

**REPUBLIC OF ALBANIA
THE ASSEMBLY**

LAW

Nr. 9977 dated 07.07.2008

ON INDUSTRIAL PROPERTY

In reliance on articles 78 and 83 (1) of the Constitution, on the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

D E C I D E D:

PART I

GENERAL PROVISIONS

**Article 1
Purpose**

1. The object of this Law is to establish a system for the grant and protection of the industrial property rights. The protection of Industrial Property has as its object:

- a) Patents and utility models;
- b) Industrial designs;
- c) Trademarks and service marks;
- ç) Geographical indications.

2. Inventions are protected by means of patents or utility models, which shall be granted by the General Directorate of Patents and Trademarks, hereinafter called the "GDPT." Industrial designs, trademarks and service marks and geographical indications are protected by means of registration in the GDPT. The protection as above of industrial designs does not exclude any other right provided by law and, in particular, the rights based on the law "On copyright and related rights".

**Article 2
Field of Application of Industrial Property**

The field of application of Industrial property shall comprise industry, commerce and agriculture as well as all manufactured or natural products.

Article 3

Application of Law

1. This Law shall apply to all territory of the Republic of Albania including the land space, territorial and internal sea waters, the air space extending over the land space and territorial and internal sea waters and any other territory under the sovereignty of Albanian State such as the residencies of the Albanian diplomatic and consular missions, the ships carrying the flag of the Republic of Albania, the ships belonging to the navy, the carriers of the military and civil aviation wherever they happen to be.
2. This Law shall also apply to inventions created or used in outer space, including on celestial bodies or on spacecraft, which are under the jurisdiction and control of the Republic of Albania in accordance with international law.
3. This Law shall apply to Albanian natural or legal persons as well as to foreign natural or legal persons:
 - a) from states and territories that are contracting parties to international conventions and treaties in the field of industrial property to which the Republic of Albania is also a party;
 - b) from states and territories which are members of World Trade Organization.
 - c) from authorities with which the principle of reciprocity in the field of industrial property is applicable.

Article 4

Definitions

For the purposes of this Law:

1. “Person” means every natural or legal person;
2. “Paris Convention” is the Convention for the Protection of Industrial Property done in Paris on 20 March 1883, together with its subsequent amendments;
3. “International exhibition” is an exhibition or fair within the meaning of the Convention on International Exhibitions done in Paris on 22 November 1928, together with its subsequent amendments;
4. “Madrid Agreement” is the agreement and protocol to this Agreement for the international registration of marks of 14 April 1891, together with its subsequent amendments and additions;
5. “International classification” is the international classification of goods and services in the function of the registration of marks established by the Nice Agreement of 15 June 1957, together with its subsequent amendments;

6. "GDPT Gazette" is the official periodical journal of the General Directorate of Patents and Marks where data about the objects of this property protected by this Law are published;
7. "Biotechnological inventions" means inventions which concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used;
8. "Biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system;
9. "Plant variety" means any plant grouping with a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:
 - a) defined by the expression of the characteristics that result from a given genotype or combination of genotypes;
 - b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - c) considered as a unit with regard to its suitability for being propagated unchanged;
10. "Essentially biological process for the production of plants or animals" means a process consisting entirely of natural phenomena such as crossing or selection;
11. "Microbiological process" means any process involving or performed upon or resulting in microbiological material;
12. "PCT" is the Patent Cooperation Treaty done in Washington on 19 June 1970 together with its subsequent amendments;
13. "Well-known mark" means a mark within the meaning of article 6 of the Paris Convention accepted in the Republic of Albania in conformity with articles of this Law;
14. "Licensing" is the granting of a license by means of which the owner of the registration of one of the objects of industrial property (the licensor) allows another party (the licensee) to perform any of the actions mentioned respectively in articles 46, 47, 129 and 163 of this Law;
15. "Exclusive license" means a license that is granted only to one licensee and prevents the owner of the object of industrial property from using the object and from licensing it to other Persons;
16. "Non-exclusive license" means a license that that does not prevent the owner of the object of the industrial property from using it or licensing it to other persons.
17. "Court" means the District Court of Tirana.

**PART II
PATENTS FOR INVENTIONS AND
UTILITY MODELS**

**CHAPTER I
PATENTABILITY OF INVENTIONS**

**Article 5
Patentable Inventions**

1. Patents shall be granted for inventions, in all fields of technology, provided that they are:
 - a) new;
 - b) involve an inventive step; and
 - c) are susceptible of industrial application.

2. The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
 - a) discoveries, scientific theories and mathematical methods;
 - b) aesthetic creations;
 - c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
 - ç) presentations of information.

3. Paragraph 2 shall exclude patentability of the subject-matter or activities referred to therein only to the extent to which a patent application or a patent relates to such subject-matter or activities as such.

4. The subject-matter of an invention protected by a patent may be a product or a process.

5. Biotechnological inventions shall also be patentable if they concern:
 - a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature;
 - b) plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety;
 - c) microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety;
 - ç) an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

**Article 6
Exceptions to patentability**

Patents shall not be granted in respect of:

1. Inventions the commercial exploitation of which would be contrary to public order, morality or public health and human life; such exploitation may be deemed to be so contrary even if it is not prohibited by law or regulation. On this basis, the following, in particular, shall be considered unpatentable:
 - a) processes for cloning human beings;
 - b) processes for modifying the germ line genetic identity of human beings;
 - c) uses of human embryos for industrial or commercial purposes;
 - ç) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.
2. Plant or animal varieties or essentially biological processes for the production of plants or animals, without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process;
3. The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.
4. Methods for treatment of the human body or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
5. Substances obtained through internal nuclear transformations for military purposes.

Article 7

Novelty

1. An invention shall be considered to be new if it does not form part of the state of the art.
2. The disclosure of a document or any kind of disclosure must be considered in isolation when assessing novelty.
3. Irrespective of paragraph 2 of this article, features of a second document may be combined with those of a first document when assessing novelty, if the first document contains a specific reference to these features and the features unequivocally form part of the invention.
4. The state of the art shall be held to comprise everything that has been made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application or before the earlier filing date of the

application when priority is claimed according to article 24 of this Law, which hereafter, shall be called the priority date.

5. The state of the art shall also include the content of patent applications as filed in the Republic of Albania or valid for Albania, whose filing date or priority date is earlier than the date referred to in paragraph 4, to the extent that they have been published by the GDPT under article 26 on or after that date.

Article 8 **First and Further Medical Use**

1. The provisions of article 6 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a surgical or diagnostic method or in a method of therapeutical treatment, provided that its use for any such method is not comprised in the state of the art.

2. The provisions of article 6 shall also not exclude the patentability of any substance or composition referred to in paragraph 1 for any specific use in a surgical or diagnostic method or in a method of therapeutical treatment, provided that such use is not comprised in the state of the art.

Article 9 **Inventive Step**

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

2. If the state of the art includes documents, within the meaning of paragraph 5 of article 7 of this Law, these documents shall not be considered in deciding whether there has been an inventive step.

Article 10 **Applicability in Industry and Agriculture**

1. An invention shall be considered applicable in industry when it can be made or used in any kind of industry, including agriculture.

2. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

Article 11 **Period of Immunity**

The disclosure of information that would affect the patentability of an invention shall not be taken in consideration, if it occurred no earlier than 6 months preceding the filing date or the priority date of the claimed invention, when:

- a) the publication is made by the applicant or his predecessor in title;
 - b) the publication is made by a third party who has received the information directly or indirectly from the applicant or his predecessor in title;
 - c) the applicant or his legal predecessor has displayed the invention at an official, or officially recognized, international exhibition.
 - ç) the publication is made by a an office and the information is found:
 - i) in another application filed by the applicant or his predecessor in title and which should not have been published by the office;
 - ii) in an application filed by a third party without the knowledge and the permission of the applicant or his predecessor in title, although the party received the information directly or indirectly from the applicant or his predecessor in title.
2. In the case of paragraph 1(c), paragraph 1 shall apply only if the applicant states, when filing the patent application with GDPM that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulation.

CHAPTER II THE RIGHT TO A PATENT,

Article 12 The Right to Apply for a Patent

A patent application may be filed by any Person, or any body equivalent to a legal person by virtue of the law governing it. A patent application may also be filed by two or more joint applicants.

Article 13 The Right to a Patent

1. The right to a patent shall belong to the inventor or his successor in title. Joint applicants shall have equal rights between them, except for cases when they have reached another agreement on this issue.
2. If two or more applications have been filed for the same invention by different Persons, and when they have made the invention independently of one another, then the right to the patent shall belong to the applicant whose application bears the earliest filing date or where applicable, the earliest priority date, provided that this first application has been published.

Article 14 Patent Applications by Persons Not Having the Right to a Patent

1. If by a final decision it is adjudged that a Person other than the applicant is entitled to the grant of the patent that Person may:
 - a) prosecute the patent application as his own application in place of the applicant;
 - b) file a new patent application in respect of the same invention, or

c) request that the patent application be refused.

2. Article 23 shall apply *mutatis mutandis* to a new application filed under paragraph 1(b) of this article.

Article 15 **Invention by an Employee**

1. If an invention is made in the framework of a work contract or agreement:

a) the right to the patent shall belong to the Person who ordered it or to the employer, except when it is provided otherwise in the contract;

b) when the invention has an economic value much higher than what the parties contemplated at the time of concluding the employment contract, the employee shall have the right to special compensation. In the absence of an agreement between the parties, the amount of compensation shall be determined by the court.

2. When an employee whose work contract does not obligate him to deal with inventive activity makes an invention, using data and other means that were made known through his employment in the field of activity of the employer:

a) the right to a patent for this invention shall belong to the employee, except for cases when within a four month period from the date on which the report according to paragraph 2(b) of this article is submitted to the employer, or from the date when the employer is notified of the invention in other ways, whichever date is earlier, the employer notifies the employee by means of a written declaration of his interest in the invention;

b) the employee who has made an invention in conformity with paragraph 2(a) of this article shall immediately submit a written report about the invention to the employer;

c) if within the period defined in paragraph 2(a) of this article the employer makes a declaration expressing interest in the invention, then the right to the patent shall belong to him, from the beginning. The employee shall have the right to compensation, depending on his pay, the economic value of the invention and the profit that the employer receives from the invention. If the parties do not agree, the amount of compensation shall be set by the court.

3. Every contract that is less favorable to the inventor than the provisions of this article shall be considered invalid.

Article 16 **Name of the Inventor**

1. In every publication of the GDPT in which patents or patent applications are published, it shall be obligatory to mention the name of the inventor or inventors.

2. The name of the inventor shall be mentioned unless he informs the GDPT in writing that he has waived his right to be mentioned.

CHAPTER III

APPLICATIONS AND PROCEDURES FOR ISSUANCE OF A PATENT

Article 17

Requirements of an Application for a Patent

1. A patent application shall contain:
 - a) request for the grant of the patent;
 - b) a description of the invention;
 - c) one or more claims;
 - ç) drawings, referred to in the description or the claims;
 - d) an abstract;
 - dh) a priority document if priority is claimed
2. The application shall designate the inventor or, where there are several inventors, all of them. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the patent.
3. The application shall be subject to the payment of the set fees.
4. The application shall meet all the conditions defined in the implementing regulation.

Article 18

Date of Filing

1. The date of filing of the patent application shall be the date when the application together with the necessary documentation is filed with the GDPT. The necessary documentation contains:
 - a) an indication showing that the elements of the documentation constitute an application as specified in the implementing regulation;
 - b) indications that identify the applicant and that enable contacts with him;
 - c) a document describing the invention or a reference to a previously filed application. In the case of a reference to a previously filed application, the reference shall state the filing date and number of that application. Such reference shall indicate that it replaces the description and any drawings.
2. The indications mentioned in paragraphs 1(a) and (b) of this article shall be filed in the Albanian language, while the document mentioned in paragraph 1(c) of this article may also be submitted in foreign languages, on the condition that a translation into the Albanian language shall be filed within two months from the date of filing of the application.

3. If a date of filing cannot be accorded following the examination under the precedent paragraphs, the application shall not be dealt with as patent application.

4. In conformity with paragraphs 1 and 2 of this article, the GDPT shall determine the date of filing and without delay shall notify the applicant.

Article 19

Disclosure of the Invention

1. The disclosure of the invention in the patent application shall be clear and shall contain the necessary information for a person skilled in the art to be able to carry it out.

2. If the invention involves the use of or concerns biological material which is not available to the public and that cannot be described in the application, in order to make it possible for a person skilled in the art to carry it out, the application would have to be accompanied by the filing of the necessary materials at an appropriate institution designated for this purpose.

Article 20

The Claims

1. The claims shall define the matter for which protection is sought.

2. The claims shall be clear, concise and supported by the description of the invention.

3. The claims shall be presented in the manner defined in the implementing regulation.

Article 21

Abstract

The abstract shall serve only to give technical information. It may not be taken into account for any other purpose, in particular for interpreting the scope of the protection sought or applying article 7(5) of this law.

Article 22

Unity of the Invention

1. The unity of the invention shall relate to the submission in the application of a single invention or a group of inventions, related so as to form together a single general inventive concept.

2. Failure to comply with the requirement of unity of invention shall not be a ground for invalidation (revocation) of a patent.

Article 23
Divisional Application

1. The applicant of the earlier application may divide it into two or more separate applications, on the condition that each of them shall not extend beyond the content of the earlier application as filed.
2. Each divisional application shall be deemed to have been filed on the filing date or the priority date of the earlier application.
3. The documents of priority and all necessary translations that were presented in the GDPT for the earlier application shall be valid for all the divisional applications.

Article 24
The Right to Priority

1. An application filed with GDPT may contain a declaration claiming priority and shall enjoy a right of priority if it is equivalent to one or more earlier and regular national filing, filed by the applicant or by his successor in title:
 - a) under the national law of a member state of Paris Convention;
 - b) under the national law of a member of World Trade Organization.
 - c) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.
2. When the application has the declaration mentioned in paragraph 1 of this article, the GDPT shall ask the applicant within a three-month time period after the filing of the application to deliver a certified copy of the earlier application.
3. The right of priority shall have the effect that the date of priority shall count as the date of filing of the patent application.
4. When the GDPT observes that the requirements of this article have not been met, it shall notify the applicant to correct the deficiencies within the time period defined in the implementing regulation. If the deficiencies are not remedied in due time, the declaration shall be invalid.
5. The application filed with GDPT shall enjoy a right of priority from the date of filing of the first application with the condition that the application with GDPT is filed within a period of 12 months from the date of filing of the first application. This period shall start from the date of filing of the first application; the day of filing shall not be included in the period. If the last day of the period is a holiday, the period shall be extended until the first following working day.
6. When the product or products that the invention contains have been presented for the first time in an official exposition or in an activity recognized as such, priority may be claimed from the date of introduction of the goods into the exhibition.

7. The testimony of an exposition of the products that the invention contains will be submitted in the form of a certification issued by the responsible authorities of the exposition in which the date when the invention was presented for the first time is noted.

Article 25
Changes and Corrections
Withdrawal of an Application

1. Formal changes and corrections in the application can be made on the applicant's own initiative or, on request of the GDPT, up to the date of grant of the patent, subject to the payment of a fee.
2. The applicant shall have the right to withdraw the application at any time before the patent is granted, with a request in writing directed to the GDPT.
3. The withdrawal of a patent application shall be done only by unanimous decision of all the joint applicants.

Article 26
Publication of Patent Applications

1. The GDPT shall publish all patent applications filed with it in conformity with article 18 of this Law:
 - a) The GDPT shall publish every application filed with it as soon as possible, after the end of a time period of 18 months from the date of filing or, when there is a claim for priority, from the priority date. Nevertheless when the applicant requests in writing before the end of the 18 month time period that the application be published prematurely, the GDPT shall publish it in the nearest publication.
 - b) The publication of the patent application shall be done in the manner defined in the implementing regulation.
2. The GDPT shall not publish applications if they have been withdrawn or refused before the end of a time period of 18 months, which begins from the date of filing or, when there is a claim for priority, from the priority date of the application.
3. The GDPT shall publish the patent application at the same time as the specification of the patent, when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a) of this article.
4. Immediately after the decision to grant the patent, the GDPT shall publish it together with the specification, in conformity with the implementing regulation. Inventions considered "state secret", will be handled by separate provisions of this regulation.

Article 27
Rights Conferred by the Publication of a Patent Application

The publication of a patent application shall provisionally confer the applicant the same rights that the publication of the respective patent would give.

Article 28
Examination of the Application and Grant of the Patent

1. After verifying that the application filed is in conformity with articles 17, 18, 19, 20, 21, 22 and 24 of this Law, the GDPT shall grant the respective patent, subject to the payment of the relevant fee.
2. If the application does not meet, or partially meets, the requirements of paragraph 1 of this article, the GDPT shall notify the applicant, who, within a three months period, shall correct the deficiencies. If the deficiencies are not corrected in due time, the application shall be rejected and the GDPT shall notify the applicant of this decision.
3. A decision taken in conformity with paragraph 2 of this article may be appealed to the appeal board of the GDPT within a three months period from the date of receipt of notification, subject to the payment of a fee. The decision of the appeal board may be appealed to the court within a period of 30 days from the date of receipt of notification.
4. The GDPT shall not make a substantive examination of the invention, in conformity with articles 5, 6, 7, 9 and 10 of this Law. Therefore, the patent granted by GDPT shall have legal effect only if within 10 years from the filing date, the patent's owner files an examination report issued by an institution authorized in substantial examination of inventions, otherwise the patent shall be considered invalid.
5. Immediately after a decision to grant the patent, the GDPT shall publish it as provided in article 26 (4) of this Law.

Article 29
Patent Register

1. The GDPT shall keep a register of patents in which all patent applications that are published shall be registered. No entry shall be made in the Patent Register before the publication of the patent application. Granted patents shall be registered according to the registration number.
2. All facts and information that are related to the patent shall be registered in the patent register, according to the manner defined in the provisions of this Law and in the implementing regulation, as well as corrections, additions, changes of ownership and other data that the GDPT is obligated to register according to this Law.

3. An excerpt of the patent register shall be a declarative (*prima facie*) document for all information noted in it, in conformity with the provisions of this Law.

4. The GDPT shall issue certified copies of various notes made in the patent register for every Person who is interested, subject to the payment of a fee.

Article 30

Inspection of the Files

1. The patent register shall be open for public inspection, in conformity with the rules defined in the implementing regulation.

2. Files relating to a patent application that are not published cannot be inspected without the consent of the applicant.

3. After publication of the patent application, the files may be inspected, always in conformity with the provisions of this Law.

4. Any Person who can prove that the applicant has invoked the rights under the patent application against him may obtain inspection of the files before the publication of that application and without the consent of the applicant.

Article 31

Inventions Related to the Defense and Security

1. The requirements for inventions related to the defense and security of the country shall be considered “state secret” and shall be filed with the Ministry of Defense. The Ministry of Defense and the GDPT shall classify a patent application as a "state secret" no later than five months after all necessary information on the patent application is available and a date of filing is accorded.

2. When the GDPT considers a patent application as a “state secret,” it shall notify the applicant, who, within the time period defined in the implementing regulation, shall state whether:

a) he agrees with the evaluation of the GDPT, the application shall be sent to be examined in the Ministry of Defense;

b) he does not accept the evaluation of the GDPT and proves the contrary with evidence, which is accepted, then the GDPT shall begin the procedure for examination and issuance of a patent in conformity with the provisions of this Law;

c) he does not accept the evaluation of the directorate and fails in bringing evidence, then the GDPT shall send the application to the Ministry of Defense to be examined.

3. If the Ministry of Defense judges that the invention should not be considered a “state secret” and it is de-classified, it shall return the application to the GDPT, which shall treat it in conformity with the provisions of this Law.

4. When an invention that is a “state secret” is not evaluated any more as such, the Ministry of Defense shall send the complete file of the patent to the GDPT, which shall register it in the patent register, grant the patent and publish the specification according to paragraph 5 of article 28 of this Law.

5. All secret patent applications and secret patents shall be treated according to special rules provided in the rules of GDPT and in the Law and other sub statutory acts for information classified “state secret.”

6. Natural and legal Albanian nationals may ask for patents for “state secret” inventions outside the Republic of Albania only with the approval of the Directorate of the Security of Classified Information (DSCI).

7. In the case of inventions made in Albania, patents may not be applied for in any foreign country until 5 months have elapsed after the patent has been applied for at the GDPT. When the inventor is usually residing in Albania, unless there is evidence to the contrary, the invention shall be deemed to have been made in Albania.

8. The Minister of Defense shall be charged with issuing the respective instructions for “state secret” patents, in which the procedures and authorities responsible for examining them are defined.

Article 32 **Exploitation of Secret Patents**

1. The Ministry of Defense shall have the right to exploit secret patents.

2. The applicants or the owner of a patent that is secret shall be compensated by the Ministry of Defense.

3. An agreement between the parties shall be entered into for the amount of the compensation mentioned in paragraph 2 of this article. If an agreement is not reached, the applicant or the owner of the patent shall have the right to turn to the court to set the amount.

4. Assignment contracts of secret patents shall be entered into and shall be valid only after approval in writing from the Ministry of Defense, the Ministry of Interior or the State Information Service.

5. Licensing agreements of secret patents shall be entered into and shall be valid only after approval in writing from the Ministry of Defense, the Ministry Interior or the State Information Service.

Article 33 **Oppositions to the Grant of a Patent**

1. Every Person shall have the right, within nine months from the date of publication of the grant of a patent, to file an opposition to the grant of the patent with the appeal board of the GDPT, subject to the payment of a fee.
2. An opposition to the grant of a patent may be made when it was granted contrary to the requirements of articles 13, 17, 18, 19, 20, 21, 22 and 24 of this Law.
3. A copy of the opposition shall be sent, according to paragraph 1 of this article, to the owner of the patent, who shall be entitled to file observations within three months from the date of receipt of the notification.
4. The appeal board shall assess the opposition request. Each party to the opposition procedure shall have the right to take part in the procedure and to submit its arguments orally or in writing within a period to be fixed by the appeal board.
5. In conformity with the results of the assessment, the appeal board shall take a decision for the revocation of the patent or for the rejection of the opposition request.
6. The decision of the appeal board may be appealed by the parties before the court within 30 days from the date of receipt of the decision.

Article 34 **Further processing of the patent application**

1. If an applicant fails to observe a time limit *vis-à-vis* the GDPT, he may request further processing of the application.
2. The GDPT shall grant the request, provided that the requirements laid down in the implementing regulation are met. Otherwise, it shall reject the request.
3. If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
4. Further processing shall be ruled out in respect of the time limits in article 24 of this Law, as well as the time limits for requesting further processing or the re-establishment of rights. The implementing regulation may rule out further processing for other time limits.

Article 35 **Re-establishment of rights**

1. An applicant for or proprietor of a patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit *vis-à-vis* the GDPT shall have his rights reestablished upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the patent application or of a request,

or the deeming of the application to have been withdrawn or the loss of any other right or means of redress.

2. The GDPT shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the implementing regulation are met. Otherwise, it shall reject the request.
3. If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
4. Reestablishment of rights shall be ruled out in respect of the time limit for requesting reestablishment of rights. The implementing regulation of this Law may rule out reestablishment for other time limits.
5. Any Person who has in good faith used or made effective and serious preparations for using an invention which is the subject of a published patent application or a patent in the period between the loss of rights referred to in paragraph 1 and publication in the Gazette of the GDPT of the mention of reestablishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

CHAPTER IV EFFECTS OF A PATENT

Article 36 The Rights Conferred by a Patent

1. When a patent is related to a product, the owner of the patent shall have the exclusive right to prohibit any third party from performing the following actions without his authorization: making, using, offering for sale, selling, stocking or importing for these purposes that product.
2. When the patent is related to a process, the owner of the patent shall have the exclusive right to prohibit third parties from performing the following actions without his authorization:
 - a) to use the process that constitutes the subject of the patent;
 - b) to use, offer for sale, sell, stock or import for these purposes at least the product obtained directly by that process.
3. The owner of a patent has the right to assign and to transfer the patent to his successors in title, as well as to make license agreements on the patent.

Article 37 Prohibition of indirect use of the invention

1. The owner of a patent shall have the right to impede third parties, other than those who have gained the right to use the invention for which the patent was granted, from

supplying or offering to supply to a Person, other than one entitled to exploit the patented invention, means relating to an essential element of the invention, for putting it into effect therein, when the third party has knowledge, or when from the circumstances it becomes clear that those means are suitable and intended for putting that invention into effect.

2. This provision shall not apply if these means are staple commercial products, except when the third party induces the Person supplied to commit acts prohibited by article 36.

Article 38 **Limitation of the Effects of the Patent**

The rights conferred by the patent shall not extend to:

- a) acts performed privately, not for commercial purposes;
- b) acts performed merely for experimental purposes relating to the subject matter of the invention;
- c) the extemporaneous individual preparation of a medicine in a pharmacy according to a medical prescription or with other processes that lead to its preparation.
- ç) the use on board vessels of other countries of the Paris Union of devices forming the subject of the patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter Albanian waters, provided that such devices are used there exclusively for the needs of the vessel;
- d) the use of devices forming the subject of the patent in the construction or operation of aircraft or spacecraft or land vehicles of other countries of the Paris Union, or of accessories of such aircraft or land vehicles, when those aircraft or spacecraft or land vehicles temporarily enter Albania;
- dh) biological material obtained from the propagation or multiplication of biological material placed in the market by the holder of the patent or with its consent, where multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.
- e) the use by a farmer of the product of his crop for propagation or multiplication on his own holding, provided that the reproductive vegetable material was sold or otherwise commercialized by the holder of the patent or with his consent to the farmer, for agricultural purposes.
- ë) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animals reproductive material was sold or otherwise commercialized to the farmer by the holder of the patent or with his consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his agricultural activity, but not the sale as part of or for the purpose of commercial reproductive activity.

Article 39 **Exhaustion of rights**

The rights conferred by a patent shall not extend to acts committed in the Republic of Albania with regard to a product protected by the patent after the said product has been put on the market in the Republic of Albania by the patent's owner or with his consent.

Article 40
Time Extent of a Patent

1. The time extent of a patent shall be 20 years from the filing date of the application.
2. The grant of supplementary protection certificates for medicinal products and plant protection products is subject to the requirements provided in Chapter XVI of this Law.

Article 41
Renewal fees

1. The maintenance of the patent shall be conditioned on the payment of an annual renewal fee.
2. The renewal fee for the patent shall be due on the last day of the month containing the anniversary of the date of filing of the patent application, starting from the first year after the grant of the patent.
3. If the renewal fee is not paid in due time, it may still be paid within six months after the last day of the month containing the anniversary of the date of filing of the patent application, provided that an additional fee is also paid within that period.
4. If paragraphs 1 and 2 of this article are not complied with, the patent shall be deemed to have lapsed on the day when the renewal fee is due to be paid.

Article 42
Extent of Protection and Interpretation of the Claims

1. The extent of protection conferred by a patent shall be determined by the claims. Nevertheless, the description and the drawings shall be used to interpret the claims.
2. For the purposes of determining the extent of protection conferred by a patent, due account shall be taken of any element which is equivalent to an element specified in the claims.

Article 43
Prior Users

1. The rights conferred by a patent shall have no effect on Persons who within the territory of the Republic of Albania, have used the invention or are in the process of serious and effective preparations for its use, before the filing date of the application, or,

in cases when priority is claimed, before the priority date. These Persons shall have the right to continue use or preparations for use.

2. The right of prior use may be transferred, with the enterprise or company, or with that part of the enterprise or company where the use or the the preparations for use have been made.

CHAPTER V CHANGE OF OWNERSHIP AND JOINT OWNERSHIP IN THE APPLICATION FOR A PATENT OR A PATENT

Article 44 Change of Ownership of the Application for a Patent or of the Patent

1. Every contract assigning a patent application or a patent shall be made in writing and signed by the contracting parties. Otherwise, it shall be considered invalid.

2. Every change in ownership of a patent application or a patent shall be subject to the payment of a fee. In case of a change in ownership of a patent, the change shall be registered in the register of patents. The owner of the patent shall have the right to begin a judicial proceeding for that patent only if the change of ownership has been registered in the patent register. The GDPT shall publish changes in the ownership of patents.

3. The transfer or assignment of a patent application or a patent shall have effects *vis-a-vis* third parties only after entry in the Patent Register. Nevertheless, such an act, before it is so entered, shall have effects *vis-a-vis* third parties who have acquired the rights concerning the patent after the date of that act but who knew of the act at the date on which the rights were acquired.

Article 45 Joint Ownership in a Patent Application or a Patent

1. If two or more applicants submit a patent application jointly, each of them shall have the right to separately transfer his part of the application. The entering into of a licensing agreement with third parties shall be done only by unanimous decision of all the joint applicants.

2. When there are joint owners of a granted patent, the transfer of the patent and the entering into of a licensing agreement with third parties shall be done only by unanimous decision of all the joint patent owners. Each of the joint owners shall have the right, without the approval of the other joint owners, to begin a judicial process for a violation of the patent rights against a Person who is infringing the patent. The use of the invention by one of the joint owners does not require the approval of the others.

3. The provisions of this article shall be applicable only when an agreement to the contrary does not exist.

CHAPTER VI LICENSING AGREEMENT

Article 46 Licensing Agreement

1. A licensing agreement shall be made in written and shall be signed by the parties. Otherwise, it shall be considered invalid.
2. The object of the licensing agreement may be a patent application or a patent.
3. The license shall be registered in the patent register subject to the payment of a fee. The licensor shall have the right to bring a judicial proceeding for a licensing agreement only if it is registered in the patent register.
4. The licensing of a patent application or a patent shall have effects *vis-a-vis* third parties only after entry in the Patent Register. Nevertheless, such an act, before it is so entered, shall have effects *vis-a-vis* third parties who have acquired the license rights concerning the patent after the date of that act but who knew of the act at the date on which the rights were acquired.
5. If the owner of a patent does not pay the relevant fee in conformity with article 41 (1) of this Law, and a license in favor of a third Person is entered in the Patent Register, the GDPT shall notify the licensee that the fee has not been paid and that he may pay the fee within six months from the date of notification, in order to keep the validity of the license registered. In case of a disagreement about securing the registered rights of the licensee, the court may decide that the patent shall be transferred to the licensee.

Article 47 The Rights of the Licensee

1. A licensing agreement shall confer to the licensee all the rights defined in article 36, and it shall extend to the entire territory of the Republic of Albania and to every application of the invention, unless provided otherwise in the licensing agreement.
2. The licensee shall not have the right to allow third parties to perform the actions defined in article 36 of this Law, unless provided otherwise in the licensing agreement.

Article 48 The Rights of the Licensor

1. If the licensing agreement is exclusive, both the licensor and third parties are prevented from performing the rights defined in article 36 of this Law.

2. In the absence of any provision to the contrary, the licensing agreement shall be non-exclusive. If the licensing agreement is non-exclusive, the licensor may allow other licensees to perform the rights defined in article 36, and shall not be prevented from performing them himself.

Article 49 **Licenses of right**

1. If the owner of a patent informs the GDPT in writing that he is ready to allow any Person to use the invention as a licensee in return for appropriate compensation, the renewal fees which fall due after receipt of the statement shall be reduced according to the provisions of the implementing regulation of this Law.

2. The written statement mentioned in paragraph 1 of this article may be withdrawn by the owner of the patent at any time, by a written notification directed to the GDPT, on the condition that no Person shall have notified the owner of the patent of an intention to use the invention.

3. The written statement mentioned in paragraph 1 of this article shall not be valid for as long as an exclusive license is registered in the patent register or a request for the recording of such a license is before the GDPT.

4. On the basis of the statement, any Person shall be entitled to use the invention as a licensee in conformity with the conditions defined in the implementing regulation and shall be obligated, at the end of every calendar year, to give the owner of the patent data about the manner of its use and to pay the respective compensation. A license obtained under the terms of this article shall be treated as a contractual license.

CHAPTER VII **COMPULSORY LICENSES**

Article 50 **Compulsory Licenses**

1. On request, the court is entitled to grant a compulsory license to any Person who can demonstrate the capability to exploit the invention which is the subject-matter of the granted patent in the Republic of Albania when he meets all the requirements defined in the implementing regulation of this Law, provided that:

a) four years have expired from the filing of the application and three years have expired from the grant of the patent;

b) the patent owner has not exploited the patent on reasonable terms or has not made effective and serious preparations to do so, unless he provides legitimate reasons to justify his inaction.

c) the Person requesting the compulsory license has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions, and if such efforts have not been successful within a reasonable period of time.

2. On request, the court is entitled to grant a compulsory license in respect of a first patent to the owner of a subsequent patent who cannot use his patent without infringing the first patent, provided that the invention in the second patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent. In the case of a compulsory license in respect of a dependent patent, the owner of the first patent shall be entitled to use the subsequent patented invention on reasonable terms.

3. On request, the court is entitled to grant a compulsory license in respect of patents and supplementary protection certificates relating to the manufacture and sell of pharmaceutical products, when such products are intended for export to importing countries in need of such products in order to address public health problems, subject to the implementing regulation.

4. The type of use covered and the conditions to be met shall be specified by the court. The following conditions shall apply:

a) The scope and duration of the exploitation shall be limited to the purpose for which it was authorized;

b) The exploitation shall be non-exclusive;

c) The exploitation shall be non-assignable. In the case of a compulsory license in respect of a dependent patent, the exploitation authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

ç) The amount of products manufactured under the license shall not exceed what is necessary to meet the needs of the importing country or countries cited in the application, taking into account the amount of products manufactured under other compulsory licenses granted elsewhere.

5. The exploitation shall be authorized, above all, to supply the market of the Republic of Albania, except in the case provided in paragraph 3 of this article.

6. A compulsory license shall be valid until the end of the time period designated by the court or until the end of the term of the patent. However, the court may, on reasoned request, decide to cancel the authorization, subject to adequate protection of the legitimate interests of the Persons so authorized, if and when the circumstances which led to it cease to exist and are unlikely to recur.

7. Compulsory licenses shall be registered in the patent register.

8. The owner of the patent shall be entitled to adequate compensation for a compulsory license, taking into account the economic value of the authorization. When the parties do not agree, the amount of this compensation shall be set by the court.

9. The holder of a compulsory license may renounce at it at any time. If the holder does not begin exploitation within one year from the final grant of the compulsory license, the owner of the patent may claim for the compulsory license to be modified or annulled.

10. The requirements of paragraphs 1(c) and 5 of this article shall not be applicable when such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account of in determining the amount of remuneration in such cases. The court shall have the authority to refuse termination of an authorization if the conditions that led to such authorization are likely to recur.

Article 51

Exploitation by the Government or Third Parties Authorized by the Government

1. When the interests of essential defense or national security require it, the Minister of Defense or the Minister of Health may, even without the approval of the owner of the patent or the applicant, by a notification in the GDPT Gazette, authorize a governmental agency or a specific Person to make, use or sell the invention for which the patent application was submitted, or the patent was granted, subject to payment of equitable remuneration to the owner of the patent or to the patent applicant. The owner of the patent or the patent applicant shall be notified as soon as possible.

2. An appeal to the court can be taken against the decision of the Minister of Defense or the Minister of Health.

CHAPTER VIII INFRINGEMENTS

Article 52

Acts that Constitute an Infringement

Any act taken by a Person in violation of articles 36, 37(1), 47 and 48 of this Law, concerning an invention which is the subject-matter of a patent or patent application, shall constitute an infringement of patent rights.

Article 53

Procedures in Case of Infringement

1. The owner of a patent or the patent applicant shall have the right to bring a lawsuit in the court against any Person who has infringed or infringes or threatens to infringe the patent or the patent application. However, the court may not decide on the merits of a case until the grant of the patent has been published.

2. When:

a) the owner of the patent proves that a violation has happened or is happening, the court shall set the respective compensation and take measures to prevent other violations in conformity with the legislation in force;

b) the owner of a patent proves the possibility of an imminent violation, the court shall order the taking of preventative measures, in conformity with the legislation in force;

c) the application for a patent proves that a violation has been committed or is being committed, the court shall order the respective compensation, as well as the taking of measures in conformity with the legislation in force.

3. In addition to the provisions provided for in the Albanian Code of Civil Procedure, when handling cases concerning the industrial property rights, courts shall also comply with articles included in Chapters IX and X of this Law.

4. If the licensee has:

a) an exclusive license, he may bring proceedings for infringement if the owner of the patent or the patent applicant, after formal notice, does not himself bring infringement proceedings within an appropriate period;

b) a non-exclusive license, he may bring proceedings for infringement of a patent only if its owner or the patent applicant consents thereto.

5. The owner of the patent or the patent applicant shall be entitled to participate in infringement proceedings brought by the licensee.

6. In the event that the infringement proceedings are initiated by the patent owner, the licensee is entitled to participate as interested third person.

7. Where the subject-matter of the patent is a process for obtaining a product, unless there is proof to the contrary, it shall be presumed that any product with the same characteristics has been produced by using the patented process. During proceedings to prove the contrary, the legitimate interests of the defendant shall be taken into account so as to protect his manufacturing or trade secrets. In the case of trade secrets, the GDPT shall act according to the provisions of the legislation into force concerning the trade secrets, during the revocation and surrender proceedings.

8. The right to bring a lawsuit in the court referred to in this Chapter and in the Chapters IX and X of this law shall be barred after three years have elapsed from the date on which the requesting party became aware of facts justifying proceedings or should have become aware of them and in any case after ten years have elapsed from the infringement.

Article 54 **Declaration of Non-Infringement**

1. Any interested party may bring an action before the court against the owner of the patent in order to prove that a particular act does not constitute infringement of the patent. The licensee of an exclusive license must also be summoned in the court as a defendant together with the owner of the patent.

2. The owner of the patent shall have the duty of notifying the licensees of the proceedings in question. The licensees shall have the right to take part in these proceedings, with the status of interested third Person, except when it is said otherwise in the licensing agreement.

3. If a claim for infringement of a given patent has been filed by the patent owner or the licensee against a Person, the latter is entitled to counterclaim that his/her particular act does not constitute infringement of the patent.

4. The action referred to in the present article may be brought jointly with an action for revocation of the patent.

CHAPTER IX PROCEDURE BEFORE THE COURT

Article 55 Evidence

1. In proceedings before the court, the means of giving or obtaining evidence shall, in addition to those provided for by the civil procedures, include even the following:

- a) requests for information,
- b) production of documents,
- c) inspection,
- ç) comparative tests or experiments.

2. The onus of proof of any facts shall be on the party relying on such facts, unless it is provided otherwise in this Law.

Article 56 Production of evidence by other or third parties

1. Where a party has sufficiently substantiated a claim and specified evidence relevant to such claim which is in the possession of another party, the court may order the other party to produce such evidence.

2. Where a party has sufficiently substantiated a claim and specified evidence relevant to such claim which is likely to be in the possession of a third party due to its relationship to another party, the court may order that third party to produce such evidence. The Court shall take due account of the interests of that third party and shall, before making such order, give that party an opportunity to present its interests unless this is incompatible with an effective enforcement of such order.

Article 57 Costs

1. In accordance with the Rules of Procedure, the unsuccessful party shall bear the cost of litigation before the court incurred by the other party and the court. The court may order the infringer to pay the right holder expenses, including the attorney's fees.

2. Where a party succeeds only in part, or where the circumstances are exceptional, the court may order that costs be apportioned equitably or that the parties bear their own costs.

3. Notwithstanding paragraph 2 of this article, the court may order a party to bear any costs it has unnecessarily caused the Court or another party.

Article 58

Rules of the Code of Civil Procedure

The rules of procedure concerning the proceedings having as an object the industrial property rights are established by the Code of Civil Procedure and this Law.

Article 59

Penalty for non-compliance

1. The court may order any noncompliance with an order of the Court to be sanctioned by a penalty, payable to the party mentioned in the order, in compliance with articles 165-169 of the Code of Civil Procedure.

Article 60

Injunction

The court may order a party infringing or threatening to infringe a patent to cease and desist from any act infringing the patent.

Article 61

Forfeiture

1. The court may order that goods found to be infringing be destroyed or otherwise given for charity purposes, without compensation of any sort and in such a manner as to prevent any harm to the injured party.

2. The court may also order that materials and devices used mainly to manufacture infringing goods or carry out an infringing process be destroyed or otherwise given for charity purposes, without compensation of any sort, and in such a manner as to prevent any harm to the injured party.

3. Due account shall be taken by the court of the need for proportionality between the seriousness of the infringing act and the remedies ordered, the willingness of the party

concerned to convert the materials into a non-infringing state, and the interests of third parties.

Article 62

Damages

1. The court may order the party who knowingly, or with reasonable grounds to know, infringes the patent, to pay the injured party damages adequate to compensate for the injury suffered.
2. The court shall have the same power in respect of a party who caused or tolerated such infringement, on the basis of his relationship with the party infringing the patent, while it was in his power to stop it.
3. Regarding the assessment and awarding of damages, the injured party shall, as far as possible, be restored to the position he would have been in if no infringement had taken place, and the party infringing the patent shall not benefit from the infringement.
4. Damages shall not be punitive.

Article 63

Kinds of damages

1. Damages shall compensate for any loss suffered by the injured party because of any infringing act. They shall include, without necessarily being confined to:
 - a) the profits the injured party would have made if no such act had taken place, or
 - b) any profits actually made or likely to have been made by the party infringing the patent.
2. The court may order the party infringing the patent to lay open his books to the injured party or to such expert as the court may designate.
3. If it is impossible or disproportionately difficult or costly to establish the real extent of any damages under paragraph 1 of this article, the court may freely determine the amount of damages to be awarded, which shall in any event exceed the amount of the customary license fee.
4. In awarding damages, the court may also order the party infringing the patent to perform, or refrain from, certain acts.

Article 64

Indemnification of a party

The court may order a party, at whose request measures ordered by the court were enforced, to provide the other party wrongfully enjoined or restrained with adequate

compensation for the injury suffered as a result of such enforcement, and to pay his expenses. Article 63 shall apply *mutatis mutandis*.

Article 65
Limitation of right to claim damages

1. The right to claim damages shall expire three years from the date on which the injured person became, or had reasonable grounds to become, aware of the infringing act and the identity of infringer.
2. The suspension, discontinuance and calculation of the time period mentioned in paragraph 1 of this article shall be done in compliance with the provisions of the Code of Civil Procedure.

Article 66
Right of information

1. In the context of proceedings concerning an infringement of a patent, and in response to a justified and proportionate request of the claimant, the court may order that information on the origin and distribution networks of the goods which infringe the patent be provided by the infringer and/or any other person who:
 - a) was found in possession of the infringing goods on a commercial scale;
 - b) was found to be providing on a commercial scale services used in infringing activities; or
 - c) was indicated by the person referred to in letters “a” or “b” as being involved in the production, manufacture or distribution of the goods or the provision of the services.
2. The information referred to in paragraph 1 shall, as appropriate, comprise:
 - a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods, as well as the intended wholesalers and retailers;
 - b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
3. Paragraphs 1 and 2 shall not apply if:
 - a) on the basis of the information available to it, the court has reason to assume that the right to information is misused;
 - b) providing the requested information would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in the infringement of the design right; or
 - c) disclosure of the information cannot be requested pursuant to rules protecting the confidentiality of information sources or the processing of personal data.

CHAPTER X
PROVISIONAL AND PROTECTIVE MEASURES

Article 67
General

1. The court may order such provisional and protective measures as are laid down in this Law and may make its orders subject to other conditions, in particular securities, in accordance with the Code of Civil Procedure.
2. The court shall take due account of the likely outcome of the proceedings as to the merits and the proportionality of the measure requested.
3. Any such measure may be ordered even *inaudita altera parte* in case of exceptional urgency or if the measure could not otherwise be implemented effectively.
4. If no proceedings as to the merits are pending before the court at the date on which a provisional or protective measure is ordered and if such proceedings are not brought before the court within 15 calendar days from the day the measure is ordered or such other period as the court specifies, the order shall cease to have effect from the day after this time limit expires.
5. Article 64 shall apply *mutatis mutandis*.

Article 68
Preliminary injunctions
Measures at the border

1. Where there is an immediate need to protect and safeguard a party's interests, the court may, in accordance with the Code of Civil Procedure, issue a preliminary injunction under article 60 of this Law.
2. If the owner of a patent submits a complaint about goods imported into the Republic of Albania or the goods inside the market that violate their rights defined in this law, the customs authorities or the authorities responsible for the supervision of internal market, whichever the case, are obliged to make the necessary inspection and according to its result, to decide not to release the goods from the custom regime or to remove them from the market and in both cases to store them in a secure place, except when the importer or the seller has authentic documents about the production of these goods.
3. The owner of a patent is obligated to submit a guaranty for the damage that might be caused by the taking of the measures described in point 2 of this article.
4. The customs authorities or the authorities responsible for the supervision of internal market immediately notify the importer and the recipient of the goods about the measures taken.

5. The customs authorities or the authorities responsible for the supervision of internal market interrupt the measures determined in point 2 of this article if the owners of the registered geographical indication do not file a lawsuit in court for the violation of rights within 20 days (working days) from the day of the notification of the measures taken by customs authorities or the authorities responsible for the supervision of internal market.

Article 69

Orders for inspection of property

1. The court may order the inspection of premises and the preservation of evidence that is or may be relevant in pending or future proceedings before it.
2. The order may instruct any person to permit someone specified in the order, or to ensure that someone so described, hereinafter referred to as "the executing person", is permitted, to enter commercial premises of any infringing party.
3. In accordance with the terms of the order, the executing person may in respect of any goods, materials or devices described in the order:
 - a) inspect the premises
 - b) search for such articles
 - c) make or obtain a copy, photograph, sample or other record of such articles, and
 - ç) request any information or article and retain for safe keeping anything described in the order.

CHAPTER XI

CHANGES, SURRENDER AND REVOCATION OF PATENTS

Article 70

Changes to a Patent

1. The owner of a patent shall have the right to ask the GDPT to make changes in a patent for the correction of formal unintentional mistakes or inaccuracies. The details about reflecting the corrections are defined in the implementing regulation of this Law.
2. The GDPT shall publish the changes made to a patent according to this article.

Article 71

Surrender of a Patent

1. When the owner of a patent seeks to surrender the patent, he shall submit a request in writing to the GDPT. The surrender of a patent owned by the joint owners shall be done only by unanimous decision of all of them. This action may also be limited to one or more claims submitted in the patent.

2. The GDPT shall register the surrender of the patent in the patent register and publish it in the next number of the GDPT Gazette. Surrender shall have no effect until it is entered in the Patent Register.

3. Proceedings for surrender could only start once the relevant third party who has acquired a right to the patent is informed.

Article 72 **Lapse**

A patent shall lapse:

- a) 20 years after the date of filing of the application;
- b) if the patent owner surrenders it;
- c) if a renewal fee and any surcharge have not been paid in due time.

Article 73 **Revocation of a Patent**

1. Where the validity of a patent has been contested, the court shall have the right to revoke or limit the patent if:

- a) the subject-matter of the patent is not patentable in conformity with the requirements of articles 5, 6, 7, 8, 9 and 10 of this Law;
- b) the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- c) the subject-matter of the patent extends beyond the content of the patent application as filed, or, if the patent was granted on a divisional application, beyond the content of the earlier application as filed;
- ç) the protection given by the patent has been extended.
- d) the owner of the patent is not entitled under articles 13 and 15 of this Law;

2. If the validity of a patent has been contested in proceedings initiated by the holder of an exclusive licence, in which proceedings the proprietor of the patent did not take part, the decision of the Court shall only take effect between the parties to those proceedings.

3. During the examination of a request for revocation, the court may ask the owner of the patent to submit to it for the purpose of examination publications and other documents showing the prior art which have been referred to in the patent application or taken into account before other examining offices.

4. When an opposition proceeding starts before the appeal board of the GDPT, ongoing revocation proceedings shall be suspended until a decision under article 33 (5) of this Law is issued.

Article 74 **Effects of Revocation**

1. Every patent, claim or part of a claim that is revoked shall be considered non-existent and invalid from the outset.
2. If the grounds for revocation affect the patent only partially, revocation shall be pronounced in the form of a corresponding limitation of the patent. The limitation may be effected in the form of an amendment to the claims.
3. When the court orders the revocation of a patent, wholly or partially, it shall notify the GDPT, which shall register the decision in the patent register and publish it in the GDPT Gazette.

CHAPTER XII INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Article 75 Application of the Patent Cooperation Treaty

1. For the purposes of this Law the term “international application” means a patent application filed under the PCT.
2. Where reference is made in this law to the PCT, this reference also includes the Regulations under the PCT.
3. The PCT and its Regulations shall have full effect and shall apply in accordance with the provisions of this Law.
4. If an international application is the subject of proceedings before the GDPT the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Law and its implementing legislation. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

Article 76 Designated Office and Elected Office

1. An international application designating the Republic of Albania and which has been accorded an international date of filing shall be equivalent to an application filed with the GDPT in conformity with article 18 of this Law. For such application the GDPT shall be a designated or, as the case may be, elected Office within the meaning of the PCT. The international date of filing shall be considered to be the actual date of filing in any proceedings under this Law.
2. In respect of an international application for which the Republic of Albania is designated or elected and for which the applicant wishes to obtain protection under the

provisions of Chapters I to IX of this law, the applicant shall within thirty-one months from the date of filing of the application or, if priority has been claimed from the priority date:

- a) furnish, a translation of the international application in the Albanian language;
- b) pay the prescribed filing fee.

3. If the requirements in paragraph 2 (a) of this article are not met the application shall be deemed to be withdrawn and the applicant shall be notified thereof.

4. Any international application designating the Republic of Albania which has been published under Article 21 PCT, shall give rise to the same rights as an application published in accordance with article 26 of this law. The rights shall be effective as from the date on which a translation into the Albanian language of the claims of the international application is published. This translation shall be published within three months from the date it was furnished by the applicant to the GDPT but not before the prescribed filing fee was paid.

Article 77

International applications filed with the GDPT

1. The GDPT shall act as a receiving Office within the meaning of the PCT if the applicant is a resident or national of the Republic of Albania.
2. Each international application shall be subject to the payment of the transmittal fee, which shall be paid within one month from the date of receipt of the international application.
3. When the GDPT acts as a receiving Office under the PCT the international application shall be filed in Albanian or English

CHAPTER XIII

REGISTRATION OF EUROPEAN PATENTS

Article 78

Extension of the effects of European patents

1. A European patent application and a European patent extending to the Republic of Albania shall, subject to the following provisions, have the effect of and be subject to the same conditions as a national patent application and a national patent under this Law.
2. For the purposes of these provisions of this Chapter,
 - a) "European patent application" means an application for a European patent filed under the European Patent Convention (EPC), as well as an international application filed under the Patent Cooperation Treaty (PCT) for which the European Patent Office (EPO) acts as designated or elected Office and in which Albania is designated;

b) "extended European patent" means a European patent granted by the EPO on a European patent application in respect of which extension to Albania has been requested;

c) "national patent application" means a patent application filed under this Law with the GDPT;

ç) "national patent" means a patent granted on a national patent application.

Article 79 **Request for extension**

1. A European patent application and a European patent granted on such application shall be extended to Albania at the request of the applicant. The request for extension shall be deemed to be filed with any European patent application filed on or after the date on which the Cooperation Agreement between the Government of the Republic of Albania and the European Patent Organization enters into force.

2. Any request for extension for which the prescribed extension fee was duly paid as laid down in article 80 shall be published by the GDPT as soon as possible after the GDPT has been informed thereof by the EPO but not before the expiry of 18 months from the filing date or, if priority has been claimed, the earliest priority date.

3. The request for extension may be withdrawn at any time. It shall be deemed withdrawn where the prescribed extension fee has not been paid in time or where the European patent application has been finally refused, withdrawn or deemed withdrawn. The GDPT shall publish this as soon as possible if the request for extension has already been published by it in accordance with paragraph 2 of this article.

Article 80 **Extension fee**

1. The extension fee under Article 79 (2) shall be paid to the EPO within the applicable time-limits provided under the EPC for the payment of the designation fee.

2. The extension fee may still be validly paid within the period of grace specified in Rule 85a(2) of EPC, provided that a surcharge of 50% is paid within this period.

3. For the payment of extension fees the EPO Rules relating to Fees shall apply *mutatis mutandis*. Extension fees validly paid shall not be refunded.

Article 81 **Effects of European patent applications**

1. A European patent application which has been accorded a filing date shall be equivalent to a regular national patent application, where appropriate with the priority claimed for the European patent application, whatever its outcome may be.

2. A published European patent application shall provisionally confer the same protection conferred by this Law as from the date on which a translation of the claims of the published European patent application in Albanian language has been communicated by the applicant to the person using the invention in Albania.

3. The European patent application shall be deemed not to have had *ab initio* the effects referred to in paragraph 2 of this article where the request for extension has been withdrawn or is deemed withdrawn.

Article 82 **Effects of European patents**

1. An extended European patent shall, subject to paragraphs 2 to 6 of this article, confer from the date of publication of the mention of its grant by the EPO the same rights as would be conferred by a national patent under this Law.

2. Within three months from the date on which the mention of the grant of the European patent has been published, the owner of the patent shall furnish to the GDPT a translation of the claims of the European patent into the Albanian language and shall pay the prescribed fee for publication.

3. If, as a result of an opposition filed with the EPO, the European patent is maintained with amended claims, the owner of the patent shall, within three months from the date on which the mention of the decision to maintain the European patent as amended was published, furnish to the GDPT a translation of the amended claims into the Albanian language and pay the prescribed fee for publication.

4. The GDPT shall publish any translation duly filed under paragraph 2 or 3 of this article.

5. If the translation specified in paragraph 2 or 3 of this article is not filed in due time or the prescribed fee is not paid in due time, the extended European patent shall be deemed to be void *ab initio*.

6. An extended European patent and the European patent application on which it is based shall be deemed not to have had *ab initio* the effects specified in paragraph 1 of this article and paragraph 2 of article 81, to the extent that the patent has been revoked in opposition proceedings before the EPO.

Article 83 **Authentic text of European patent applications or European patents**

1. The text of a European patent application or a European patent in the language of the proceedings before the EPO shall be the authentic text in any proceedings in Albania.

2. The translation as provided for under articles 81-4 and 82-5 shall be regarded as authentic, except in revocation proceedings, where the application or patent in the language of the translation confers protection which is narrower than that conferred by it in the language of the proceedings.

3. The applicant or owner of the patent may file a corrected translation of the claims of the European patent application or European patent. The corrected translation shall not have any legal effects until it has been published by the GDPT. Any person who, in good faith, uses or has made effective and serious preparations for using an invention, the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

Article 84

Rights of earlier date

1. A European patent application for which the extension fee has been paid and an extended European patent shall have with regard to a national patent application and a national patent the same prior art effect as a national patent application and a national patent under this Law.

2. A national patent application and a national patent shall have with regard to an extended European patent the same prior art effect as they have with regard to a national patent under this Law.

Article 85

Simultaneous Protection

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

Article 86

Renewal fees for extended European patents

Renewal fees for an extended European patent shall be paid to the GDPT for the years following the year in which the mention of the grant of the European patent was published.

Article 87

Applicability of the EPC

The provisions of this Law are applicable in the measure that they don't contradict the provisions of EPC and its Implementing Regulations.

CHAPTER XIV PATENTABILITY OF UTILITY MODELS

Article 88 Conditions for Protection

With the exception of processes, animal and plant varieties, the following inventions can be protected by a utility model:

- a) inventions which are patentable according to this Law;
- b) inventions which are new, susceptible of industrial application and are the result of a creative effort.

Article 89 Novelty and Applicability in Industry

Novelty and applicability in industry of utility models are defined in conformity with the provisions of articles **7** and **10** of this Law.

Article 90 Term

The term of utility models shall be 10 years from the date of filing of the application.

Article 91 Conversion

On the basis of the written request of the applicant, a patent application may be converted into an application for a utility model, as long as the patent has not been granted.

Article 92 Treatment

The treatment of utility models is the same as the treatment of patents according to this Law, unless otherwise provided in this chapter.

CHAPTER XV CIVIL PROCEEDINGS

Article 93

Articles 52, 53, 54, 73 and 74 of this Law are valid for and shall be also applied to utility models.

Article 94 Jurisdiction

1. The court has jurisdiction on the disputes concerning:
 - a) the infringement of a patent or a patent application;
 - b) the revocation or counter-claim of a patent;
 - c) the ownership or transfer of the right to a patent application or a patent;
 - ç) licensing agreement;
 - d) the grant of an compulsory license;
 - dh) the examination of decisions of the appeal board of the GDPT provided for in this Law.

Article 95 Time Periods for Undertaking Actions in Court

1. Actions in court may be undertaken during the entire period of the time extent of a patent, if the disagreement has arisen on the basis of:
 - a) the revocation of the patent according to article 73 of this Law;
 - b) a licensing agreement.
2. For other cases of disagreements that are not mentioned in the above paragraph, the time period of the beginning of the actions in court shall be within three years, except for cases when other time periods have been provided in this Law or other legal provisions in force.

CHAPTER XVI

GRANTING SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICINAL PRODUCTS AND PLANT PROTECTION PRODUCTS

Article 96 Supplementary protection certificate for medicinal products

For the purpose of this chapter:

- a) " Product" means the active ingredient or combination of active ingredients of a medicinal product for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals;
- b) "Basic Patent" means a patent which protects a product as above as such, a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;
- c) "Certificate" means the supplementary protection certificate;

Article 97

Scope and conditions for obtaining a certificate for medicinal products

GDPT shall grant the supplementary protection certificate for a medicinal product to any medicinal product which is the ingredient of a medicine which before being placed on the market is subject to registration pursuant to a special regulation, provided that:

- a) the medicinal product is protected by a basic patent in force in the territory of the Republic of Albania,
- b) a valid authorization to place the product on the market as a medicinal product has been granted,
- c) the product has not already been the subject of a certificate,
- ç) the authorization referred to in (b) is the first authorization to place the product on the market as a medicinal product.

Article 98

Supplementary protection certificate for plant protection products

1. "Plant Protection Products" means active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

- a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined below;
- b) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);
- c) preserve plant products, in so far as such substances or products are not subject to special provisions on preservatives;
- ç) destroy undesirable plants; or
- d) destroy parts of plants, check or prevent undesirable growth of plants;

2. "Substances" means chemical elements and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;

3. "Active substances" means substances or micro-organisms including viruses, having general or specific action:

- a) against harmful organisms; or
- b) on plants, parts of plants or plant products;

4. "Preparations" means mixtures or solutions composed of two or more substances, of which at least one is an active substance, intended for use as plant protection products;

5. "Plants" means live plants and live parts of plants, including fresh fruit and seeds;

6. "Plant products" means products in the unprocessed state or having undergone only simple preparation such as milling, drying or pressing, derived from plants, but excluding plants themselves as defined in point above;

7. "Harmful organisms" means pests of plants or plant products belonging to the animal or plant kingdom, and also viruses, bacteria and mycoplasmas and other pathogens;

8. "Basic Patent" means a patent which protects a product as such, a preparation, a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;

9. "Certificate" means the supplementary protection certificate.

10. "Product" means the active substance or combination of active substances of a plant protection product;

Article 99

Scope and conditions for obtaining a certificate for plant protection products

1. DPPM shall grant the supplementary protection certificate for a plant protection product to any product which is the active substance of a plant protection product which before being placed on the market is a subject to registration pursuant to a special regulation, provided that:

a) the plant protection product is protected by a basic patent in force in the territory of the Republic of Albania,

b) a valid authorization to place the product on the market as a plant protection product has been granted,

c) the product has not already been the subject of a certificate,

ç) the authorization referred to in (b) is the first authorization to place the product on the market as a plant protection product.

2. The holder of more than one patent for the same product shall not be granted more than one certificate for that product.

3. However, where two or more applications concerning the same product and emanating from two or more holders of different patents are pending, one certificate for this product may be issued to each of these holders.

Article 100

The subject matter of protection

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

Article 101
Effects of the certificate

The certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

Article 102
Entitlement to the certificate

The certificate shall be granted to the holder of the basic patent or his successor in title.

Article 103
Application for a certificate

1. The application for a certificate shall be lodged within six months of the date on which the authorization to place the product on the market as a medicinal product or as a plant protection product was granted.
2. Notwithstanding paragraph 1, where the authorization to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be lodged within six months of the date on which the patent is granted.

Article 104
Content of the application for a certificate

The application for a certificate shall contain:

- a) a request for the grant of a certificate, stating in particular:
 - i) the name and address of the applicant;
 - ii) if he has appointed a representative, the name and address of the representative;
 - iii) the number of the basic patent and the title of the invention;
 - iv) the number and date of the first authorization to place the product on the market;
- b) a copy of the authorization to place the product on the market, in which the product is identified, containing in particular the number and date of the authorization and the summary of the product characteristics;
- c) if the authorization referred to in point (b) is not the first authorization to place the product on the market as a plant protection product, information regarding the identity of the product thus authorized and the legal provision under which the authorization procedure took place, together with a copy of the notice publishing the authorization in the appropriate official publication or, failing such a notice, any other document proving

that the authorization has been issued, the date on which it was issued and the identity of the product authorized.

Article 105

Lodging of an application for a certificate

1. The application for a certificate shall be lodged with the GDPT.
2. Notification of the application for a certificate shall be published by the GDPT. The notification shall contain at least the following information:
 - a) the name and address of the applicant;
 - b) the number of the basic patent;
 - c) the title of the invention;
 - ç) the number and date of the authorization to place the product on the market, and the product identified in that authorization;

Article 106

Grant of the certificate or rejection of the application

1. Where the application for a certificate and the product to which it relates meet the conditions laid down in this Chapter, the GDPT shall grant the certificate.
2. Where the application for a certificate does not meet the conditions laid down in Article 104, the GDPT shall ask the applicant to rectify the irregularity, or to settle the fee, within a stated time.
3. If the irregularity is not rectified or the fee is not settled under paragraph 2 within the stated time, the GDPT shall reject the application.

Article 107

Publication of the certificate

1. Notification of the fact that a certificate has been granted shall be published by the GDPT. The notification shall contain at least the following information:
 - a) the name and address of the holder of the certificate;
 - b) the number of the basic patent;
 - c) the title of the invention;
 - ç) the number and date of the authorization to place the product on the market referred and the product identified in that authorization;
 - d) the duration of the certificate.
2. Notification of the fact that the application for a certificate has been rejected shall be published by the GDPT. The notification shall contain at least the information listed in Article 105 (2) of this law.

Article 108

Duration of the certificate

1. The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorization to place the product on the market reduced by a period of five years.

2. Notwithstanding paragraph 1, the duration of the certificate may not exceed five years from the date on which it takes effect.

3. For the purposes of calculating the duration of the certificate, account shall be taken of a provisional first marketing authorization only if it is directly followed by a definitive authorization concerning the same product.

Article 109 **Expiry of the certificate**

1. The certificate shall lapse:

a) at the end of the period provided for in Article 108;

b) if the certificate-holder surrenders it;

c) if the annual fee laid down is not paid in time;

ç) if and as long as the product covered by the certificate may no longer be placed on the market following the withdrawal of the appropriate authorization to place on the market. The GDPT may decide on the lapse of the certificate either of its own motion or at the request of a third party.

2. If the certificate lapses in accordance with paragraphs (1) (b), (c) or (ç) of this article, notification thereof shall be published by the GDPT.

Article 110 **Invalidity of the certificate**

1. The certificate shall be invalid if:

a) it was granted contrary to the provisions of Article 97 or 99;

b) the basic patent has lapsed before its lawful term expires;

c) the basic patent is revoked or limited to the extent that the product for which the certificate was granted would no longer be protected by the claims of the basic patent or, after the basic patent has expired, grounds for revocation exist which would have justified such revocation or limitation.

2. Any person may submit an application or bring an action for a declaration of invalidity of the certificate before the GDPT.

3. If the certificate lapses notification thereof shall be published by the GDPT.

Article 111 **Appeals**

The decisions of the GDPT taken under this Chapter shall be open to the same appeals as those provided for similar decisions taken in respect of patents.

PART III INDUSTRIAL DESIGNS

CHAPTER XVII DEFINITION, CONDITIONS AND THE RIGHT TO PROTECTION

Article 112 Definition and Conditions of Protection

1. For purposes of this law:

a) “industrial design” (hereinafter called a “design”), means the characteristics of the external form of a product, in general the ornamental or aesthetic aspect of a product as a whole or of its parts, which give it a particular appearance and which are not excluded from protection pursuant to paragraph 3 of this article.

b) “Product” means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

c) "complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

ç) Industrial designs may be two-dimensional, three-dimensional or in combinations.

2. To secure protection, the design should be new and have an individual character. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and

b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

'Normal use` within the meaning of letter “a” of this paragraph shall mean use by the end user, excluding maintenance, servicing or repair work.

3. A design right shall not subsist in features of appearance of a product;

a) which are solely dictated by its technical function.

b) which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected with or placed in, around or against another product so that either product may perform its function.

4. Notwithstanding paragraph 3, letter “b” of this article, a design right shall, under the conditions set out in article 113, subsist in a design serving the purpose of allowing

multiple assembly or connection of mutually interchangeable products within a modular system.

Article 113 **Novelty and Individual Character**

1. A design shall be considered to be new if no identical design has been made available to the public:

a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;

b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

Designs are the same if their characteristics differ only in immaterial details.

2. A design has an individual nature if the general impression that it reflects on an informed user differs from the general impression reflected on the same user by any design that, through publication or public use, has become known to the public:

a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;

b) in the case of a registered design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

The level of freedom in the development of the design is taken into consideration in the assessment of individual character.

3. A disclosure shall not be taken into consideration for the purpose of applying paragraphs 1 and 2 of this article when:

a) it could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Republic of Albania, before the date of filing of the application for registration or, if priority is claimed, the date of priority;

b) when the creator of the design or his lawful descendant or a third person as a result of information provided or action taken by the designer or his successor in title has published or publicly used the design within a six time period before the filing date of the application or before the priority date, when priority is sought.

4. Paragraph 3 letter “b” of this article shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

Article 114 **The Right to Protection**

1. The exclusive right of ownership of a design belongs to the creator or his lawful descendants. In a case when there are several creators, they have equal rights, except when they have agreed otherwise in their agreement.
2. The right to protection of a design belongs to the applicant of the application with the earlier filing date or, when priority is claimed, the earlier priority date, if two or more applications have been registered by different persons for the same design independently created.

Article 115 **Refusal of a Design on an Absolute Basis**

1. A product design is not protected if:
 - a) it does not constitute a design in the meaning of article 112 paragraph 1 of this law;
 - b) it is not new and does not have an individual character, in the meaning of article 112 paragraph 2 of this law;
 - c) it is dictated exclusively by the function of the product or by its purpose to be connected with, or be placed in, against or around another product as set out in Article 112 paragraph 3 of this law;
 - ç) it is in conflict with morals or public order, including improper representations of well-known persons that are of particular concern for Albanian history or cultural heritage;
 - d) it presents an abstract scheme or technical plan, without thereby excluding the appearance of graphical symbols or other products expressing such schemes or plans;
 - dh) it contains a national seal, flag or emblem, the name or abbreviation of the name of a country or international organization, except for cases when this is permitted by the responsible state authorities or the above-mentioned organizations.
2. Paragraph 1 letter “ç” of this article does not apply when the person concerned, or the responsible state authority when the person is not alive, have consented to the representation.

Article 116 **Refusal of a Design on a Relative Basis**

1. A product design is not protected if:
 - a) it is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority, and which is protected in the Republic of Albania from a date prior to the said date by a registered design or an application for a registered design;
 - b) the applicant for or the holder of the design right is not entitled to it under article 114 of this Law;
 - c) it is in conflict with a prior right in a distinctive sign or in another industrial property right;
 - ç) it constitutes an unauthorised use of a work protected under copyright;

d) it contains or imitates the representation of a natural person including his or her name, surname and external appearance;

dh) it contains or imitates the appearance of a person who is not alive.

2. In the cases listed under paragraph 1, letters “a” to “d” of this article, refusal of registration, or, where the design has already been registered, cancellation of the design can only be sought by the person or persons whose rights have been violated. In the case of letter “dh” of this article, refusal or cancellation can only be sought by the descendants of the person whose image is contained in, or imitated by, the design.

3. In the case listed under paragraph 1, letter “b” of this article, the person entitled to the design under the article 114 of this law may also claim to become recognised as the legitimate holder of the registered design.

Article 117 **Industrial Design Created to Order or by an Employee**

1. If a design has been created to order or by a work contract, the right to its protection belongs to the one who ordered it or the employer, except when it is otherwise specified by agreement.

2. When the design has an economic value much greater than what the parties contemplated at the time of concluding the contract, the employee has the right to special compensation. In the absence of an agreement between the parties, the amount of compensation is determined by the court.

3. When an employee whose work contract does not obligate him to deal with creative activity creates a design using data and other means that were made known through his employment in the field of activity of his employer, the right to protection for this design belongs to the employee, except for the cases when within a four month period from the date on which the report according to point 4 of this article is submitted to the employer or the date when the employer is notified of the invention in other ways, whichever date is earlier, the employer notifies the employee with a written declaration that he is interested in the design.

4. The employee who has created a design in conformity with point 3 of this article should immediately submit to the employer a declaration in writing about the design.

5. If within the period defined in point 3 of this article, the employer makes a declaration expressing interest in the design, the right to protection of the design belongs to him, from the beginning, while the employee has the right to compensation, depending on his pay, of the economic value of the design and the profit that the employer receives from the design. In the absence of an agreement between the parties, the amount of compensation is set by the court.

6. Every contract that is less favorable to the creator than is provided in this article is invalid.

Article 118
Name of the Creator of a Design

In every publication of the DPPM for an application or registration of a design, the creator or creators should be mentioned, except for the cases when the creator asks in writing that his name not be mentioned.

CHAPTER XVIII
PROCEDURE FOR REGISTRATION OF INDUSTRIAL DESIGNS

Article 119
Filing Date

1. The filing date of an application for registration of a design is considered the date when the GDPT receives an application containing the following elements:

- a) the name and address of the submitter of the application;
- b) drawings of the general appearance of the product, a prepared scheme, drawings or a model of the product, if necessary to clarify the essence of the design;
- c) an indication of the product or products where the design will be incorporated;
- ç) a description of the design;
- d) the filing date of the priority application and, if possible, the number of the priority application, together with the identification of the office where the application was filed as to which priority is claimed;
- dh) the identification of the creator or creators of the design.

2. Two or more designs may be the subject of the same application, on the condition that they have the same class of international classification established by the Locarno Agreement.

3. Every application is subject to payment of the designated tariff.

4. An application for the registration of an industrial design filed with GDPT may contain a declaration claiming priority and shall enjoy a right of priority if it is equivalent to an earlier and regular national filing, filed by the applicant or by his successor in title:

- a) under the national law of a member state of Paris Convention;
- b) under the national law of a member of World Trade Organization.
- c) the application filed with GDPT, shall enjoy, a priority right from the date of filing of the first application with the condition that the request is filed in GDPT within six months from the filing date of the first application.
- ç) a regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.
- d) The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a design registered by GDPT.

5. The submission of an application for the registration of a design and all the further procedures are defined in the implementing regulation of this Law.

Article 120

The Right to Priority from International Expositions

1. For the registration of a design, a submitter of the application who has exhibited a product or products with this design in an official international exposition submits an application for registration within six months from the date when the product or products offered with this design were presented for the first time in the exposition. In this case, he has the right from that day to claim the same priority given by paragraph 4 of article 119 of this law.

2. As proof of the exposition of the product or products with this design, a certificate issued by the responsible authorities of the exposition noting the date of exposing the design for the first time and data about the product or products presented at the exposition suffices.

Article 121

Examination of the Formalities

1. Within three months from the date of receipt of an application to register a design, the GDPT performs a preliminary examination of the application to see whether it is in conformity with the requirements of article 119 of this Law and, with the set procedure, also determines the filing date of the application or the priority filing date, in a case when the submitter of the request has the right to priority.

2. If the GDPT finds that not all the requirements of article 119 of this law have been met, it asks the submitter of the application to complete it within three months from the date of notification. If the submitter of the application does not make the completion required, the GDPT refuses the application and notifies it of this in writing.

3. The time period for submission of completions may be extended for one additional month, if the applicant gives arguments in writing as to the reasons.

Article 122

Publication of the Application

1. If an application for the registration of a design has been filed in conformity with the requirements of this law, the data of the application are published in the gazette of the GDPT.

2. The data that are published in the gazette are defined in the implementing regulation of this Law.

3. If a request for delaying publication of the registered design or designs for a period up to 12 months after the date the application was filed has been made with the filing of the application, the GDPT publishes information about the owner of the registered design, and after the end of the extended period, publishes the registered design, except when the application has been withdrawn before the end of the period mentioned above.

Article 123 **Opposition to an Industrial Design**

1. An opposition to a published design is filed in GDPM within a three month period from the date of publication, against the payment of the respective tariff, by:

a) the applicant of an earlier design filed in the GDPT or the owner of an earlier registered design, according to the definition of letter “a” of point 1 of article 116 of this Law;

b) the person entitled to the design under the article 114 of this law, according to the provision of letter ‘b’ of point 1 of article 116 of this law.

c) a person who, at the time of filing an application for registration of the design, is the owner of a distinctive sign, or another industrial property right, which is in conflict with the design, according to letter “c” of paragraph 1 of article 116 of this Law ;

ç) the owner or holder of the copyright to a work of which unauthorized use has been made according to letter “ç” of paragraph 1 of article 116 of this Law;

d) the person whose representation is contained in, or imitated by, the design according to letter “d” of paragraph 1 of article 116 of this Law;

dh) the descendants of the deceased person whose appearance is contained in, or imitated by, the design, ranked according to their closeness to her or him, according to letter “dh” of paragraph 1 of article 116 of this Law;

2. The time period for filing an opposition is not extended beyond the period defined in point 1 of this article.

3. The GDPT is obligated to notify the applicant against whom the opposition is filed in writing.

4. Details about the submission of an opposition and the respective procedure are defined in the implementing regulation.

Article 124 **Examination of the Opposition**

1. The Board of Appeal of GDPM examines that the opposition filed is in conformity with the requirements of point 1 of article 123 of this Law. Each party to the opposition procedure shall have the right to take part in the procedure and to submit its arguments orally or in writing within a period to be fixed by the appeal board

2. During the examination, the board has the right to ask the parties to the opposition procedure for additional materials and documents within the period defined for this purpose in the implementing regulation.
3. The board examines the opposition within a three-month period from the date of submission and notifies the parties of its decision.
4. The decision of the appeal board on an opposition submitted according article 123 of this law may be appealed to court within 30 days from the date of receipt of notification of the decision of the board.

Article 125 **Registration of the Design**

1. After the approval of the filing date, the GDPT within a three month period examines whether the application comports with the requirements of articles 115 of this law.
2. During the examination, the GDPT has the right to ask the submitter of the application for additional materials and documents. The period within which these materials should be presented is set in the implementing regulation.
3. In conformity with the results of the examination, the GDPT takes a decision whether to register or refuse the design and notifies the applicant. When the decision is positive, the applicant is asked to pay the tariff for registration after the three-month period from the date of publication.
4. The GDPT refuses an application for the registration of a design if the conditions defined in article 115 of this Law are not met.
5. After the applicant pays the tariff of registration within the specified period, the GDPT registers the design in the register of designs and issues a certificate of registration, within a three-month period from the date of payment.
6. When the applicant does not pay the tariff of registration within the period defined in the implementing regulation, the GDPT refuses the application for registration of the design.
7. The registered design is published in the GDPT gazette.
8. Data about the certificate of registration of the design and data about its publication are specified in the implementing regulation.
9. The exclusive right to the design, according to this law, is gained with its registration by the GDPT.

Article 126 **Appealing the Decision**

1. Within a two month period from the date of receipt of notice of the refusal of an application according to articles 121 point 2 and 125 point 4 of this Law, the applicant has the right, against payment of the respective tariff, to appeal the decision to the appeal board of the GDPT.
2. The board examines the appeal application within a three-month period from the date of its presentation and notifies the applicant of the decision taken.
3. During examination, the board has the right to ask the submitter of the applicable for additional materials and documents that should be submitted within the period defined in the implementing regulation.
4. A decision of refusal by the appeal board according to point 2 of article 121 of this law is final, while a decision for refusal according to point 4 of article 125 of this law may be appealed to court within 30 days from the date of receiving notification of the decision of the board.

CHAPTER XIX EFFECTS OF THE REGISTRATION OF A DESIGN

Article 127 The Rights that Come from Registration

1. The owner of a registered design has the right to prevent third parties from producing, importing, exporting, putting into the market, supplying, distributing or keeping in possession for such purposes any product that is included in the design.
2. The scope of protection conferred by a design shall include any design which does not produce on the informed user a different overall impression. In assessing the scope of protection, the degree of freedom of the designer in developing the design shall be taken into consideration.
3. Point 1 of this article is not applicable if the products in question are put into the market by the owner himself or with his content in the territory of the Republic of Albania or even outside the territory, in compatibility with bilateral or multilateral agreements entered into by the Republic of Albania.
4. The rights conferred by a registered design shall not be exercised in respect of:
 - a) acts done privately and for non-commercial purposes;
 - b) acts done for experimental purposes;
 - c) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

5. In addition, the rights conferred by a registered design shall not be exercised in respect of:

- a) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Republic of Albania;
- b) the importation in the Republic of Albania of spare parts and accessories for the purpose of repairing such craft;
- c) the execution of repairs on such craft;
- ç) the use, in the meaning of paragraph 1 of this article, of a component part of a complex product, for the purpose of repair of that complex product so as to restore its original appearance, provided that consumers are duly informed about the origin of the part so that they can make an informed choice between competing spare parts.

Article 128 **The Time Extent of Registration and Renewal**

1. The registration of a design is valid for five years, beginning from the date it is filed.
2. A registration may be renewed against a set payment for an additional period of five years, up to a total time period of 25 years from the date the design is filed.
3. The data contained in a request to renew the design and the respective procedure are defined in the implementing regulation.

Article 129 **Licensing**

1. A license contract is made in writing and is signed by the parties to the contract, otherwise it is invalid. A license may be exclusive or non-exclusive. The owner of a design may invoke the rights conferred by the registration of the design against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form in which the design may be used, the range of products for which the license is granted and the quality of products manufactured by the licensee.
2. A license contract is registered in the GDPT, in the register of designs, against a set tariff. The licensee has the right to turn to the court as to a license contract only after it is registered in the register of designs. Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a design only if the licensor consents thereto. However, the holder of an exclusive license may bring such proceedings even without the consent of the licensor if the later, having been given notice to do so, does not himself bring infringement proceedings within an appropriate period. A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the licensor.
3. Details about the submission of a request for registration of a license and the procedure for its registration are defined in the implementing regulation.

Article 130
Changes in Names and/or Addresses

1. The GDPT registers a change of name and/or address of the owner of the design in the register of designs, at the request of the owner of the design, against payment.
2. Details about the submission of a request for changes and the procedures for registering them are defined in the implementing regulation.

Article 131
Transferring Ownership of a Design

1. On the request of the owner of the design or of the new owner, the GDPT registers the transfer of ownership of a design in the register of designs against a payment.
2. The owner of a registered design may transfer his right to the design wholly or in part by an agreement signed by the two parties, which is filed in the GDPT.
3. The rights to a design may be transferred with or without transferring the business.
4. Transferring has no legal effect if it is not registered in the design register.
5. The GDPT refuses registration of a requested change in the register if the respective document is not submitted within the designated period.
6. Details about the submission of a request for the registration of a change of ownership and the procedures for the registration of this change are defined in the implementing regulation.

CHAPTER XX
EXECUTION OF RIGHTS

Article 132
Procedures for Violation of Rights

1. When the rights of the applicant, the owner of a registered design, a licensed person, an authorized user of the design or any other person whose rights, in conformity with the provisions of this law, are violated, he has the right to bring a lawsuit in court for the violation of the rights.
2. Every unauthorized use, every limitation, imitation or joint accompaniment that is against the provisions of this law is a violation of the right of a registered design or a design as to which there has been an application for registration, according to this law.

3. A person within the meaning of point 1 of this article has the right to turn to the court against the person who has violated his rights, seeking that:

- a) the violator be prohibited from committing further acts of violation of these rights;
- b) the violator remove the objects that constitute a violation of the rights from the channels of commerce or, if there is no other way, destroy them;
- c) the violator remove means used exclusively or almost exclusively for the creation of the products that constitute a violation or, if there is no other way, destroy them;
- d) the final decision of the court shall be published in the public media at the expense of the person who has committed the violation, in the manner determined by the court.

4. The violator is responsible for all damage that has been caused to the plaintiff. In conformity with the provisions of the legislation in force, the court determines the amount of compensation of the damage, except when it is otherwise specified and based on the specific case may:

- a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement; or
- b) set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

5. A lawsuit for a violation of rights is filed in court within three years from the date when the plaintiff became aware of the violation and the violator.

Article 133 **Right of information**

1. In the context of proceedings concerning an infringement of a design, and in response to a justified and proportionate request of the claimant, the court may order that information on the origin and distribution networks of the goods which infringe the design be provided by the infringer and/or any other person who:

- a) was found in possession of the infringing goods on a commercial scale;
- b) was found to be providing on a commercial scale services used in infringing activities; or
- c) was indicated by the person referred to in letters “a” or “b” as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods, as well as the intended wholesalers and retailers;
- b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3.Paragraphs 1 and 2 shall not apply if

- a) on the basis of the information available to it, the court has reason to assume that the right to information is misused;
- b) providing the requested information would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in the infringement of the design right; or
- c) disclosure of the information cannot be requested pursuant to rules protecting the confidentiality of information sources or the processing of personal data.

Article 134 Evidence

1. On application by a party which has presented reasonably available evidence sufficient to support his claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court can order that such evidence be presented by the opposing party, subject to the protection of confidential information.
2. Under the same conditions, in the case of an infringement committed on a commercial scale, the court can order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 135 Temporary Measures

1. The court orders temporary measures if:
 - a) the person is an owner according to the definition of this law and enjoys the rights mentioned in article 127 of the law;
 - b) the owner of the right submits documents that create the possibility for the court to decide that his right has been violated or there is a great possibility that it will happen ;
 - c) the owner of the right seeks that the measures be taken without unjustified delay after noticing the declared violation.
2. In taking temporary measures, the court:
 - a) impedes expected violations or violations that have begun to be committed;
 - b) prohibits the entry of the goods into the channels of commerce;
 - c) orders the preservation of relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto;
 - ç) confiscates, takes out of circulation or takes under safe-keeping, for the period of the civil procedure, the objects of the violation or the means principally used for the production of the objects violating the rights according to this law;

d) orders, in the case of an infringement committed on a commercial scale and if the injured party demonstrates circumstances likely to endanger the recovery of damages, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The court decides on taking the temporary measures mentioned in paragraph 2 of this article without hearing the other party, in particular when any delay might cause irreparable damage to the owner of the right, or lead to the destruction of evidence. The party against whom the lawsuit has been brought is notified of the measures taken without delay, at the latest immediately after they have been executed. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

4. With the decision on temporary measures, the court sets a time limit during which the person who has asked for these measures should bring a lawsuit in court according to article 132 of this law. The time limit begins on the date the temporary measure requested by the owner of the right begins, but should not exceed 15 days.

5. The temporary measures mentioned in paragraph 2 letters “a” and “b” of this article can be issued against the alleged infringer of a design right as well as, under the same conditions, against an intermediary whose services are being used by a third party to infringe a design right.

6. The issue of temporary measures mentioned in this article is subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the opposing party.

Article 136

Measures at the Border and in the internal market

1. If the owner of a registered design or the holder of right within the meaning of this Law, submits a complaint for goods imported into the Republic of Albania or the goods inside the market that violate his rights defined in this law, on his request the customs authorities or the authorities responsible for the supervision of internal market, whichever the case, are obliged to make the necessary inspection and according to its result, to decide not to release the goods from the custom regime or to remove them from the market and in both cases to store them in a secure place, except when the importer or the seller has original documents about the production of the imported goods.

2. The owner of a registered design or the holder of right within the meaning of this Law, is obligated to submit a guaranty for the damage that might be caused by the taking of the measures described in point 1 of this article.

3. The customs authorities or the authorities responsible for the supervision of internal market immediately notify the importer and the recipient of the goods or the seller about the measures taken.

4. The customs authorities or the authorities responsible for the supervision of internal market interrupt the measures taken according to point 1 of this article if the owner of the registered design or the holder of right within the meaning of this Law, does not file a lawsuit in court for the violation of his rights within 20 days (working days) from the day of the notification of the measures taken by customs authorities or the authorities responsible for the supervision of internal market.

CHAPTER XXI SURRENDER OF A DESIGN AND REVOCATION

Article 137 Surrender of a Design

1. To surrender from registration, the owner of a design should submit a declaration in writing to the GDPT, accompanied by an authorization of representation and a document showing payment of the respective tariff. The surrender enters into force from the date the mentioned documents are filed. When the registration has been made for several separate designs, the withdrawal may be done for all or for some of them.

2. The GDPT registers the surrender of the design in the register and publishes it. If a license has been registered, surrender shall be entered in the register only if the owner of the registered design proves that he has informed the licensee of his intention to surrender. If an action pursuant to Article 114 relating to the entitlement to a registered design has been brought before the court, GDPT shall not enter the surrender in the register without the agreement of the claimant.

Article 138 Revocation of a Design

1. On the request of an interested person, the court may cancel a registration if the registered design does not meet the conditions for being protected, in conformity with articles 115 and 116 of this Law. However, the registered design right may be maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained.

2. Every registration that is canceled is invalid from the date the design was filed.

3. The revocation of a registered design cannot be done without its owner being called as a party in the court proceeding. The court notifies the GDPT about a decision of cancellation of the design.

4. The GDPT registers the judicial decision in the register.
5. A design right may be declared invalid even after it has lapsed or has been surrendered

CHAPTER XXII INTERNATIONAL AGREEMENTS

Article 139 Requirements according to the Hague Agreement

1. Applications for the international registration of a design are filed with the International Office of Industrial Property in conformity with The Hague Agreement “On the international registration of industrial designs” dated 28 November 1960, supplemented on 14 July 1967 and amended on 28 September 1979, and its implementing regulations.
2. In conformity with article 8 of the Hague agreement, the provisions of this law for the protection of a design in the Republic of Albania are applied *mutatis mutandis*.

PART IV TRADEMARKS AND SERVICE MARKS

CHAPTER XXIII CONDITIONS AND THE RIGHT TO PROTECTION OF A MARK

Article 140 Signs that Constitute a Mark

1. Every sign or combination of signs presented graphically that serve to distinguish the goods or services of a natural or juridical person from those of another natural or juridical person are marks for these goods and services, provided that the requirements under articles 141 to 143 of this Law are fulfilled (hereafter we will refer to a “mark”).
2. The following signs constitute marks:
 - a) words, including personal names, letters, numbers, abbreviations;
 - b) figurative signs, including drawings;
 - c) two- or three-dimensional forms, forms of goods and/or their wrapping;
 - ç) combinations of colors or shades, as well as colors *per se*;
 - d) every combination of the signs mentioned in letters “a” to “ç” of this point.
3. Marks are registered only if they can be presented graphically. This regards in particular, but not only, special types of marks such as voice and light signals.

Article 141

Distinctiveness

1. A sign has a distinctive nature if through it an ordinary user distinguishes several specific goods and services from other goods and services the same as the first, with regard to their respective commercial origin.
2. The distinctive nature of a sign is evaluated in close connection with the goods and services whose purpose it is to distinguish.

Article 142

Refusal on an Absolute Basis

1. A sign is not registered as a mark if:
 - a) it does not have a distinguishing nature;
 - b) it consists exclusively of elements or indicators that may serve in the market to show the kind, quality, amount, purpose, value, geographical origin or time of production of the goods or the performance of the services, or other characteristics of the goods or services;
 - c) it consists exclusively of elements or indicators that have become customary in daily language or have turned into fixed practices in commerce;
 - ç) it consists of forms or lines imposed by the very nature of the goods or services and/or forms or lines essential to achieve a technical result;
 - d) it consists of forms that give a fundamental value to the goods;
 - dh) it consists of elements that violate public interests or are in conflict with public morals and order;
 - e) it consists of elements tending to disorient the public, principally so far as concerns the nature, quality or geographical origin of the goods and/or services that they have the purpose of distinguishing;
 - ë) it consists of geographical indications, for wines or alcoholic beverages, that do not originate from the place indicated by the geographical indication in question, even if the true origin of the products has been indicated or the geographical indications have been translated and are accompanied by such expressions as: “kind,” “type,” “style,” “imitation” or other similar ones];
 - f) it consists of names, portraits, personal pseudonyms, well known by the public in the Republic of Albania, if they are not authorized by the person himself or his descendant;
 - g) it consists of:
 - the names of countries (complete or abbreviated);
 - state emblems, medals, honors of distinction;
 - official seals and signs approved by the country;
 - the emblems of recognized international organizations or abbreviations of them;
 - religious symbols;
 - national flags;
 - gj) it consists of elements that are against article six *bis* of the Paris Convention.

2. A sign is not excluded from registration as a mark within the meaning of letters “a,” “b,” and “c” of point 1 of this article if the sign in question has gained a distinguishing nature in the process of use before the date of application.

Article 143 **Refusal on a Relative Basis**

1. A mark is not protected if its use is against prior rights.
2. A mark shall not be registered or, if registered, shall be liable to be declared invalid:
 - a) if it is identical with an earlier mark, and the goods or services for which the mark is applied for or is registered are identical with the goods or services for which the earlier mark is protected;
 - b) if it is identical with, or similar to, an earlier mark which is protected for identical or similar goods or services, and if, because of the identity or similarity of the marks and the goods or services covered by them, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier mark.
 - c) if it is identical with, or similar to, an earlier mark, even when it is to be, or has been, registered for goods or services which are not similar to those for which the earlier trade mark is registered, where the earlier trade mark has a reputation in the Republic of Albania, and its use or registration, without due cause, takes unfair advantage of, or damages, the distinguishing nature or the good name of the earlier mark.
3. A mark cannot be registered, or, if registered, is liable to be declared invalid if it violates other prior rights that have been obtained such as:
 - a) the right of a commercial name, on the condition that this name or the fundamental part of it shall be the same as or similar to the mark that is sought to be registered, as well as on the condition that the owner of the commercial name shall produce or secure, respectively, goods or services that are the same as or similar to those of the mark that is sought to be registered;
 - b) the right of a natural person whose name, surname or external appearance is the same as or similar to the mark that is sought to be registered;
 - c) industrial property rights, including the names of protected varieties of plants and/or animals and geographical indications;
 - ç) copyright in a work or piece of work, on the condition that it is the same as or similar to the mark that is sought to be registered.
4. A mark is not protected if it is the same as or similar to a mark registered for the same or similar goods or services, the validity of which has ended because of the expiration of the time period of renewal, for a six-month period from the expiration date.
5. An earlier mark within the meaning of point 2 of this article is considered:

a) a mark with a date of application for registration which is earlier than the date of application for registration of the trade mark, taking account, where appropriate, of the priority claimed in respect of that trade marks, in accordance with article 147 of this law;

b) a mark previously registered through international agreements to which the Republic of Albania is a party;

c) applications for a mark referred to in letters “a” and “b” of this paragraph, subject to their registration;

ç) a mark which, on the date of application for registration of the mark, or, where appropriate, of the priority claimed in respect of the application for registration of the mark, is well known in the Republic of Albania, in the meaning of Article 6 *bis* of the Paris Convention, to the public in the respective sector, as a result of use, representation, publication, or advertisement defined as such by the GDPT and international bodies.

Article 144

The Right to a Mark

The exclusive right to marks according to this law is gained when registration is made by the GDPT.

CHAPTER XXIV

REGISTRATION OF TRADEMARKS PROCEDURES

Article 145

Content of the Request

1. The request to obtain the right to a commercial mark may be made by a natural or juridical person.
2. A separate request is made for every sign as to which protection as a commercial mark is sought.
3. The request to register a mark contains one or more goods and/or services.
4. The request for the registration of a commercial mark contains the following elements:
 - a) the name and address of the submitter of the application;
 - b) the representation of the mark as to which registration is sought;
 - c) a list of the goods and/or services as to which registration is sought, grouped on the basis of the international classification for goods and services;
 - ç) a declaration claiming priority, if there is such a claim;
 - d) a document showing payment of the tariff of filing.
5. The other elements of the application and the procedures in connection with it are defined in the implementing regulation.

Article 146

Filing Date

1. The date of filing of an application for registration of a mark is the date when the GDPT receives the request with the elements defined in article 145 of this law.
2. If the application does not contain the basic elements defined in article 145 of this law, the applicant is notified that he should complete them within a three month period from the date of notification.
3. When the applicant makes the required completions and corrections within the period defined in point 2 of this article, the GDPT files the application. The date when the GDPT receives the completed and corrected application in conformity with the requirements of article 145 of this law is defined as the filing date.
4. When the applicant does not make the required completions and corrections within the period defined in point 2 of this article, the application is conclusively refused.

Article 147 **The Right to Priority**

1. An application for the registration of a trademark filed with GDPT may contain a declaration claiming priority and shall enjoy a right of priority if it is equivalent to an earlier and regular national filing, filed by the applicant or by his successor in title:
 - a) under the national law of a member state of Paris Convention;
 - b) under the national law of a member of World Trade Organization.A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.
2. The application filed in accordance with paragraph 1, shall enjoy, a priority right from the date of filing of the first application with the condition that the request is filed in GDPT within six months from the filing date of the first application. The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for the registration of the trademark by GDPT, for the purpose of establishing which rights take precedence.
3. An applicant who intends to use the right of priority in conformity with point 2 of this article submits to the GDPT all information about the application (date, country and number of the first application) and within a three-month period from the date of submission of the application delivers to the GDPT a copy of the first application and the translation of this application into Albanian.

Article 148 **The Right to Priority from International Expositions**

1. A person who exhibits goods and/or services under a particular sign in an exposition recognized in the Republic of Albania or in another state that is a member of the Paris Convention may, within a six-month period, apply for the registration of the mark,

requesting as the priority date the date of exhibition of the goods and/or services at the exposition.

2. The application referred to in point 1 of this article is accompanied by a certificate issued by the respective authorities of the member state of the Paris Convention and a document showing the kind of exposition or fair, the place where it was organized, the date it opened and closed and the first day of exhibition of the products and/or services mentioned in the application for registration of the mark.

Article 149 **Separating the Initial Application**

1. On the request of the applicant, every application (initial application) referring to different goods or services may be separated into two or more applications.

2. The separated applications keep the date of filing of the initial application and enjoy the priority right, if any.

3. A request to separate an application may be filed in the period before a decision is taken on the registration of the mark.

4. A specified tariff is paid for every separation of an application.

Article 150 **Examination of the Formalities**

1. Applications for the registration of a commercial mark are examined by the GDMP according to the order of their submission date.

2. An application is examined out of order, in an exception to point 1 of this article, if:
a) an application for the international registration of the mark has been filed;
b) there is a conflict about the violation of the rights of the mark.

3. In the case of letter “b” of point 2 of this article, the applicant files a request that the application be preceded immediately and pays the respective tariff.

4. Within three months from the date of receiving the application, the GDPT examines it as to whether it is in conformity with the requirements of article 145 of this law and the implementing regulation.

5. If the GDPT finds that not all the requirements of article 145 of this law and the implementing regulation have been met, it notifies the applicant that he should make completions within three months from the date of notification. When the applicant does not make the required completions within the designated period, the GDPT refuses the application for registration of the mark.

6. The time period for submission of completions may be extended for one additional month if the applicant submits a reasoned request for an extension.

7. If the applicant makes the completions required within the defined period, the application for registration of the mark is filed.

Article 151

Publication of the Application

1. If an application for registration of a mark has been filed in conformity with the requirements of this law, the data of the application are published in the gazette of the GDPT.

2. The data of the application that are published in the gazette of the GDPT are defined in the implementing regulation.

Article 152

Opposition to a Published Mark

1. An opposition to a published mark is filed in GDPM within a three month period from the date of publication, against the payment of the respective tariff by:

a) the applicant of an earlier mark filed in the GDPT or the owner of an earlier mark registered in conformity with the definitions of points 1 and 2 of article 143 of this Law;

b) an owner who has a commercial name according to the definition of letter “a” of point 3 of article 143;

c) a natural person, according to the definition of letter “b” of point 3 of article 143;

ç) the owner of an earlier right of industrial property, according to the definition of letter “c” of point 3 of article 143;

d) every person who has a copyright according to the definition of letter “ç” of point 3 of article 143.

2. The time period for filing an opposition is not extended beyond the period defined in point 1 of this article.

3. The GDPT is obligated to notify the applicant against whom the opposition is filed in writing.

4. Details about the submission of an opposition and the respective procedure are defined in the implementing regulation of this Law.

Article 153

Examination of an Opposition

1. The Board of Appeal of GDPM examines that the opposition filed is in conformity with the requirements of point 1 of article 152 of this Law. Each party to the opposition

procedure shall have the right to take part in the procedure and to submit its arguments orally or in writing within a period to be fixed by the appeal board

2. During the examination, the board has the right to ask the parties to the opposition procedure for additional materials and documents within the period defined for this purpose in the implementing regulation.

3. The board examines the opposition within a three-month period from the date of submission and notifies the parties of its decision.

4. The decision of the appeal board on an opposition submitted according article 152 of this law may be appealed to court within 30 days from the date of receipt of notification of the decision of the board.

Article 154 Registration of a Mark

1. After the approval of the filing date, the GDPT examines an application within a three-month period as to whether it is in conformity with the requirements of paragraph 2 and 3 of articles 140 and article 142 of this law.

2. During the examination, the GDPT has the right to ask the submitter of the application for additional materials and documents. The period within which the applicant should submit them to the GDPT is defined in the implementing regulation.

3. In conformity with the results of the examination, the GDPT decides whether to register or refuse the mark. After the end of the three-month period of publication of the mark, the applicant is notified of the decision taken. When the decision is positive, the applicant is required to pay the tariff of registration of the mark.

4. The GDPT refuses the application for registration of the mark if it does not meet the conditions defined in articles 140 points 2 and 3 and 142 of this law.

5. If the applicant pays the tariff of registration within the period defined in the implementing regulation, the GDPT registers the mark in the register of marks and issues a certificate of registration within a three-month period from the date of payment of the tariff.

6. If the applicant does not make payment of the tariff of registration within the period defined in the implementing regulation, the GDPT refuses the application for registration of the mark.

7. The GDPT makes publication of a registered mark in its gazette.

8. Data about the certificate of registration of the mark and data about the publication of the registered mark are defined in the implementing regulation.

Article 155
Appealing a Decision

1. Within a two-month period from the date of receiving notification of the refusal of an application according to articles 150 point 5 and 154 point 4 of this law, the applicant has the right to appeal the decision of the GDPT to the appeal board of the directorate, against payment of the respective tariff.
2. The board examines the application within a three-month period from the date of submission and notifies the applicant of its decision.
3. During the examination, the board has the right to ask the submitter of the application for additional materials and documents within the period defined for this purpose in the implementing regulation.
4. A decision of the appeal board on a refusal according to point 5 of article 150 of this law is final.
5. A decision of the appeal board on a refusal according to point 4 of article 154 of this law may be appealed to court within 30 days from the date of receipt of notification of the decision of the board.

CHAPTER XXV
EFFECTS OF REGISTRATION OF A MARK

Article 156
The Rights that Come from Registration

1. The owner of a registered mark has the exclusive right of use of the mark according to the rights defined in this law.
2. The owner of a registered mark has the right to impede third parties from using, in the course of trade, without his authorization:
 - a) a sign that is the same for goods or services that are the same as those for which the mark is registered;
 - b) a sign that is the same as or similar to a mark, but which, because of the identity or similarity of the goods and services for which the sign is used the sign with those designated by the registered mark may cause a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark;
 - c) the same or similar sign for goods or services even when they are neither the same as nor similar to those as to which the mark has been registered, when the mark has a reputation in the Republic of Albania and from the use of the sign, without due cause, an unfair benefit is created or the distinguishing nature and good name of the mark are damaged.

3. In conformity with point 2 of this article, also prohibited is:
 - a) putting the signs on goods or on their wrapping;
 - b) putting goods into the market, offering them for sale, using this sign, or creating stockpiles for these purposes;
 - c) the offering of services using this sign;
 - ç) the import or export of goods using this sign;
 - d) the use of the sign in business and in advertisements.

4. The rights granted to the owner of a registered mark according to this article are also granted to the owner of a mark that is well known in the Republic of Albania, in the meaning defined in Article 143, paragraph 5 letter “ç” of this law.

Article 157
Restrictions of the Rights that Come from Registration

1. The protection does not give the owner of the mark the right to prohibit third parties from using, in the market and in conformity with business practices and requirements:
 - a) his name and address;
 - b) indications of the type, quality, amount, destination, value, place of origin, time of production or other characteristics of goods or the performance of services;
 - c) the mark, when it is necessary to show the purpose of use of goods and services, especially in the case of accessories or parts.

Article 158
End of the Rights that Come from Registration

1. The owner of the mark does not have the right defined in article 156 of this Law for goods that have been put into the market by him himself or with his permission, in the Republic of Albania or in any other territory defined by a bilateral or multilateral agreement.

2. Point 1 of this article is not applicable in a case when there is legitimate reason for the owner to oppose the further marketing of the goods, in particular when the condition of the goods has changed or when the goods have been spoiled after entering the market.

Article 159
Obligation to Use the Mark

1. In order to maintain its validity, the owner of a mark should use the mark for the goods or services for which it is registered, unless there are proper reasons for non-use, like in cases that do not depend on his will.

2. If within a five-year period from the date of registration of the mark, the owner of the mark has not made genuine use of it for the goods or services for which it is registered, or has suspended its use for an uninterrupted five-year period, the mark will be subject to

the sanctions provided for in article 174 of this law, unless there are proper reasons for non-use, like in cases that do not depend on the will of the owner.

3. The use of the mark within the meaning of point 1 and 2 of this article also means its use in packaging, catalogues, brochures, manuals, advertisements, the media of communication and electronic commerce or audio-visual media, [provided that it is perceived by the public as relating to the offering or providing of goods or services designated by the mark in the Republic of Albania].

4. The use of the mark within the meaning of point 1 and 2 of this article also means:

a) its use by a licensee or another person when this is permitted by its owner, or by any person who has authority to use a collective mark

b) its use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;

c) affixing of the mark to goods or to the packaging thereof in the Republic of Albania solely for export purposes.

Article 160

Limitation in consequence of acquiescence

1. Where the proprietor of an earlier mark as referred to in article 143 paragraph 5 has acquiesced, for a period of five successive years, in the use of a later mark registered in the Republic of Albania while being aware of such use, he shall no longer be entitled on the basis of the earlier mark either to apply for a declaration that the later mark is invalid or to oppose the use of the later mark in respect of the goods or services for which the later trade mark has been used, unless registration of the later trade mark was applied for in bad faith.

2. The proprietor of the later registered mark shall not be entitled to oppose the use of the earlier mark

Article 161

Changes in Name and/or Address

1. The registered mark shall not be altered in the register during the period of registration or on renewal thereof. Nevertheless, where the alteration of the trade mark includes the name and address of the proprietor, such alteration shall be registered by GDPT in the trademarks register, against the payment of the respective tariff.

2. The GDPT registers the limitation of list of goods and/or services in the register of marks on the request of the owner of the mark, against payment of the respective tariff.

3. Details about the submission of the request and the procedure for registration of the change are defined in the implementing regulation.

Article 162
Transferring Ownership of a Mark

1. The GDPT registers the transfer of ownership of a mark in the register of marks on the request of the owner of the mark or of its new owner, against the respective tariff.
2. The owner of a registered mark may transfer his right to the mark, in whole or in part, by means of an agreement signed by the two parties, which is filed in the GDPT.
3. The rights to the mark may be transferred with or without transferring the business.
4. The transfer has no legal effect if it is not registered in the trademark register. Where it is clear from the transfer documents that because of the transfer the trade mark is likely to mislead the public concerning the nature, quality or geographical origin of the goods or services in respect of which it is registered, the GDPT shall not register the transfer unless the successor agrees to limit registration of the trade mark to goods or services in respect of which it is not likely to mislead.
5. The GDPT refuses registration in the register of a requested change if the respective documentation is not submitted in the designated period.
6. Details about the submission of the request and the procedure for registration of the change are defined in the implementing regulation.

Article 163
Licensing

1. A mark may be licensed for some or all of the goods or services for which it was registered. A license may be exclusive or non-exclusive.
2. The license agreement, which will be filed in the GDPT, shall be in written form and signed by the two parties.
3. The owner of a licensed mark may use the rights that registration of the mark gives against a licensee who violates the conditions set in the contract for its time extent, the form in which the mark may be used, the sphere of the goods or services for which the license was issued, the territory where the mark is used or the quality of the products produced or the services secured by the licensee.
4. A license contract will not be valid when it does not contain the obligations that the licensor puts on the licensee for its time extent, the form in which the mark may be used, the sphere of goods or services for which the license has been issued, the territory where the mark is used or the quality of the products produced or the services secured by the licensee.

5. A license agreement does not have legal effect if it has not been registered in the register of marks. Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a trade mark only if the licensor consents thereto. However, the holder of an exclusive license may bring such proceedings if the licensor, after formal notice, does not himself bring infringement proceedings within an appropriate period. A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in infringement proceedings brought by the licensor.

6. The GDPT refuses registration of a license in the register if the respective documentation is not submitted in the designated period.

7. Details about the submission of the request and the procedures for registering a change are defined in the implementing regulation.

Article 164

Time Extent and Renewal of Registration

1. The registration of a mark lasts for 10 years, starting from the filing date.

2. A mark may be renewed endlessly for ten-year periods, after the owner of the mark files a request in the GDPT and pays the respective tariff, in a period no later than six months from the end date of the time period of registration.

3. The new period for protection of the mark begins from the end date of the previous ten-year period of protection.

4. If the owner of a mark does not file a request for its renewal or does not pay the respective tariff according to the requirements of point 2 of this article, the mark in question becomes invalid.

5. The data contained in a request to renew a mark and the respective procedure is defined in the implementing regulation.

CHAPTER XXVI

COLLECTIVE MARKS

Article 165

Object of the Protection of Collective Marks

A collective mark protects a sign that is used to distinguish goods and/or services put into the market by a commercial or industrial collaboration, by a society or similar body of various subjects.

Article 166

Content of an Application for a Collective Mark

1. Applicants for collective marks may be juridical persons and other entities who gain juridical personality in the manner defined by law.
2. The application for a collective mark is accompanied by an act or contract defining the rules of joint use of the collective mark.
3. The provisions of this law for commercial marks are also applicable for collective marks, while details about the data of the application and the respective procedures are defined in the implementing regulation.

CHAPTER XXVII EXECUTION OF RIGHTS

Article 167 Procedures for Violation of Rights

1. The applicant, the owner of a registered mark, a licensed person, an authorized user of a collective mark or any other person whose right in conformity with the provisions of this law has been violated may bring a lawsuit in court for the violation of the rights. For the purposes of this chapter, the owners of marks which are well known in the Republic of Albania in the meaning of article 6 *bis* of the Paris Convention, as defined in article 143 paragraph 5 letter “ç” of this Law, enjoy the same rights as the owners of registered marks.
2. Every unauthorized use, limitation, imitation or joint accompaniment that is in opposition to the provisions of this law is an infringement of the right of a registered mark or a mark as to which there has been an application for registration, according to this law.
3. A person within the meaning of point 1 of this article has the right to turn to the court against the person who is infringing his rights, seeking:
 - a) the prohibition of further acts that constitute infringement of the rights;
 - b) the removal of the objects that constitute an infringement of the rights from the channels of commerce or, if there is no other way, their destruction;
 - c) the removal of means used exclusively or almost exclusively for the creation of the products that constitute an infringement or, if there is no other way, their destruction;
 - ç) the publication of the final decision of the court in the public media at the expense of the person who has committed the infringement in the manner determined by the court.
4. The infringer is responsible for all damage that has been caused to the plaintiff. In conformity with the provisions of the legislation in force, the court determines the compensation of damages, except when it is otherwise specified and based on the case may:

a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement; or

b) in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

5. A lawsuit for the infringement of rights may be filed in court within three years from the date when the plaintiff became aware of the infringement and the identity of the infringer.

Article 168 **Right of information**

1. In the context of proceedings concerning an infringement of a mark, and in response to a justified and proportionate request of the claimant, the court may order that information on the origin and distribution networks of the goods or services which infringe the mark be provided by the infringer and/or any other person who:

a) was found in possession of the infringing goods on a commercial scale;

b) was found to be using the infringing services on a commercial scale;

c) was found to be providing on a commercial scale services used in infringing activities; or

ç) was indicated by the person referred to in letters “a”, “b” or “c” of this paragraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 of this article shall, as appropriate, comprise:

a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 of this article shall not apply if:

a) on the basis of the information available to it, the court has reason to assume that the right to information is misused;

b) providing the requested information would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in the infringement of the mark, or

c) disclosure of the information cannot be requested pursuant to rules protecting the confidentiality of information sources or the processing of personal data.

Article 169

Evidence

1. On application by a party which has presented reasonably available evidence sufficient to support his claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court can order that such evidence be presented by the opposing party, subject to the protection of confidential information.

2. Under the same conditions, in the case of an infringement committed on a commercial scale, the court can order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 170

Temporary Measures

1. The court orders temporary measures when the person who requests them:

- a) is an owner according to the definition of this Law and enjoys the rights mentioned in article 156 of it;
- b) submits documents that enable the court to decide that his right has been infringed or that such an infringement is very likely to occur;
- c) seeks that the measures be taken without unjustified delay after noticing the declared violation.

2. In taking temporary measures, the court, may:

- a) impede imminent violations or violations that have started;
- b) prohibit the entry of the goods into the channels of commerce;
- c) order the preservation of relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto;
- ç) confiscate, take out of circulation or take under safe-keeping, for the period of the civil procedure, the objects that constitute the violation or the means used for the production of the objects that constitute a violation of the rights according to this law.
- d) order, in the case of an infringement committed on a commercial scale and if the injured party demonstrates circumstances likely to endanger the recovery of damages, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The court decides on taking the temporary measures mentioned in paragraph 2 of this article without hearing the other party, in particular when delay might cause irreparable

damage to the owner of the right, or when evidence may be destroyed.. The defendant is notified of the measures taken without delay, at the latest immediately after the measures have been executed. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

4. When deciding on temporary measures, the court also sets a time limit for the person who has asked for them to bring a suit in court according to the definitions of article 167 of this Law. The time limit begins from the date the temporary measures begin and no later than 15 days after this date.

5. The temporary measures mentioned in paragraph 2 letters “a” and “b” of this article can be issued against the alleged infringer of a mark as well as, under the same conditions, against an intermediary whose services are being used by a third party to infringe a mark.

6. The issue of temporary measures mentioned in this article is subject to the lodging by the plaintiff of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the opposing party.

Article 171 **Measures at the Border**

1. If the owner of a registered mark or the holder of right within the meaning of this Law, submits a complaint for goods imported into the Republic of Albania or the goods inside the market that violate his rights defined in this law, on his request the customs authorities or the authorities responsible for the supervision of internal market, whichever the case, are obliged to make the necessary inspection and according to its result, to decide not to release the goods from the custom regime or to remove them from the market and in both cases to store them in a secure place, except when the importer or the seller has original documents about the production of the imported goods..

2. The owner of a registered mark or the holder of right within the meaning of this Law, is obligated to submit a guaranty for the damages that might be caused by the taking of the measures described in point 1 of this article.

3. The customs authorities or the authorities responsible for the supervision of internal market immediately notify the importer and recipient of the goods of the measures decided on.

4. The customs authorities or the authorities responsible for the supervision of internal market interrupt the measures imposed according to point 1 of this article if the owner of the registered mark or the holder of right within the meaning of this Law, does not file a lawsuit in court within 20 days (working days) from the day of the notification of the measures taken by customs authorities or the authorities responsible for the supervision of internal market.

CHAPTER XXVIII
SURRENDER OF REGISTRATION, REVOCATION AND REPEAL

Article 172
Withdrawal of Registration

1. The owner of a registered mark may withdraw it from registration by a request in writing, which is submitted to the GDPT.
2. The withdrawal enters into force from the date of delivery of the request to the GDPT together with the authorization of representation and the document of the payment of the respective tariff.
3. The withdrawal may be done for several or all of the goods and services for which the mark was registered.
4. The GDPT notes the withdrawal in the register of marks.

Article 173
Revocation of a Mark

1. On the request of a person, the court revokes a registration when it does not meet the requirements defined in articles 142 and 143 of this law, at the time when the application for registration was filed.
2. Every registration that is de-registered is considered non-existent beginning from the filing date of the mark. If a mark which does not meet the requirements of article 142, paragraph 1, letters “a”, “b” or “c” of this law has acquired a distinctive character in accordance with article 142 paragraph 2 of this Law, it will not be cancelled, but its priority date will be shifted to the point in time when distinctive character had been acquired.
3. A mark may not be declared invalid on the ground that there is an earlier conflicting trade mark if the latter does not fulfil the requirements of use set out in article 159 of this Law.
4. Where grounds for refusal of registration or declaration of invalidity of a mark exist in respect of only some of the goods or services for which that mark has been applied for or has been registered, refusal of registration or declaration of invalidity shall cover those goods or services only.
5. The revocation of a registered mark cannot be done without its owner being called as a party in the court proceeding. The court notifies the GDPT on the decision of revocation of a mark.

6. The GDPT registers the decision in the register of marks.

Article 174 **Repeal of a Mark**

1. The registration of a mark is repealed when:

a) its owner has not used the mark for the goods or services for which the mark was registered for an uninterrupted period of five years. However, a third party may not claim that the proprietor's rights on a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application or counterclaim may be filed;

b) in consequence of acts or inactivity of the owner, the mark has become an ordinary name in the market for the goods or services for which it was registered;

c) as a consequence of the use made by the owner or with his consent of the goods or services for which it was registered, the mark disorients the public, principally about the nature, quality or geographical origin of the goods or services.

2. A request for the repeal of a mark, within the meaning of point 1 of this article, is sought in court by the interested parties. The repeal of a registered mark cannot be done without its owner being called as a party in the court proceeding. The court makes the GDPT aware of its decision within one month from the date of taking the final decision.

3. A registration of a mark, within the meaning of letter "a" of point 1 of this article, is not repealed for the goods and services for which it was registered when:

a) it has been used by a licensee or another person when this is permitted by its owner, or by any person who has authority to use a collective mark

b) it has been used in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;

c) it has been affixed to goods or to the packaging thereof in the Republic of Albania solely for export purposes

ç) it has been used for publicity and business correspondence, as set out in article 159, paragraph 3 of this Law.

4. Where grounds for revocation of a mark exist in respect of only some of the goods or services for which that mark has been registered, revocation shall cover those goods or services only.

5. Every registration that is repealed ceases its effects from the date the repeal enters into force.

6. The GDPT registers the repeal in the register of marks.

**CHAPTER XXIX
INTERNATIONAL AGREEMENTS**

**Article 175
International Registration of Marks**

1. The owner of a registered mark or the applicant may file with the GDPT, against payment of the respective tariff, a request for the international registration of the mark, in reliance on the Madrid agreement and/or the protocol of this agreement.
2. The provisions of this law are applicable to all matters that are not included in those agreements.
3. In the service of the international registration of the mark according to the Madrid agreement, the publication of the request according to article 151 of this Law is replaced with the publication of the international registration in the official gazette of WIPO.
4. The time period for filing an opposition to an international registration of a mark in the Republic of Albania begins from the first day of the month following the month of publication of the mark in the official gazette of WIPO.
5. The request referred to in point 1 of this article is filed in the GDPT according to the procedure defined in the implementing regulation.

**PART V
GEOGRAPHICAL INDICATIONS**

**CHAPTER XXX
DEFINITIONS, CONDITIONS AND RIGHT OF PROTECTION**

**Article 176
Object of Protection**

1. Geographical names and designations of origin that are used in the market to show the geographical origin of products are protected by this Law and the implementing regulation as geographical indications.
2. Designation of origin means the name of a region, a specific place or, in exceptional cases, a country, used to describe a product:
 - a) originating in that region, specific place or country, and
 - b) the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

3. Geographical indication means the name of a region, a specific place or, in exceptional cases, a country, used to describe a product:

- a) originating in that region, specific place or country, and
- b) which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

4. Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfill the conditions referred to in the second indent of paragraph 2 (b) shall also be considered as designations of origin.

5. By way of derogation from paragraph 2 of this article, certain geographical designations shall be treated as designations of origin where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that:

- a) the production area of the raw materials is limited,
- b) special conditions for the production of the raw materials exist, and
- c) there are inspection arrangements to ensure that those conditions are adhered to.

For the purposes of this paragraph, only live animals, meat and milk may be considered as raw materials.

Article 177

The Right to File an Application

1. Every person who produces processes or prepares, in a designated geographical zone, a product for the definition of which a geographical indication is used, has the right to file an application for the registration of this indication.

2. The boundaries of the geographical locality, the particularities and characteristics of the goods, and the relation between the particularities and characteristics of the goods in the geographical environment or geographical origin are defined by the respective authority. When the designated geographical area lies outside the Republic of Albania, the respective determinations are made by the GDPT or the authority designated by it.

Article 178

The Rights that Come from Registration

1. The right of ownership over geographical indications is gained through registration in the GDPT. The registration of a geographical indication gives the owners the right to use it. They do not have the right to give use licenses for geographical indications.

2. The owners have the right to prohibit:

- a) every commercial use of a geographical indication for goods that are the same as, or similar to, those for which the geographical indication is registered, or any use for goods, even when they are dissimilar to those for which the geographical indication has been

registered, if unfair advantage is taken of the reputation of the geographical indication goods;

b) every inappropriate use or falsification of the geographical indication, even when the true origin of the goods has been specified, or every use of the translation or use accompanied by such terms as “kind,” “type,” “style,” or other similar ones;

c) every other inexact and false use of the geographical indication, the origin, the nature or the fundamental qualities of the goods specified in the packing, the materials of advertisements and correspondence about the products, when such indications create misinformation about the true origin of the products;

ç) every use of the geographical indication that identifies wines or beverages that do not have their origin in the country indicated by the geographical indication even in cases when their true origin is indicated, or every use of a translation or use accompanied by such terms as “kind,” “type,” etc.;

d) every other action that might create misinformation of the user about the true origin of the goods.

3. Geographical indications will not be turned into ordinary names so long as they enjoy protection according to the provisions of this law.

4. A registered geographical indication is a collective right and may be used as such in the market only by those who, in conformity with the definitions of points 2 and 3 of article 176, produce, process or prepare the product.

Article 179

The Right of the User

1. A registered geographical indication may be used only by the persons registered as users.

2. A registered user may use the geographical indication only for the goods for which it has been registered and put it on the goods or packaging or use it in advertisements or in business correspondence.

Article 180

Bases for Refusal of Registration

A name is not registered as a geographical indication if:

a) it has been turned into a general name in the market, in the territory of the Republic of Albania, for a specific product, regardless of whether the product has its origin in the country specified by the indicator in question;

b) it is the same as the name of an agricultural product or animal variety previously registered, when this creates misinformation of the user about the true origin of the goods;

c) it is the same as a geographic indication or mark previously registered for the same products;

ç) it is the same as a geographical indication or mark previously registered for products that are similar or the same, when this causes misinformation of the user.

Article 181

Time Extent of Protection

1. The protection of geographical indications begins with registration in the GDPT, with effects from the date the application was filed.
2. The legal protection of a registered geographical indication is unlimited in time and ends when there no longer exists a connection between the particularities and characteristics of the goods and the geographical environment.

CHAPTER XXXI

PROCEDURES FOR REGISTRATION OF A GEOGRAPHICAL INDICATION

Article 182

Filing the Application

1. An application for the registration of a geographical indication is filed in the GDPT.
2. An application is made only for one geographical indication and one type of product.
3. The application contains:
 - a) the name and address of the applicant;
 - b) the definition of the product;
 - c) the definition of the boundaries of the geographical locality;
 - ç) a report about the particularities and characteristics of the goods and their connection with the geographical environment and geographical origin;
 - d) a document issued by the respective authority according to point 2 of article 177 of this Law;
 - dh) a document issued by the local authorities certifying the performance of the productive activity of the applicant in the defined geographical region.
4. The application is accompanied by a document of the payment of the respective tariff.
5. Other procedures and additions for the application are defined in the implementing regulation.

Article 183

Revocation of a Geographical Indication

1. On the request of an interested person, the court revokes a registration when it does not meet the requirements defined in article 176 point 1 and 2 and article 180 of this law, at the time when the application for registration was filed.

2. The registration of a foreign geographical indication is considered revoked when it is de-registered in the country of origin.
3. The revocation of a geographical indication has effects from the filing date of the application.
4. The revocation of a geographical indication cannot be done without the registered user of the geographical indication being called as a party in the court proceeding. The court notifies the GDPT on the decision of revocation of a geographical indication.
5. The GDPT registers the decision in the respective register.

CHAPTER XXXII EXECUTION OF THE RIGHTS

Article 184 Procedures for Infringement of Rights

1. The applicant and the registered user of a geographical indication may bring a lawsuit in court for an infringement of rights.
2. Every unauthorized use, limitation, imitation or joint accompaniment that is against the provisions of this law is an infringement of the right of a geographical indication or an indication for which there has been an application for registration according to this law.
3. A person within the meaning of point 1 of this article has the right to turn to the court against another person who violates his rights, seeking:
 - a) the prohibition of the commission of further acts of infringement of the rights;
 - b) the removal of the objects that constitute an infringement of the rights from the channels of commerce or, if there is no other way to cease the infringement, their destruction;
 - c) the removal of means used exclusively or almost exclusively for the creation of the products that constitute an infringement, or if there is no other way, their destruction;
 - ç) the publication of the final decision of the court in the public media at the expense of the infringer, in the manner determined by the court.
4. The infringer shall be responsible for all damage that has been caused to the plaintiff. In conformity with the provisions of the legislation in force, the court shall determine the compensation of damages, except when it is otherwise specified and based on the case may:
 - a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement; or

b) in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

5. A lawsuit for an infringement of rights may be filed in the court within three years from the date when the plaintiff became aware of the infringement and the identity of the infringer.

Article 185 **Right of information**

1. In the context of proceedings concerning an infringement of a geographical indication, and in response to a justified and proportionate request of the claimant, the court may order that information on the origin and distribution networks of the goods or services which infringe the geographical indication be provided by the infringer and/or any other person who:

- a) was found in possession of the infringing goods on a commercial scale;
- b) was found to be using the infringing services on a commercial scale;
- c) was found to be providing on a commercial scale services used in infringing activities; or
- ç) was indicated by the person referred to in letters “a”, “b” or “c” of this paragraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 of this article shall, as appropriate, comprise:

- a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 of this article shall not apply if

- a) on the basis of the information available to it, the court has reason to assume that the right to information is misused;
- b) providing the requested information would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in the infringement of the geographical indication, or
- c) disclosure of the information cannot be requested pursuant to rules protecting the confidentiality of information sources or the processing of personal data.

Article 186 **Evidence**

1. On application by a party which has presented reasonably available evidence sufficient to support his claims, and has, in substantiating those claims, specified evidence which

lies in the control of the opposing party, the court can order that such evidence be presented by the opposing party, subject to the protection of confidential information.

2. Under the same conditions, in the case of an infringement committed on a commercial scale, the court can order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information..

Article 187

Temporary Measures

1. The court, based on the request of an interested person, orders the temporary measures when such a person:

- a) is an owner according to the definition of this law and enjoys the rights defined in article 180 of the law;
- b) submits documents that create the possibility for the court to decide that his right has been infringed or there is a great possibility that such an infringement will happen;
- c) request the temporary measures without unjustified delay after he has learned of the declared infringement.

2. In ordering temporary measures, the court may:

- a) impede imminent violations or violations that have begun to be committed;
- b) prohibit the entry of the goods into the channels of commerce;
- c) order the preservation of relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto;
- ç) confiscate, take out of circulation or take under safe-keeping, for the period of the civil procedure, the objects that constitute a violation of the rights according to this law;
- d) order, in the case of an infringement committed on a commercial scale and if the injured party demonstrates circumstances likely to endanger the recovery of damages, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The court orders the above-mentioned temporary measures without hearing the other party, in particular when any delay might cause irreparable damage to the owner of the right, or lead to the destruction of evidence. The party against whom the lawsuit has been brought is notified of the measures taken without delay, at the latest immediately after the measures have been executed. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

4. When ordering temporary measures, the court also sets a time limit for the person who has asked for them to submit a lawsuit in court according to the definitions of article 184 of this law. The time limit begins on the date the temporary measures start and no later than 15 days after this date.

5. The temporary measures mentioned in paragraph 2 letters “a” and “b” of this article can be issued against the alleged infringer of a geographical indication as well as, under the same conditions, against an intermediary whose services are being used by a third party to infringe a geographical indication.

6. The issue of temporary measures mentioned in this article is subject to the lodging by the claimant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the opposing party.

Article 188 **Measures at the Border**

1. If the owners of a registered geographical indication submit a complaint about goods imported into the Republic of Albania or the goods inside the market that violate their rights defined in this law, the customs authorities or the authorities responsible for the supervision of internal market, whichever the case, are obliged to make the necessary inspection and according to its result, to decide not to release the goods from the custom regime or to remove them from the market and in both cases to store them in a secure place, except when the importer or the seller has authentic documents about the production of these goods.

2. The owners of a registered geographical indication are obligated to submit a guaranty for the damage that might be caused by the taking of the measures described in point 1 of this article.

3. The customs authorities or the authorities responsible for the supervision of internal market immediately notify the importer and the recipient of the goods about the measures taken.

4. The customs authorities or the authorities responsible for the supervision of internal market interrupt the measures determined in point 1 of this article if the owners of the registered geographical indication do not file a lawsuit in court for the violation of rights within 20 days (working days) from the day of the notification of the measures taken by customs authorities or the authorities responsible for the supervision of internal market.

PART VI **GENERAL PROVISIONS**

CHAPTER XXXIII **GENERAL DIRECTORATE OF PATENTS AND TRADEMARKS**

Article 189
General Directorate of Patents and Trademarks (GDPT)

1. The General Directorate of Patents and Trademarks is a public institution under the dependence of the Minister of Economy, Trade and Energetic. The General Director is its representative in relationship with third parties.
2. The structure and organic of the Directorate of Patents and Trademarks is defined by order of Prime Minister, on the proposal of the Minister of Economy, Trade and Energy.
3. The activity of the Directorate of Patents and Trademarks is defined and regulated by this law and the implementing regulations of this law.
4. The General Director of the Directorate of Patents and Trademarks is assigned and dismissed by order of Prime Minister, on the proposal of the Minister of Economy, Trade and Energy.
5. The status of the staff of GDPT is regulated by Law No. 8549, date 11.11.1999 “On the Status of Public Servant”.

Article 190
Obligations and Restrictions of the Employees of the GDPT

1. During the exercise of activity and for a period of one year after the end of work in the directorate, the employees of the GDPT may not file applications for patents, trade marks, industrial designs or geographical indications. They are not permitted directly or indirectly (except in cases of inheritance) to enjoy the right to patents, commercial marks or industrial designs approved by the GDPT nor may obtain any right that arises from them.
2. The employees of the GDPT may not enjoy a priority right for patents, the registration of marks, industrial designs or geographical indications, or applications for patents, marks, industrial designs or geographical indications, that have an earlier date than one year from the end of their employment in GDPT.

Article 191
General Director of the GDPT

1. The General Director of the GDPT directs the activity of the directorate and follows the fulfillment of the provisions defined by this law and its implemetation regulations.
2. The General Director of the GDPT has the right to sign bilateral agreements of cooperation with analogous offices in the field of industrial property, according to the legislation in force.
3. The General Director of the GDPT, within the areas that this law defines, represents the directorate in court, arbitration and the state institutions.

4. In conformity with the provisions of this law, the General Director of GDPT proposes the organizational regulation of GDPT to the Minister of Economy, Trade and Energy and issues orders, instructions or other internal acts.

Article 192

Registers and Gazette

1. The GDPT keeps and administers the registers of:
 - a) applications for the registration of marks, industrial designs, geographical indications and applications for the grant of a patent and registration of integrated circuits;
 - b) registered patents, integrated circuits, marks, industrial designs, geographical indications;
 - c) authorized representatives for patents, marks and industrial designs.
2. The registers mentioned in point 1 of this article are open to the public.
3. Data about the rights of protected industrial property or applications for their protection are published periodically in the gazette of the GDPT no less than four times a year, in conformity with the requirements of this law.

Article 193

Appeal Board

1. The appeal board consists of three members appointed by the General Director of GDPT. The members of the board should be employees of GDPT.
3. Details about the organization and functioning of the appeal board are defined in the Internal Regulation of the GDPT.

Article 194

Informing the Public

1. The disclosure of information concerning documents and other information owned by GDPT is made in compliance with the provisions of this Law.
2. The documentation and information within the meaning of point 1 of this article are made available against defined tariffs.

CHAPTER XXXIV

REPRESENTATION

Article 195

Representation before the GDPT

1. Representation of Persons before GDPT may only be undertaken by authorized representatives registered with the GDPT.

2. By an authorization of representation, Persons may authorize one or more representatives for all or for some acts before the GDPT.

3. As an exception to paragraph 1 of this article, Persons with a permanent residence in the Republic of Albania or who conduct activity within its territory may be represented before the GDPT, directly or through other representatives who are not registered by GDPT but manage or are employed by this person and have an authorization of representation.

4. Details about the authorization of the representation are defined in the implementing regulation.

Article 196 **Revocation and Limitation of Representation**

1. The applicant or the holder of right can revoke, amend or limit the act of representation or the representation rights.

2. The revocation, amendment or limitation of representation act shall become effective only after it has been notified to GDPT through a written notification.

Article 197 **Authorized Representatives of Patents and Marks**

1. Authorized patent representatives shall be:

a) Any person resident in the Republic of Albania who has completed the university studies and has exercised an activity in the field of industrial property for a period of time not less than 5 years. Shall be considered activity in the field of industrial property any activity fulfilled under directions of an authorized representative registered by GDPT.

b) Any legal office which employs on a regular contractual basis a person who meets the conditions defined in letter “a” of paragraph 1 of this article.

2. The authorized representative of industrial designs, marks and geographical indications may be:

a) any person resident in the Republic of Albania who has completed university studies and have passed the qualifying test for authorized representatives of industrial designs and marks in the GDPT;

b) any law office.

Article 198 **Qualifying Test**

1. The GDPT shall organize a test for the qualification as authorized representative. Participation in the qualifying test shall be subject to the payment of the respective fee.

2. The GDPT shall register authorized representatives of patents, industrial designs and marks in the respective register.
3. Details about the register of authorized representatives and the procedures of registration are defined in the organizational regulation of GDPT.
4. Registration shall be subject to the payment of the respective fee.

CHAPTER XXXV ADMINISTRATIVE INFRACTIONS

Article 199 Administrative Infractions

1. Any action taken in violation of the provisions of articles 36, 127, 156 and 178 of this Law constitutes infringement of industrial property rights and is punished with a fine of from 100,000 to 500,000 lek. Fines shall be set by the authorities responsible for the supervision of the internal market within the Ministry of Economy, Trade and Energy or by the court.
2. The judicial procedures provided for in point 1 of this article may not be undertaken if a period of three years has passed from the date of commission of the violation.
3. In case of a repetition, the maximum punishment defined in point 1 of this article is doubled. It is considered a repetition when the infringer commits the violation for a second time within five years.
4. The body encharged by this Law to excecute the fines is the Tax Police.

CHAPTER XXXVI TRANSITIONAL AND FINAL PROVISIONS

Article 200 The Control and Supervision of the Internal Market

1. The enforcement of this Law in the internal market is in the competences of the authorities responsible for the supervision of the internal market within the Ministry of Economy, Trade and Energy.
2. The organization, functioning and powers of this authority shall be regulated by other acts.

Article 201 Procedures in Process

1. For the procedures for the registration of rights of industrial property that have not been completed by the date of entry of this law into force, the provisions of the law in force will be applied.
2. For the procedures for the violation of rights of industrial property that have not been completed by the date of the entry of this law into force, the provisions of the law in force will be applied.

Article 202

Implementing Regulations

This law charges the Council of Minister to approve the implementing regulations in appliance of articles 11, 17, 18, 20, 24, 26, 29, 30, 31, 34, 35, 49, 50, 70, 75, 97, 99, 119, 122, 123, 124, 125, 126, 128, 129, 130, 131, 145, 150, 151, 152, 153, 154, 155, 161, 162, 163, 164, 166, 175, 182 of this Law, within one month from the date of its entry into force.

Article 203

Repeal

The Law nr. 7819 dated 27.04.1994 “On industrial property” and its amendments are repealed.

Article 204

Entry into Force

This law enters into force three months from the date of its publication in the Official Journal.