regarding civil remedies, the Trademark Law specifies that, in the case of intentional infringement of a trademark, the injured party may, instead of remuneration of pecuniary damages, request from the infringing party compensation amounting up to three times the usual license fee he/she would have obtained for the use of the trademark.

In addition, the Criminal Code stipulates that, in case of severe infringements of IPRs, infringing parties could face a prison sentence of up to five years, and in the case of an organised network of resellers or if illegal benefits exceeds EUR 16 000, up to eight years. A special chapter of the Code is devoted to criminal offences against intellectual property: violation of moral rights of author and performer, unauthorised use of works of authorship or other works protected by related right, unauthorised removal or altering of electronic information on copyright and related rights, violation of patent rights, and unauthorised use of another's design. Trademarks and geographical indication markings' infringement is regulated in a special article, outside this chapter.

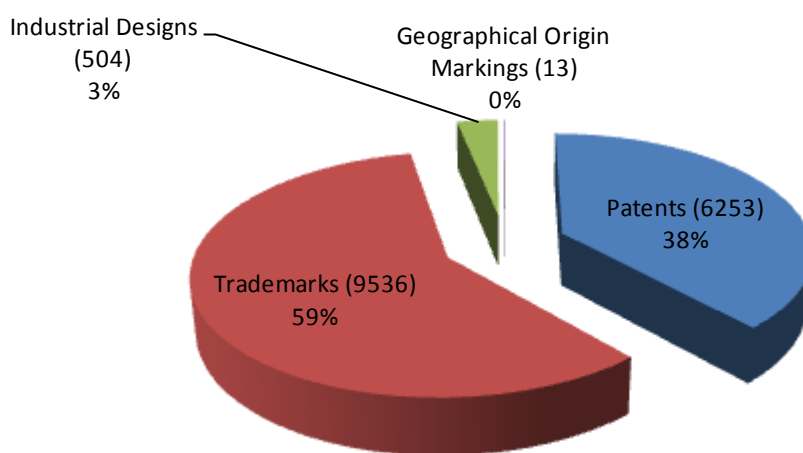
IPRs Authority

The Intellectual Property Office represents the competent state authority dealing with IPRs, including both industrial property rights and copyright and related rights. Its decisions are final and no appeal is allowed, but an administrative dispute can nevertheless be initiated by filing a lawsuit with the Supreme Court of Serbia within 30 days of receiving the decision. Figure 9 provides a breakdown of IP applications filed with the competent authority in Serbia in the period from 2003 to 2007.

Industrial Property Rights

As identified above, the industrial property rights governed by relevant Serbian legislation are patent, trademark, industrial design, indications of geographical origin and topographies of integrated circuits. Within the chart below, a structure of all industrial property applications filed in 2008 is presented.

Figure 9. Applications Submitted in 2008



Source : Serbian IP Office - Annual Report for 2008.

Patent

The regulatory framework for patent protection is established by the Patent Law (2004).

Requirements for Protection – Patent and Petty Patent

The Patent Law deals with protection of inventions (or solutions to technical problems) by patent or petty patent, through monopoly rights granted by the IP Office to an applicant, provided the legal requirements are fulfilled. Both patent and petty patent require the invention to be new and susceptible of industrial application, but whereas an invention can be patented only if it involves an inventive step, petty

patent protects an invention which has a lower inventive step, but nevertheless exceeds a routine usage of state of the art by a relevant expert. In addition, the differences between patent and petty patent are as follows: duration period (while patent lasts for up to 20 years from filing the application, petty patent lasts for up to 10 years, with fees paid yearly in both cases), subject matter of protection (while patent protects both inventions of products (such as a device, substance, composition, biological material) and process, the subject matter of petty patent is limited to inventions of products), procedure of granting (unlike patents, petty patents shall not be examined as to novelty, inventive step or susceptibility to industrial application, unless the procedure of revocation of petty patent is initiated before the IP Office). Nevertheless, unless explicitly specified otherwise, provisions regulating patents refer to petty patents as well.

The Law also stipulates that the following shall not be regarded as inventions:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- plans, rules and procedures for performing intellectual activities, playing games or doing business;
- computer software;
- presentation of information; and
- the human body and its elements (including partial sequences of genes, unless isolated from the human body or produced by a technical process).

Additionally, certain inventions are barred from patentability, such as:

- inventions, the commercial use of which would be against public order or morality (processes for cloning of human beings etc.);
- inventions concerning methods for treatment by surgery, diagnostic or therapy methods practiced directly on the human or animal body, except products or substances for use in any of these methods (therefore, drugs are patentable);
- plant or animal varieties, or an essential biological process for the production of a plant or an animal, with the exception of certain types of this process (biotechnological or microbiological processes, etc.)

Patent-Granting Procedure

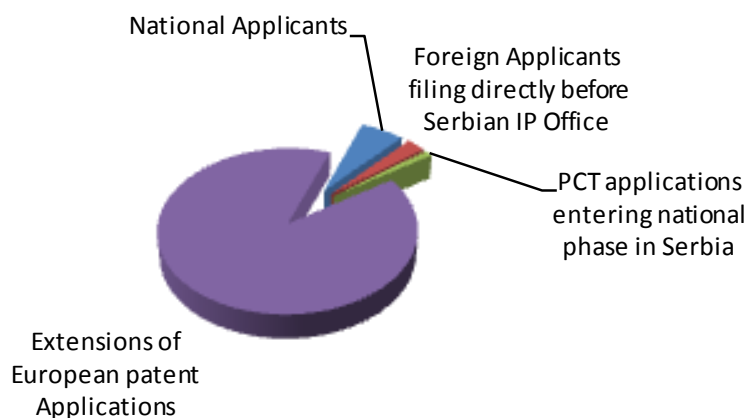
The procedure for patent registration commences with an application filed before the IP Office. The right to file the application (and eventually obtain the patent) belongs to the inventor or his/her successor in title or, in certain cases set forth in the Law, to his/her employer or successor in title. The inventor also possesses the moral right to request to be recognised as the inventor and for his/her name to be indicated in patent application and related documents.

The application is then formally examined to determine if it contains all the elements prescribed by the Law. In order to be accorded a date of filing, the application must contain: an indication that a patent is being sought, information about the applicant and a description of the invention (even if it is not clear and complete enough for the invention to be carried out by a person skilled in the art, which the Law requires).

Once the application has been accorded a date of filing, IP Office examines whether it meets all the requirements for publication specified by the Law (if the filing fee has been paid, if it was filed through an authorised representative if the applicant is a foreign person, etc.). If so, the application is published in the *IP Gazette* 18 months from the application filing date (or as early as three months from the filing date, on request). However, certain applications will not be published. Namely, an application (filed by a national applicant) concerning an invention of significance to the defence and security of Serbia will be filed with the Ministry of Defence and as such, will be considered a secret and will not be published; if a patent is granted based on such an application, the Ministry of Defence or the Ministry of Internal Affairs has the exclusive right to use and dispose of a secret invention, and the inventor is entitled to a single lump sum compensation.

Within six months from the date of publication, the applicant can request a substantive examination of the application (an examination of invention's patentability, its novelty, inventive step and susceptibility of industrial application). If all the requirements provided by the Law are met, the patent is granted, followed by its registration in the official Register of the IP Office, publication in the *IP Gazette* and issuance of a Patent Certificate to the patent owner. If not, the patent application is rejected, and the applicant can file an administrative suit against the decision with the Supreme Court of Serbia. Figure 10 provides a breakdown of patent applications filed with the competent authority in Serbia in 2008.

Figure 10. Patent Application Structure by Applicant in 2008



Source : Serbian IP Office - Annual Report for 2008

Scope and Term of Patent Protection

A patent entitles its owner to exclusive commercial usage of the protected invention, including production, placing the subject of invention on the market and disposing of the patent.

However, there are certain exceptions to exclusivity of the rights conferred by a patent, or specific limitations prescribed explicitly by the Patent Law which allow third parties to use the patented invention without infringing the owner's rights, including: usage of a patented invention for personal non-commercial purposes or for the purposes of research or individual drug preparation in a pharmacy and placing it in the market based on a single prescription, right of consumption, right of a prior user acting in good faith provided that he/she had already started exploiting the protected invention in production before the date of priority of the owner's application, limitations in order to facilitate international traffic, compulsory license and compulsory license in the public interest.

Both domestic and foreign persons are entitled to patent protection in Serbia. More precisely, foreign persons may obtain patent protection in accordance with international conventions or (in their absence) reciprocity, provided that they are represented by an authorised representative (listed in the Register of Representatives kept by the IP Office) or a domestic lawyer in the procedure before the IP Office.

The term of patent protection is 20 years from the patent application's filing date. In order to maintain validity of the patent during the term, it is necessary to pay administrative fees and procedural charges for the third and every subsequent year starting at the application filing date.

Licensing and Transfer of Patents

Patent, petty patent, the right to file an application and the rights conferred by an application can be transferred, in whole or partially, by a contract, as well as by inheritance. These rights (except the right to file an application) can be licensed as well. The contract governing such transfer or license should be written in order to be legally binding, and the transferred or licensed right should be recorded in the Patent Register of the IP Office, at the request of either party, in order to apply to third parties.

Patent Annulment

At any time during the term of patent the IP Office may declare it null and void, at the request of an interested person, if it establishes that legal requirements were not fulfilled (*e.g.*, if the subject matter of protection is not an invention or it falls under the category of inventions excluded from protection, if the invention was not new, did not involve an inventive step or was not industrially applicable on the date of filing the application). The proposal for patent annulment is to be filed with the IP Office together with the evidence substantiating the claims in the proposal. The owner of the patent will be forwarded the copy of the application for annulment, together with the evidence, and will be requested to reply within 30 to 60 days. If the IP Office establishes that the patent annulment proposal is justified, it will declare the patent null and void. It will consider that the patent has never had any of the patent protection effects governed by the Patent Law, excluding the effects of final court decisions regarding patent infringement, as well as concluded agreements regarding the transfer of rights or license, which are valid to the extent of their previous execution, provided the patent owner had entered into the agreement in good faith.

Trademark

The regulatory framework for trademark protection is established by the Trademark Law (2004) which regulates the manner of acquisition and protection of marks used in trade of goods and services.

Prerequisites for Protection and Types of Trademarks

Under the Trademark Law, any mark that is used to distinguish goods or services in trade and that can be graphically presented may be protected by a trademark. Such capability is a main prerequisite for trademark protection.

There are three types of trademarks, as follows:

- Individual trademark.
- Collective trademark: a trademark of a legal person representing a certain type of association of manufacturers or providers of services, which may be used by members of that association.
- Warranty trademark: a trademark that is used by several companies under the supervision of a trademark holder, as a warranty of quality, geographic origin, etc.

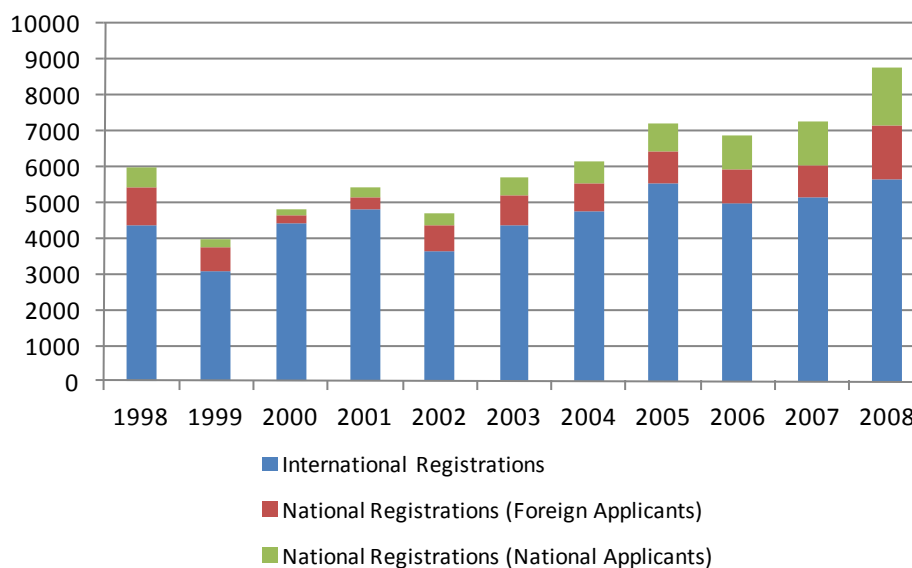
Trademark Registration Procedure

In order to obtain protection for a trademark, an applicant must register it before the IP Office. The registration procedure is launched by filing an application whose elements are prescribed by Law. The right to protect the trademark belongs to natural or legal persons in the business of manufacturing or trading with goods or services. The trademark application must include the request for trademark protection; the appearance of the mark that is the subject of the application; and a list of the goods and services for which the trademark is to be registered, in accordance with the Nice Classification. Figure 11 provides a breakdown of trademark registrations filed with the competent authority in Serbia in the period from 1998 to 2008.

The IP Office examines it to determine whether it contains all the necessary elements. If so, the competent officer examines whether the applied mark fulfils the legal requirements for registration. Protection will not be granted if the mark is, for example:

- contrary to moral or public order;
- not distinguishable enough;
- represented by a shape determined exclusively by the nature of the product;
- customary for designating certain goods or services;
- capable of creating confusion in commerce with respect of origin, quality and other characteristics of the goods or services;
- identical or similar to a protected mark of another person for identical or similar goods or services, if that similarity may lead to confusion in commerce;
- identical or similar to a mark for identical or similar goods or services, which is well-known in Serbia;
- a reproduction or imitation of a famous trademark, etc.

Figure 11. Trademark Registrations Structure by Applicant 1998 - 2008



Source : Serbian IP Office - Annual Report for 2008.

Grounds for Refusal of Trademark Protection and Trademark Annulment

Non-fulfilment of any of the legal requirements identified above represents grounds for refusal of trademark protection.

Accordingly, if a trademark was registered despite the fact that some of the legal requirements has not been fulfilled at the time of trademark registration, that is grounds for the trademark's annulment, at the initiative of any interested party or the State Prosecutor, or *ex officio* by the IP Office, at any time during the term of trademark protection.

Scope and Term of Trademark Protection

Granted trademark is a monopoly right which entitles its owner the exclusive right to use the trademark on goods and services to which it is related (as well as to dispose of it, such as by license agreement) and to prohibit others from unauthorised usage of an identical or similar mark in relation to identical or similar goods or services, if such usage could cause confusion in commerce. The Law, therefore, entitles the owner to use the trademark, but it also prescribes a special sanction if the trademark has not been used for more than five years without justified reason (the trademark can then be cancelled by the IP Office, upon request from an interested party).

Once registered, a trademark lasts for 10 years, but it can be renewed an unlimited number of times, provided that the fees are paid. Upon registration, the IP Office issues a Certificate on Trademark to its owner and publishes the granted right in the *IP Gazette*.

Licensing and Transfer of Trademarks

Both registered trademark and trademark application can be transferred, in whole or in part, by a contract, as well as by inheritance. These rights can be licensed as well. On the other hand, collective and warranty trademarks cannot be transferred or licensed. The contract governing such transfer or license

should be written in order to be legally binding, and the transferred or licensed right should be recorded in the Trademark Register of the IP Office, at the request of either party, in order to apply to third parties.

Indications of Geographical Origin

The regulatory framework for legal protection of the indications of geographical origin is established by the Law on Indications of Geographical Origin (2006).

This Law regulates the protection of two types of markings: names of origin and geographical indications. Name of origin is a geographical name of a country or a region, designating the product that originates from there, whose quality or special characteristics are determined by that specific geographical environment and whose production is completely carried out in that limited area. Geographical indication is a mark that identifies certain goods as goods from that country or a region, whereas its quality, reputation or other characteristics can be attributed to that territory.

Geographical origin indication can also be a mark which is not an administrative geographical marking of a country, region or locality, but which became well-known through continuous usage in commerce as a traditional marking for products from that area, or if it is a historical marking of that area.

Certain markings are excluded from protection by the Law, such as:

- markings contrary to moral or public order;
- markings which may lead to confusion in commerce regarding their nature, origin, quality etc. because of their appearance or contents;
- markings representing the correct name of country or region where the product originates, but which create false idea for consumers that it originates from a different country or region;
- markings which became customary for certain product, due to continuous usage etc.

The procedure for acquiring protection is carried out before the IP Office, and is divided into two phases: registration of geographical origin indication, and registration of recognition of status of an authorised user of a geographical origin indication.

Geographical origin indication application can refer to a single marking only (one name of origin or geographical indication) and to a single product. Authorised applicants are:

- domestic natural or legal persons who produce the designated products in that specific area;
- associations of persons or consumers, chambers of commerce and state bodies;
- foreign natural or legal persons provided that the geographical indication marking is registered in their country of origin, in accordance with international treaties.

The elements of the application are prescribed by the Law: request for protection of geographical origin indication (including information on the applicants, geographical marking, type of product, proof that the fee has been paid, etc.), geographical area description, information about the products' specific characteristics; and indication of an organisation authorised to control the quality of the products.

Once the geographical origin indication is registered, the authorised applicant (the applicant who filed the geographical origin indication application, but also any other natural or legal person who, in a certain geographical area, manufactures the products that are being marked with that geographical area marking) can file an application for recognition of status of authorised user of geographical origin indication. This application must contain the following elements:

- request for recognition of status of authorised user of geographical origin marking,
- proof of performance of certain activities in the geographical area, and
- proof of quality control performed on the products by authorised organisation.

Both registrations are published in the *Official Gazette* of the IP Office. While the duration of registered geographical origin indication is not limited, the status of an authorised user lasts for three years, but can be renewed (provided that the prescribed fee is paid) an unlimited number of times.

Authorised users are exclusively entitled to use the registered geographical origin indication to designate the products to which the marking relates, as well as to use the marking "controlled name of origin." This includes the right to use the mark on labels, packaging, catalogues, business correspondence, import and export of products marked with that marking, etc.

Geographical origin indications cannot be transferred or licensed, due to a specific connection that exists between them on one hand and a specific geographical area and authorised user, on the other.

The IP Office declares the registered geographical origin indication null and void, as well as the decision on recognition of status of authorised user of geographical origin indication, if it establishes that legal requirements were not fulfilled (*e.g.*, if the marking is against moral or public order, or if it might lead to confusion in commerce). Also, registered geographical origin indication is cancelled by the IP Office (at the request of an interested party) if its protection ceases to be valid in the country of origin. An interested party can file a suit for cancellation of registered geographical origin indication before the competent court, if the indication became generic or customary for certain products.

Topographies of Integrated Circuits

The regulatory framework for legal protection of the topographies of integrated circuits is established by the Law on Protection of Topography of Integrated Circuits (2004). This Law was designed to promote integrated circuits topographies in Serbia by providing exclusive rights to their makers and protection of those rights. The Law is fully harmonised with TRIPS Agreement and EU standards. However, economic and technology standards are still trailing far behind legislative standards: the IP Office in Serbia is yet to receive its first topography of integrated circuits application.

The procedure for registration of topography of integrated circuits is initiated by filing an application with the IP Office. An application can be filed within two years from the date that the topography was first used commercially (or within 15 years of its creation, if it was not used commercially). The application is examined, looking closely at the basis for granting protection: whether it is the result of a creator's intellectual effort and whether it was well known among creators of topographies of integrated circuits at the time of its creation. If all the conditions are met, the IP Office grants the right, registers it in the official register of topographies, publishes it in the *IP Gazette* and issues a Certificate of Topography to the rightful owner.

The topography owner has the exclusive right to use the protected topography, including the right to copy it; manufacture integrated circuits containing the topography; and import, market or commercially exploit a copy of topography or integrated circuits containing it.

Protection of topography lasts for 10 years from filing the application or from the day it was used commercially for the first time, whichever comes first.

Applications (filed by national applicants) of topographies of significance to the defence and security of Serbia are filed with the Ministry of Defence, are considered a secret and will not be published. If the topography is granted, the Ministry of Defence or the Ministry of Internal Affairs will have the exclusive right to use and dispose of the topography. The creator is entitled to a single lump-sum compensation.

Registered topographies can be transferred by a written contract or by inheritance, as well as licensed. The transferred or licensed right is recorded in the Topography Register of the IP Office (at the request of either party) in order to apply to third parties.

Industrial Design

The regulatory framework for legal protection of industrial design is established by the Law on Designs Legal Protection (2004). This Law regulates the protection of a design owner's exclusive right to commercially exploit the design and to forbid unauthorised copy or imitation by others. It introduces the term "design" instead of earlier used terms ("patterns" and "models") and extends the protection from previously prescribed 15 years to 25 years.

Under the Law, a design represents a two-dimensional or three-dimensional appearance of the product or its part, determined by its visual characteristics (*e.g.*, lines, colours, texture, materials) as well as their combination.

A design can be protected only if it is new and if it possesses individual character.

Certain designs are excluded from protection by Law, such as:

- design, the publication or usage of which is against public order or morality;
- design which infringes the intellectual property rights of others;
- design consisting of country's or other public coat of arms, flag or symbol; a country's or international organisation's name or short name; religious or national symbols, unless authorised, etc.

The procedure of registering a design is launched by filing an application with the IP Office. The elements of the application are prescribed by the Law: request for design protection, design description and a two-dimensional representation of design.

The IP Office examines whether the requirements for protection are fulfilled. If so, after the fee is paid for the first five years, the IP Office issues a Certificate on Design, enter it into the Register and publish it in the *IP Gazette*.

The owner of a design is exclusively entitled to exploit the design commercially and to forbid to third parties from doing the same. In addition, the design's author has the moral right to request to be recognised as such and for his/her name to be indicated in the design application and related documents.

Both registered design and design application can be transferred, in whole or in part, by a written contract or by inheritance, as well as licensed. The transferred or licensed right is recorded in the Design Register of the IP Office, at the request of either party, in order to apply to third parties.

Furthermore, the IP Office may declare the decision on design recognition null and void, at the request of an interested person or state attorney, if it establishes that legal requirements were not fulfilled (*e.g.*, if the design was not new or if it does not possess individual character). The proposal for design annulment is filed with the IP Office together with the evidence substantiating the claims. The owner of the design is given a copy of the application for annulment and the evidence, and must reply within 30 days. If the IP Office establishes that the design annulment proposal is justified, it will declare the design null and void, and consider that the design never had any of the design protection effects. This excludes the effects of final court decisions regarding design infringement, as well as concluded agreements regarding transfer of rights or license. Agreements regarding transfers of rights or licenses are valid to the extent of their previous execution, provided the design owner had entered into an agreement in good faith.

The Law stipulates that foreign persons are entitled to design protection in accordance with international conventions or (in their absence) reciprocity, provided that they are represented by an authorised representative (listed in the relevant Register of Representatives kept by the IP Office) or a domestic lawyer in the procedure before the IP Office.

Copyright and Related Rights

The regulatory framework for legal protection of both copyright and related rights is established by the Law on Copyright and Related Rights (2004).

This Law protects the rights of the authors of works of authorship (such as literary, scientific and artistic works), as well as related rights (right of performers, rights of the first publisher of a free work, rights of producers of phonograms, videograms, broadcasts and databases). Unlike industrial property rights (patents, trademarks, geographical origin indications, topographies of integrated circuits and designs), protection of either copyright or related rights does not demand registration of the work before the IP Office. The work of authorship enjoys protection from the day of its creation without any formal requirements.

Copyright

Under the Law, a work of authorship represents an author's original intellectual creation, expressed in a certain form. For copyright protection, the value of the work is irrelevant, as well as its size, purpose, contents, way of manifestation or permissibility of public communication.

An author is a natural person who has created the work. The Law presumes that the author is a person whose name or pseudonym is stated on copies of the work, or is referred to on occasion of publication of the work, until proven otherwise (with the exception of film producers).

The protection of copyright does not apply to general ideas, principles and instructions included in a work of authorship. In addition, the following do not constitute a work of authorship: laws and other regulations (or their translations), official materials of state bodies and bodies performing public functions (or their translations), and submissions and other documents presented in administrative or court proceedings.

Although works of authorship do not need to be registered, authors have an option to deposit their works with the IP Office, making it easier to prove authorship in the case of a dispute. Unlike during the

registration of patents, trademarks etc., the IP Office does not review the content of the work of authorship, but simply completes the deposition.

Regarding the scope of the rights conferred by copyright, the author as copyright holder has moral and pecuniary rights regarding his/her work of authorship. The author's moral rights are:

- to be recognised as the author of the work;
- for his/her name to be indicated on each copy of the work or to be quoted at each public communication of that work;
- the right of disclosure of the work;
- the right to protection of the work's integrity; and
- the right to oppose unbecoming exploitation of the work.

In addition, regarding the pecuniary rights, an author is exclusively entitled to commercially exploit his/her work; specific forms of exploitation are listed in the Law. An author is entitled to remuneration for the exploitation of his/her work by others, unless otherwise provided by the Law or a contract. In addition, an author has certain rights *vis-à-vis* the owner of the work of authorship, such as the right of access to a copy of the work for reproduction.

The Law also describes several limitations of copyright. In some cases, a disclosed work of authorship may be reproduced and communicated to the public without the author's permission and without paying remuneration, such as:

- for the purposes of conducting an official procedure before a court or other state body;
- in the scope of informing the public on current events through press, radio and television;
- short excerpts from the disclosed works may be reproduced if used for non-commercial purposes in the field of education, examination or scientific research;
- for archival and non-commercial purposes of public libraries, educational institutions, museums etc.;
- any natural person may reproduce a disclosed work for personal non-commercial purposes, with certain exceptions (*e.g.*, computer programs, constructed works of architecture).

In certain situations, a work of authorship may be reproduced without the author's permission, but with the obligation to pay the remuneration (public license), *e.g.*:

- for educational or scientific research purposes of state bodies, educational institutions and public libraries;
- published articles may be reproduced, marketed or communicated to the public by other mass media, provided that such articles relate to current economic, political or religious issues and that such activity is not explicitly forbidden by the author.

Regarding copyright term, an author's pecuniary rights last throughout his/her lifetime and 70 years after death, when successors can commercially exploit their ancestor's work. However, an author's moral

rights are not limited in time. Seventy years after an author's death, associations of authors and relevant institutions in the fields of science and arts will be entitled to protect authors' moral rights. Deposition of the work before the IP Office does not influence the length of author's rights in any way.

The protection of foreign authors and their works is based on international treaties ratified by Serbia or (in their absence) on reciprocity between Serbia and the author's country, with the exception of foreign author's moral rights, which enjoy protection regardless of conditions.

Related Rights

Related rights governed by the Serbian Law on Copyright and Related Rights are the following:

- Rights of Performers
- Rights of Phonogram Producers
- Rights of Videogram Producers
- Rights of Broadcast Producers
- Rights of Database Producers
- Rights of the First Publisher of a Free Work

Rights of Performers

This category includes persons who perform works which do not have to be protected works of authorship which include exclusive rights: moral rights (such as the right to be recognised as the performer) and pecuniary rights (such as the right to authorise or prohibit marketing or rental of the recordings of his/her performance). Pecuniary rights of performers last for 50 years after the performance date, but moral rights last perpetually.

Rights of Phonogram Producers

This category includes (natural or legal persons who have organised and paid for production of the phonogram) include exclusive pecuniary rights with respect to the phonogram which they produced (e.g., right to prohibit or permit reproduction of the phonogram or rental of the phonogram copies). These rights last for 50 years after the phonogram's production. If, however, the phonogram has been lawfully published or communicated to the public within the stated period, the term starts to run the first communication to the public.

Rights of Videogram Producers

This category includes natural or legal persons who have organised and paid for production of the videogram which include exclusive pecuniary rights with respect to the videogram which they produced (e.g., the right to prohibit or permit reproduction of the videogram or rental of the videogram copies), as well as the right to oppose the videogram's exploitation in altered form if it might jeopardise their economic interests. (The 50-year term is the same as it is for the rights of phonogram producers.)

Rights of Broadcast Producers

This category includes natural or legal persons who have organised and paid for production of the broadcast which include exclusive pecuniary rights with respect to the broadcast (e.g., the right to prohibit or permit any third party to record the broadcast, re-broadcast it or rent the copies of the broadcast's recording). These rights last for 50 years from the first broadcasting.

Rights of Database Producers

This category includes natural or legal persons who have created a database by substantial investment in obtaining, verifying or presenting a database's content, taking into account that a database is defined as a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means which include exclusive pecuniary rights with regard to the database (e.g., the right to prohibit or permit any third party to reproduce the database, or to market or rent copies or substantial parts). These rights last for 15 years after the database completion. If, however, the database has been lawfully disclosed, the term starts to run from first disclosure. In addition, this term can be extended for another 15 years if substantial changes occur in the selection or arrangement of the database content.

Rights of the First Publisher of a Free Work are the rights of any person who, after expiry of the author's pecuniary rights protection, lawfully publishes or communicates to the public a previously unpublished work. These rights are equal to the author's pecuniary rights and they last for 25 years from the work's first publication or public communication.

Court Practice

In case of infringement of IPRs, relevant legislation stipulates the competence of the Commercial Courts (if the parties in dispute are legal entities), or the District Courts (if the parties are natural persons). The subject of such disputes is mostly related to copyright and trademark infringement.

Judicial practice (and consistency) is improving, but it is still relatively moderate comparing to other more traditional areas of law. For example, 152 lawsuits were filed with the Commercial Court in Belgrade between 18 December 2006 and 31 October 2007 regarding trademark and copyright infringement.

The procedures still tend to last longer than expected, with an average length around 12 months (or, in certain cases, even more), depending on various factors, mainly the complexity of the dispute and whether the intellectual property right had already been registered or just applied for.

As far as the activities of the Cyber Crime Prosecutor Office are concerned (this authority is given to prosecutors responsible for high-tech felony, as established by the Law on High-Tech Crime), the number of requests for conducting a criminal investigation was 147 in 2008, of which 75 offenders were eventually charged with high-tech felony. This is a significant increase compared to 2007, when there were only 62 requests for conducting a criminal investigation and 21 eventual charges. Moreover, it should be noted that during 2008, a total number of 53 998 printed publications, 129 audio tapes, 5 398 video tapes, 131 232 compact discs and 50 technical devices were seized.

International Treaties

Serbia (Serbia and Montenegro as of 3 June 2006) has ratified the vast majority of international conventions regarding intellectual property rights. In terms of conventions listed in Annex 7 of CEFTA, the following conventions have been ratified in Serbia:

1. Convention Establishing the World Intellectual Property Organization (WIPO Convention, 1967, as amended 1979) – ratified 1992;
2. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971) – ratified 1992;
3. WIPO Copyright Treaty (Geneva, 1996) – ratified 2003;
4. WIPO Performances and Phonograms Treaty (Geneva, 1996) – ratified 2003;
5. Madrid Agreement Concerning the International Registration of Marks (1891) – ratified 1992;
6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) – ratified 1992;
7. Patent Cooperation Treaty (Washington, 1970) – ratified 1997;
8. Universal Copyright Convention (Geneva Text, 1952) – ratified 2001;
9. Universal Copyright Convention (Paris Text 1971) – ratified 2001;
10. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) – ratified 2003;
11. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971) – ratified 2003;
12. Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974) – ratified 1992;
13. Paris Convention for the Protection of Industrial Property (1883) – ratified 1992;
14. Locarno Agreement Establishing an International Classification for Industrial Designs (1968) – ratified 1992;
15. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) – ratified 1994;
16. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989) – ratified 1998;
17. Hague Agreement on the International Deposit of Industrial Designs, of 6 November 1925, as revised in the Hague on 28 November 1960 (the Hague Act, 1960), and amended in Stockholm, on 14 July 1967, with the amendments of 28 September 1979 (Stockholm Complementary Act, 1967) – ratified 1993;
18. Trademark Law Treaty (2000) – ratified 1998;
19. Nairobi Treaty on the Protection of the Olympic Symbol Party (1981) – ratified 2000;
20. Strasbourg Agreement Concerning the International Patent Classification (1971) – ratified 2009, but enters into force on 15 July 2010;

21. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973) – ratified 2009, but enters into force on 15 October 2009.

On the other hand, Serbia has not yet ratified the following conventions or agreements:

1. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO) – this Agreement is not subject to ratification, but incorporation of its provisions in the national legal system is a condition for WTO membership (Serbia is not a member of WTO, but its legislation nevertheless incorporates provisions of the Agreement);
2. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs (as adopted in Geneva on 2 July 1999);
3. Patent Law Treaty (2000);
4. International Convention for the Protection of New Varieties of Plants (1961).

Taking into consideration that CEFTA was signed on 22 December 2006 and came into force in Serbia on 24 October 2007, it is important to notice two newly ratified conventions: Strasbourg Agreement (enters into force on 15 July 2010) and Vienna Agreement (enters into force on 15 October 2009), both ratified in 2009.

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