

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

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

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

No. 07-1006/1
12 February 2009
Skopje

President of the
Republic of Macedonia
Branko Crvenkovski

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

LAW ON INDUSTRIAL PROPERTY

**PART I
GENERAL PROVISIONS**

**Contents of the Law
Article 1**

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

**Industrial Property Rights
Article 2**

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

Definitions Article 3

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

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

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

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

Principle of legality Article 4

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

Entities of industrial property rights Article 5

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

Rights of the entities of industrial property rights Article 6

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

Moral right Article 7

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

Exclusive rights Article 8

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

Competent Institution Article 9

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

Management Article 10

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

Competences Article 11

The Office shall perform the following tasks:

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

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

Financing Article 12

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

Incomes Article 13

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

Relation of the Office with other authorities and users Article 14

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

Report Article 15

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

Registers and publication of data from the Office Registers Article 16

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

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

Types of applications for protection of industrial property rights Article 17

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

Application filing method Article 18

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

Administrative procedure Article 19

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

Lawsuit against the decisions of the Office
Article 20

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

Acting in compliance with international agreements
Article 21

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

Enforcing rights through a legal representative
Article 22

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

Availability of documentation and information of the Office
Article 23

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

Fees and charges
Article 24

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

PART II
PATENT

Patentable inventions
Article 25

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

Exceptions to patentability Article 26

A patent may not protect an invention:

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

Novelty Article 27

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

Non-prejudicial disclosures Article 28

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

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

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

Inventive step Article 29

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

Industrial application Article 30

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

Entities of patent right Article 31

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

Inventor Article 32

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

Inventor's successor in title Article 33

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

Initiating a procedure
Article 34

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

Unity of the invention
Article 35

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

Right of priority
Article 36

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

Exhibition priority right
Article 37

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

Union priority right Article 38

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

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

Obligations of the patent applicant with union priority Article 39

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

Multiple right of priority Article 40

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

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

Scope of the requested right of priority Article 41

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

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

Certificate for right of priority
Article 42

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

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

Contents of the patent application
Article 43

(1) The patent application must include:

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

Contents of request for grant of patent
Article 44

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

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

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

Description of the invention
Article 45

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

Patent claims
Article 46

(1) The patent claims shall determine the item for which the protection is requested.

(2) The patent claims should be clear and included in the description of the invention.

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

Abstract
Article 47

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

Filing date
Article 48

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

Setting the filing date for the application
Article 49

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

Alterations of the patent application which are not allowed
Article 50

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

Register of patent applications
Article 51

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

Statement on the method for conducting the examination procedure
Article 52

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

Division of patent application
Article 53

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

Formal examination of the application
Article 54

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

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

Request for immediate procedure of considering the application Article 55

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

Examination of the application in procedure in the Office Article 56

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

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

Shortcomings of the application

Article 57

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

Decision to reject the patent application

Article 58

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

Payment of costs and fees

Article 59

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

Decision for grant of patent
Article 60

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

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

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

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

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

Institutions for substantive examination
Article 63

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

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

Contents of the evidence from substantive examination
Article 64

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

Additional examination
Article 65

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

Decisions based on the evidence from the substantive examination
Article 66

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

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

Register of patents
Article 67

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

Recording changes in the registers
Article 68

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

Publication
Article 69

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

Patent certificate
Article 70

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

Confidential patent
Article 71

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

Use of confidential invention
Article 72

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

Properties of the confidential patent
Article 73

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

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

Patent validity Article 74

The patent right shall be valid for 20 years, counting from the date of filing the application.

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

Supplementary protection certificate Article 75

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

Conditions for granting a certificate Article 76

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

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

Subject protected by the Certificate
Article 77

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

Entities to the right of the Certificate
Article 78

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

Initiating a procedure for issuing a certificate
Article 79

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

Contents of the requests for issuance of a Certificate
Article 80

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

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

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

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

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

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

Approving the request Article 83

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

Validity of the certificate Article 84

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

Rejecting the request Article 85

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

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

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

Fees and charges

Article 86

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

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

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

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

Termination of the patent prior to the expiry of the validity

Article 87

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

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

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

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

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

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

Rights of third parties

Article 88

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

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

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

Exclusive rights Article 89

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

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

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

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

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

Exclusive rights of patents in the field of biotechnology Article 90

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

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

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

Free use Article 91

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

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

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

Patent for procedure Article 92

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

Scope of exclusive right Article 93

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

Right based on previous use Article 94

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

Exemption from the infringement of the patent right Article 95

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

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

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

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

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

Compulsory license
Article 97

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

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

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

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

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

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

Particularities of the compulsory license Article 98

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

Compensation Article 99

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

Compulsory licence for dependent patent Article 100

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

Competence to grant compulsory license Article 101

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

(2) The procedure to issue a compulsory licence shall be initiated with a lawsuit against the patent holder or a supplementary protection certificate protection, which contains a request for issuing compulsory license.

(3) In the procedure for issuing compulsory license, the patent holder referred to in paragraph (2) of this Article, which is registered in the patent register, shall be considered as a patent holder.

Compulsory license for the needs of public health Article 102

(1) Any person that has filed an application in compliance with the provisions of this Law may be issued, by the court, a compulsory patent license i.e. a supplementary protection certificate for the needs of production and sale of pharmaceutical products, where such a product is intended to be exported in the importing countries with problems in public health.

(2) When deciding upon issuing compulsory license, the court shall take into consideration the WTO General Council Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health of 14 November 2001, (hereinafter referred to as: "Decision").

(3) The pharmaceutical product referred to in paragraph (1) of this Article shall be any product in the pharmaceutical industry, including the medications for human use, which include any substance or mixture of substances designed for treatment or prevention of human diseases including any substance or mixture of substances which may be applied to people in terms of renewal, improvement, or adjustment to their physiological functions by causing pharmaceutical, immunological, or metabolic effects or by giving the medical diagnosis, including active components and accessories to diagnose outside the alive human body.

Importing country Article 103

(1) Importing country within the meaning of Article 102 paragraph (1) shall be any country in which pharmaceutical products are exported and it can be:

- 1) any least developed country stated as such in the list of the United Nations (UN);
- 2) any WTO member, except the least developed member state referred to in item (1) of this paragraph, which has send a notification to the TRIPS Council on the intention to use the system as an importing country, either to use the system in that regard as a whole or partially;
- 3) any country, which is not a WTO member, and which has been listed by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) as a country with low income of gross national product per capita i.e. less than USD 745 and for which the Ministry of Economy is notified about the intention to use the system as an import country, regardless if it will use the system in this way as a whole or partially.

(2) If a WTO member state has given a statement that it will not use this right, then it shall not fulfill the requirements to use the system as an importing country.

(3) The importing countries that are not WTO members, and are the least developed countries and developing countries and fulfill the requirements offset out in paragraph (1) of this Article, must fulfill the additional requirements:

- 1) the importing country shall be bound to send a notification directly to the Ministry of Economy;

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

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

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

Preconditions for compulsory license Article 105

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

Notifying the patent holder Article 106

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

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

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

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

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

Procedure of issuing compulsory license
Article 109

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

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

Compensation Article 110

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

Refusal of the application for issuing a compulsory license Article 111

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

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

Cessation or reconsideration of compulsory license Article 112

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

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

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

Notifications Article 113

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

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

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

Prohibition on import Article 114

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

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

Operation of the customs
Article 115

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

APPLICATION FORMS FILED ACCORDING TO INTERNATIONAL AGREEMENTS

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

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

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

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

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

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

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

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

Right that applies to European applications and European patents Article 119

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

Filing of European applications Article 120

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

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

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

Rights from the European applications Article 121

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

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

Rights from European patent Article 122

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

Language of the European patents Article 123

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

Maintenance of the European patents Article 124

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

Conversion into national application
Article 125

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

Parallel protection
Article 126

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

PART III
INDUSTRIAL DESIGN

Subject to protection
Article 127

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

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

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

Novelty of design Article 128

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

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

Individual character Article 129

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

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

Announcing the design Article 130

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

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

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

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

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

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

Absolute grounds for refusal
Article 132

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

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

(2) Competent body for granting the permission referred to in paragraph (1) items 5 and 6 of this Article shall be the Ministry of Justice, and regarding the issuance of the permit referred to in paragraph (1) item 7, competent authority shall be the Administration for Cultural Inheritance Protection.

Relative grounds for refusal
Article 133

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

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

- (3) The reasons for excluding from the protection of the right to industrial design in accordance with paragraph (1) item 4 of this Article, could be invoked only by the applicant of a previously filed application or the holder of a previously acquired right.
- (4) Industrial design that has been declared earlier shall be a reason for refusal only if it is registered.

Applicant
Article 134

- (1) Procedure for acquiring a right to industrial design may be initiated by the author or his successor only.
- (2) If the design is creation of several authors, then all the authors and their successors Article shall be entitled to the right to initiate the procedure referred to in paragraph (1) of this.
- (3) If the application for industrial design has not been filed by the author, then it shall be deemed that it has been filed in accordance with paragraph (1) of this Article, until contrary proved.
- (4) Application for industrial design could also be filed by the customer if the design has been made on the basis of an order contract, unless otherwise determined by the contract.
- (5) Application for industrial design may also be filed by the employer if the design is made by an employee in the frames of his working obligations, following the instructions of his employer, unless otherwise determined by the work contract.

Author
Article 135

- (1) Author shall be a natural person who has created the design by his creative labour.
- (2) Author shall not be deemed the person who, in the creation of the design, has offered technical assistance only.

Legal successor
Article 136

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

Initiation of a procedure
Article 137

- (1) The procedure for grant an industrial design right shall be initiated by filing an application for industrial design right to the Office.
- (2) Procedure for acknowledgement of a right to industrial design may also be initiated by filing an application in accordance with the Hague Agreement.
- (3) Procedure for international registration of an industrial design, in accordance with the provisions of the Hague Agreement, shall be initiated by filing an application for international registration of an industrial design directly to the International Bureau, of the World Intellectual Property Organisation.

Uniqueness of a design
Article 138

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

Right of priority
Article 139

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

Exhibition priority right
Article 140

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

Union priority right
Article 141

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

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

Obligations of the applicant with union priority Article 142

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

Multiple priority right Article 143

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

Certificate for priority right Article 144

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

Contents of the application Article 145

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

Date of filing the application
Article 146

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

Entry into the Register of Applications
Article 147

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

Division of multiple application
Article 148

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

Correct application
Article 149

An application for industrial design shall be correct if:

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

Formal examination of application Article 150

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

Examination of the conditions for recognition of the right Article 151

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

Decision for refusal of the application Article 152

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

Payment of expenses
Article 153

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

Publication of the application for industrial design
Article 154

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

Postponement of publication of application for industrial design
Article 155

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

Opposition
Article 156

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

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

Examination of opposition Article 157

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

Deciding on opposition Article 158

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

Grant of industrial design right and entry in register Article 159

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

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

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

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

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

Recording changes in the Registers Article 160

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

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

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

Scope of protection Article 161

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

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

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

Acquiring the industrial design right Article 162

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

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

Publication of the industrial design
Article 163

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

Industrial design certificate
Article 164

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

Moral rights of the author of the industrial design
Article 165

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

Exclusive rights
Article 166

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

Exception from infringement of industrial design right
Article 167

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

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

Limiting the exclusive Rights
to industrial design
Article 168

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

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

Right based on previous usage
Article 169

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

Tolerance of use of industrial design
Article 170

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

Drawing a right Article 171

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

Validity of the industrial design Article 172

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

Cessation of the validity of the industrial design right Article 173

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

Third parties rights Article 174

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

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

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

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

PART II TRADEMARK

Object of trademark protection Article 175

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

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

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

Distinctiveness Article 176

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

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

Absolute grounds for refusal Article 177

(1) A trademark shall not protect a sign:

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

6. which exclusively consists of shape defined by the kind of goods, shape of goods necessary to obtain a specific technical result or shape giving a substantial value to the goods;
 7. the appearance of which may create confusion in trade and mislead the average consumer particularly as to the geographical origin, kind, quality or any other characteristic of the goods or services;
 8. which contains or consists of a geographic sign which serves to signify wines or other strong alcoholic drinks, if the reported sign refers to wines or alcoholic drinks which are not from that geographical area;
 9. which contains seal, official sign or hallmarks for control and guarantee of quality and imitations thereof;
 10. which contains a national coat of arms or other public coat of arms, flag or emblem, name or abbreviated name of a country or an international organization, as well as imitations thereof, according to Article 6-ter of the Paris Convention, except with authorization from the competent authority of the country or organization;
 11. which contains the name or abbreviation of that name, the coat of arms, flag, emblem or other official symbol of the Republic of Macedonia, as well as their imitations, except with authorization from a competent state administrative body;
 12. which contains or imitates figure or name of a historical or dead eminent person from the Republic of Macedonia, except with authorization from a competent state administrative body.
 13. which contains or imitates name, shape or other recognisable part of protected cultural inheritance of the Republic of Macedonia, except with authorization from a competent state administrative body;
 14. which contains religious symbols or imitations thereof.
- (2) The signs under paragraph (1) items 3, 4 and 5 of this Article may be protected by trademark if the applicant proves that during the long years of use, the sign acquired distinctiveness.
- (3) The Ministry of Justice shall be the competent body for issuing the authorization from paragraph (1), items 11), and 12).
- (4) Competent authority for issuing authorization from paragraph (1) item 13 of this Article, shall be the Administration for Protection of the Cultural Inheritance.

Relative grounds for refusal Article 178

- (1) Trademark may not protect a sign:
1. which is identical with an earlier trademark filed or registered by another right-owner designating the identical kind of goods or services;
 2. which is identical with or similar to an earlier trademark, filed or registered by another right-owner designating the same or similar kind of goods or services which would create confusion at the average consumer, including the possibility of association to earlier filed for or registered trademark.
- (2) Trademark, earlier filed for protection shall be a reason for refusal within the meaning of paragraph (1) of this Article only if it was registered.
- (3) The term "earlier filed or registered trademark" shall comprise:
1. trademark enjoying priority right under the provisions of this Law;
 2. earlier internationally registered trademark with effect in the Republic of Macedonia;

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

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

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

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

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

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

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

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

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

Applicant Article 179

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

Initiation of procedure Article 180

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

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

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

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

Content of application Article 181

(1) A trademark application shall contain the following:

Request for grant of a trademark right;

Data related to the applicant;

Appearance of the sign for which protection is requested, and

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

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

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

Establishing the filing date of an application Article 182

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

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

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

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

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

Changes to a trademark application which are not allowed Article 183

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

Recorded in the Trademark Application Register Article 184

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

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

Division of trademark application
Article 185

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

Priority right
Article 186

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

Union priority right
Article 187

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

Exhibition priority right
Article 188

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

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

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

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

Certificate for a priority right Article 189

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

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

Order of proceeding Article 190

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

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

when there is a dispute referring to the right;

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

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

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

Proper trademark application Article 191

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

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

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

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

Formal examination of the Application Article 192

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

Examination of the requirements for grant of the right Article 193

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

Decision for refusal of application Article 194

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

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

Payment of the fees and publication of application Article 195

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

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

Third Party Intervention Article 196

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

Opposition Article 197

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

Examination of opposition Article 198

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

Deciding on opposition Article 199

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

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

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

Recording changes in the Registers
Article 201

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

Acquisition of trademark right
Article 202

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

Publication of trademark
Article 203

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

Trademark certificate
Article 204

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

Division of the registered trademark
Article 205

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

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

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

Exclusive rights

Article 206

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

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

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

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

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

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

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

1) affixing the sign on goods and their packages;

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

3) import or export of goods under that sign;

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

Limitations to the trademark right

Article 207

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

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

Acquiescence in the use of a trademark
Article 208

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

Exhaustion of right
Article 209

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

Reproduction of trademark in publications
Article 210

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

Term of trademark
Article 211

- (1) A trademark term shall be 10 years as from the date of filing the trademark application.
- (2) A trademark may be renewed indefinite number of times for term of ten years, provided that the trademark applicant files with the Office a request for renewal of the trademark validity and pays the corresponding fee and procedural expenses during the last year of the ten-year term of protection or no later than nine months after the expiration of the validity.
- (3) The new period of protection shall begin with the day of expiration of the previous ten-year period of protection.
- (4) In case when the application for renewal of the validity of the trademark covers only part of the goods i.e. services for which the trademark has been registered, the validity of the trademark shall be renewed only for those goods, i.e. services.
- (4) The contents and form of the request for renewal of the right to a trademark shall be prescribed by the regulation issued by the Director of the Office.

