



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No.2004/49

PATENT LAW

Assembly of Kosovo,

According to Regulation Nr. 2001/9 of May 15 th 2001 of Constitutional Framework for Provisional Government of Kosova based on Chapters 5.1 (e), 9.1.1, 9.3.3, 11.2.,

Given the importance of invention as an idea for an inventor that permits solutions to specific problems in fields of technology,

Adopts:

PATENT LAW

CHAPTER I

**INVENTION, PATENTABLE INVENTION, MATTERS EXCLUDED FROM
PATENT PROTECTION**

**Patentable Invention
Article 1**

1.1. For the purposes of this Law, invention means an idea of an inventor which permits in practice the solution to a specific problem in any field of technology. An invention may be, or may relate to, a product and a process.

1.2. An invention shall be patentable if it is new, involves an inventive step and is industrially applicable.

1.3. Patentable inventions shall be protected by patents in accordance with the provisions of this Law.

**Novelty
Article 2**

2.1. An invention shall be considered to be new if it is not anticipated by prior art. For the determination of novelty, items of prior art may only be taken into account individually.

2.2. The prior art shall consist of everything which before the filing date or, where priority is claimed, the priority date of the application has been made available to the

public, anywhere in the world, by means of a written or oral description, by use or in any other way.

2.3. The prior art shall also include the content of any patent application as filed in Kosovo, to the extent that such application is published, provided that the filing date or, where priority is claimed, the priority date of such application is earlier than the date referred to in paragraph 2 of this Article.

2.4. The provisions of paragraphs (1) to (3) of this Article shall not exclude the patentability of any substance or composition, comprised in the prior art, for use in a method referred to in Article 9 paragraph (3) of this Law, provided that its use for any such method is not comprised in the prior art.

Article 3

3.1. For the purpose of the Article 2. of this Law, disclosure of information of an invention claimed in an application shall not affect the novelty of that invention where the information was disclosed:

- a. by the inventor or any person who, at the filing date of the application, had the right to the patent,
- b. by a Industrial Property Office (hereinafter: the Office) where the information was contained:
 - (i) in another application filed by the inventor and should not have been disclosed by the Office , or
 - (ii) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information direct or indirectly from the inventor,
- c. by a third party which obtained the information direct or indirectly from the inventor, provided that such application occurred no earlier than twelve months prior to the filing date or, where priority is claimed, the priority date of the application.

3.2. The effects of paragraph 1. may be invoked at any time.

Inventive Step Article 4

An invention shall be considered to involve an inventive step if, having regard to the prior art, it is not obvious to a person skilled in the art. If the prior art also includes documents within the meaning of Article 2., paragraph (3) of this Law, these documents are not to be considered in deciding whether there has been an inventive step.

Industrial Applicability

Article 5

An invention shall be considered as industrially applicable if it can be made or used in any kind of industry, including, in particular, handicraft, agriculture, fishery and services.

Patentability of biological material

Article 6

6.1. According to conditions set out in Article 1. of this Law, a patent shall be granted even for an invention which concerns:

- a. a product consisting of or containing biological material;
- b. a process by means of which the biological material is produced, processed or used;
- c. a biological material which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature.

6.2. The biological material referred to in paragraph 1 of this Article shall be any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

6.3. According to conditions set out in Article 1. of this Law an invention which concerns plants or animals shall be considered patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety and if the process for carrying out the invention is not essentially biological.

6.4. A process for the production of plants and animals referred to in paragraph (3) of this Article is essentially biological if it entirely consists of natural processes such as crossing or selection.

Matters Excluded from Patent Protection

Article 7

7.1. The following, in particular, even if they are inventions within the meaning of Article 1 of this Law shall be excluded from patent protection:

- a. discoveries, scientific theories and mathematical methods
- b. esthetic creations,
- c. schemes, rules and methods for performing mental acts, playing games or doing business,
- d. programs for computers,
- e. presentations of information.

7.2. The provisions of paragraph (1) of this Article shall exclude patentability of the subject matter or activities referred to in that paragraph only to the extent to which a patent application or patent relates to such subject-matter or activities as such.

Article 8

8.1. A patent shall not be granted in respect of inventions the exploitation of which would be contrary to "order public" or public morality.

8.2. The following, in particular, shall be considered as inventions referred to in paragraph 1. of this Article:

- a. processes for cloning human beings,
- b. processes for modifying the germ line genetic identity of human beings,
- c. uses of human embryos for industrial or commercial purposes; and
- d. processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Article 9

Excluded from patent protection shall be :

9.1. The inventions which concern animal breeds, and plant varieties, and essentially biological processes for the production of plants or animals, except for the inventions which concern non-biological and microbiological processes and products resulting from such processes, as provided for in Article 6., paragraph (3) of this Law. A microbiological process shall mean, under this Law, any process involving or performed upon or resulting in microbiological material,

9.2. The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene. An invention relating to an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application as originally filed.

9.3. The inventions which concern diagnostic or surgical methods or methods of treatment practiced directly on the human or animal body, except for the products, in particular substances or compositions used in such methods.

CHAPTER II: INVENTOR, RIGHT TO A PATENT, APPLICANT Inventor and the right to be designated

Article 10

10.1. An inventor shall be the person who has created an invention in the course of his creative work.

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

10.3. The inventor shall have the un-transferable right vis-à-vis the applicant for or proprietor of the patent, to be designated as such in the patent application, in all the documents issued in relation to the grant of a patent, like published application and the patent specification, and in the Register of patent applications and Register of patents, unless the inventor requests, in a declaration signed by him and addressed to the Office, that he wishes not to be so mentioned.

Right to a Patent Article 11

11.1. The right to a patent shall belong to the inventor or his successor in title. If two or more persons have jointly made an inventions, they shall, unless they agree otherwise, have equal rights.

11.2 Notwithstanding paragraph 1 of this Article, when an invention is made in Kosovo in execution of a commission or an employment contract, the right to the patent for that invention shall, in the absence of contractual provisions to the contrary, belong to the person having commissioned the work or to the employer.

11.3. When provisions of paragraph 2 of this Article apply to an invention made in execution of an employment contract in Kosovo, the employee being the inventor shall have the right to equitable remuneration taking into account his salary, the economic value of the invention and any benefit derived from the invention by the employer. In the absence of agreement between the parties to fix the remuneration, it shall be fixed by the Judicial authority upon application by one of the parties.

11.4. The right to a patent may be assigned, or may be transferred by succession.

Applicant Article 12

12.1. For the purposes of proceedings before the Office, the applicant shall be deemed to be entitled to exercise the right to the patent.

12.2. If the applicant is not the inventor or is not the sole inventor, the applicant shall indicate the legal grounds of his entitlement to file the application.

12.3. The application shall designate the inventor or, where there are several inventors, all of them.

CHAPTER III: IMPLEMENTATION OF A PATENT GRANTING PROCEDURE

Industrial Property Office Article 13

13.1. The Patent Office shall be established as an independent agency within the Government, and shall be entrusted with all functions as specified in this Law and the Implementing Patent Administrative Instruction (hereinafter: the AI) relating to the patent granting procedure and for the administration of granted patents.

13.2. The AI may, in particular, provide for the payment of fees in connection with applications for the grant of patents and matters related thereto.

13.3. The Government shall issue AI prescribing details for the implementation of this Law, as well as Administrative Instructions relating to the procedures under this Law and the AI as well as to the other functions of the Office.

Patent Registers, Official Bulletin Article 14

14.1. The Office shall maintain a Patent Register in which patent applications and patents granted shall be recorded.

14.2. The Patent Register shall include, as prescribed in the AI, such matters constituting or relating to the patent application or patent and entries of all corrections, amendments, changes in ownership or other matters that the Office is empowered or required by this Law to record. No entry shall be made in the Patent Register prior to the publication of the application.

14.3. The Patent Register shall be prima facie evidence of all matters directed or authorized by or under this Law to be entered therein.

14.4. The Patent Register shall be open to public inspection and any person may obtain extracts there from in accordance with the AI.

14.5. The Office shall publish in the Official Bulletin all the publications provided for in this Law.

Article 15

Administrative decisions made by the Office shall not be subject to any appeal, but an administrative lawsuit may be instituted against such decisions, in accordance with the legislation relevant to the on Administrative Disputes.

Using results of patent granting procedure performed by “elected offices”

Article 16

16.1. For any patent application filed with the Office when the said patent application relates to the same or essentially the same invention as that claimed in the application filed abroad (“foreign application”) with the European Patent Office or any other patent office being the member of the European Patent Convention, provided this office is acting as an International Preliminary Examining Authority under the Patent Cooperation Treaty (PCT), (“elected offices”), the applicant can submit the request to the Office to accept as its own the results of the patent granting procedure as anticipated with Articles 20 to 37 of this Law, performed by one of this “elected offices”.

16.2. The applicant shall at the same time furnish to the Office all the appropriate data and documents relating to the patent application filed with “elected office” referred to in paragraph 1 of this Article in accordance with the AI.

Article 17

The Office will issue the decision to the request referred to in paragraph (1) of the Article 16 of this Law not later than within two months as from the filing date of the request.

Article 18

The applicant shall furnish to the Office with the following documents relating to one of the foreign applications referred to in Article 16 :

- a. a copy of any communication received by the applicant concerning the results of any granting procedure carried out as from the receipt of the patent application up to the publication thereof in respect of the foreign application;
- b. a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- c. a copy of the patent granted on the basis of the foreign application;
- d. a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

Fees and Procedural Charges

Article 19

19.1. The acquisition and maintenance of a patent shall be subject to payment of the administrative fees and procedural charges in compliance with the sub-normative acts issued by the Government relating to the procedural expenditures.

19.2. If the administrative fees and procedural charges are not paid in due time in the course of the patent granting procedure, the patent application shall be deemed to be withdrawn, while in the case of non-payment of administrative fees and procedural charges for the maintenance of a patent, such right shall lapse.

CHAPTER IV: PRIORITY RIGHT MATTERS

Priority Right Article 20

20.1. If the same invention has been created by two or more inventors independently of each other, the priority in respect of right to the patent grant shall belong to the applicant whose patent application has the earliest filing date provided that this first application has been published in accordance with Article 37 of this Law.

20.2. The priority shall be in effect as from the date of filing the application with the Office, except where the requirements for the grant of priority right referred to in Articles 21 and 22 of this Law have been complied with.

Requirements for the Grant of Priority Right Article 21

21.1. In accordance with the provisions of Article 4 of the Paris Convention for the Protection of Industrial Property (hereinafter: the Paris Convention), any legal or natural person who has filed in any member State of the Paris Union for the Protection of Industrial Property (hereinafter: the Paris Union) or in any member of the World Trade Organization (hereinafter: the WTO) a correct application for any kind of the protection for inventions, or her/his successor in title, shall enjoy in Kosovo, a right of priority as from the date of filing the first application in a member State of the Paris Union, or in a member of the WTO, provided that the application for the same invention is filed with the Office within twelve months, and that the right of priority is claimed.

21.2. The correct application referred to in paragraph 1 of this Article shall be considered to be an application the filing date of which is accorded in compliance with the national law of the member State of the Paris Union or the member of the WTO in which it was filed, or in compliance with the international treaty concluded among the member States, whatever may be the outcome thereof.

21.3. A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, refused or rejected, without being open to public inspection and without leaving any rights outstanding, and has served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming priority.

Priority Claim Article 22

The patent applicant intending to take advantage of the priority right referred to in Article 21 of this Law in Kosovo, shall file with the Office:

- a. a priority claim containing essential data concerning the first application the priority of which is claimed (application number and filing date, a member State of the Paris Union or a member of the WTO in or for which the application was filed), not later than up to the expiration of a period of 2 months as from the date of filing the application in Kosovo, and
- b. a copy of the first application certified by the competent authority of the member State of the Paris Union or a member of the WTO in or for which it was filed, not later than up to the expiration of a period of 3 months as from the filing date of the priority claim or of 4 months as from the date of filing the application in Kosovo, or 16 months from the earliest priority date claimed, whichever period expires first.

Multiple Priority Claim Article 23

23.1. The patent applicant may, subject to the requirements referred to in Article 22 of this Law, claim multiple priorities on the basis of several earlier applications filed in one or more of the member States of the Paris Union or members of the WTO.

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

23.3. If certain characteristics of the invention for which priority is claimed do not appear among the claims formulated in the first application or applications respectively, a priority right shall be granted where the application elements as a whole specifically disclose all such characteristics.

23.4. The date of a granted priority shall count as the date of filing the patent application with the Office, for the purposes of the provisions referred to in Article 2, paragraphs (2) and (3) and Article 20 paragraph (1) of this Law.

23.5. If multiple priorities are claimed, the time limits, which, under this Law, run from the date of a granted priority, shall be computed as from the earliest date of the multiple priority right.

CHAPTER V: CONTENT OF A PATENT APPLICATION, FILING OF THE APPLICATION, FILING DATE

Article 24

24.1. The patent granting procedure shall be instituted by filing a patent application to the Office.

24.2. The manner of filing a patent application shall be defined by the AI enacted by the Minister competent for the work of the Office.

Language and Script of a Patent Application Article 25

25.1. A patent application shall be drafted in the official language in Kosovo and in the Latin script.

25.2. If the application has been drafted in a foreign language, a translation of the application into the official language in Kosovo shall be filed with the Office.

Content of a Patent Application Article 26

26.1. The application for a patent shall be filed at the Office and shall contain:

- a. a request for the grant of a patent,
- b. a description of the invention,

- c. one or more claims,
- d. any drawings referred to in the description or the claims,
- e. an abstract of the invention.

26.2. The request for the grant of a patent shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention expressing the essence of the invention.

26.3. Drawings shall be required when they are necessary for the understanding of the invention.

26.4. Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

26.5. A written declaration of the inventor in the case he does not want to be mentioned in the application shall be filed with the Office not later than within 4 months as from the filing date of the application.

26.6. The abstract shall be a short summary of the essence of an invention serving exclusively for the purpose of technical information. It may not be taken into account for any other purpose, in particular not for the purpose of determining the extent of protection.

26.7. The application shall be subject to the payment of the prescribed application fee and shall satisfy the conditions laid down in the AI.

Description to disclose the invention Article 27

27.1. The description shall disclose the invention in a manner sufficiently clear, concise and complete for the invention to be carried out by a person having ordinary skill in the art.

27.2. If the invention concerns viable biological material which cannot be disclosed in a manner enabling it to be carried out by a person skilled in the art, the application must be accompanied by the proof to the effect that the sample of such material has been deposited with the competent institution not later than on the filing date of the patent application.

27.3. As competent institution referred to in paragraph (2) of this Article shall be considered an institution which complies with the requirements prescribed by the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977, and last revised on September 26, 1980.

27.4. The content, and the manner of drafting particular elements of the patent application and other details concerning the deposit of viable biological materials referred to in paragraph (2) of this Article shall be defined by the AI.

Claims
Article 28

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

The description and the drawings may be used to interpret the claims.

Unity of invention
Article 29

An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Accordance of the Filing Date
Article 30

30.1. The filing date of an application shall be the date of receipt by the Office of an application that contains at least the following elements:

- a. an indication that a patent is sought,
- b. information identifying the applicant,
- c. a description of the invention and one or more patent claims, even though such description and claims have not been proven to comply with the requirements prescribed by this Law and the AI, but at first sight, it appears to be a description of an invention and patent claims.

30.2. If the Office finds that, at the time of receipt of an application, the requirements referred to in paragraph 1 of this Article have not been fulfilled, it shall invite the applicant to comply with the requirements as prescribed in the AI.

- a. If the applicant complies with the invitation, the filing date of the application shall be the date of receipt of all missing elements;
- b. If the applicant fails to comply with the invitation, the application shall be treated as if it had not been filed.

30.3. Where the application refers to drawings which are not included in the application, the Patent Office shall invite the applicant to furnish the missing drawings.

- a. If the applicant complies with the said invitation, the filing date of the application shall be the date of receipt of the missing drawings.
- b. If the applicant fails to comply with the invitation, the filing date shall be the date of receipt of the application and any reference to the drawings shall be deemed to be deleted.

30.4. Where the application has been accorded a filing date, the Office shall inform the applicant accordingly.

CHAPTER VI:
PROCEDURE UP TO PUBLICATION OF THE PATENT APPLICATION

Examination of a Patent Application after its Receipt
Article 31

31.1. After receiving a patent application the Office shall examine whether:

- a. the application complies with the requirements for the accordance of the filing date referred to in Article 30 of this Law,
- b. the administrative fee and procedural charges for filing the application are paid in compliance with Article 19 of this Law,
- c. the translation of the application in the official language in Kosovo is filed, if the application has been drafted in a foreign language,
- d. the drawings referred to in Article 26, paragraph 1, subparagraph d), of this Law have been filed.
- e. the applicant who is a natural or legal person having its domicile or principal place of business outside Kosovo is represented by a patent agent entered in the Register of the Patent Agents kept by the Office.

31.2. If the application does not comply with the requirements for the accordance of the filing date referred to in Article 30 of this Law, the Office shall invite the applicant to correct the deficiencies expressly indicated in the invitation, within a time limit of 2 months as from the day of receipt of the invitation.

31.3. If the applicant does not comply with the Office invitation within the time limit referred to in paragraph (2) of this Article, the patent application shall be rejected by a decision.

31.4. If the applicant corrects the deficiencies within the time limit referred to in paragraph 2 of this Article, the Office shall issue a decision whereby the date of receipt of the required corrections shall be accorded as the filing date of the patent application.

31.5. Where a patent application refers to the drawings, which are not included in the application, the Office shall invite the applicant to file them within a time limit of 2 months as from the day on which the invitation has been received, and if the applicant complies with the Office invitation, it shall be considered that the filing date is the date on which the drawings have been received by the Office. If the drawings are not filed, they shall be considered as not to be referred to by the applicant.

31.6. The Office shall invite the applicant who has not paid the administrative fee and procedural charges, or has not submitted the translation of the patent application into the Albanian language, to correct the respective deficiencies within the time limit of 2 months as from the day of receipt of the invitation.

31.7. On the reasoned request of the applicant, the Office may extend the time limits set out in this Article, for a time period considered to be justified, but not exceeding additional 3 months.

31.8. If the applicant does not comply with the invitation referred to in paragraph (6) of this Article, the patent application having the accorded filing date shall be considered to

be withdrawn and the Office shall issue a decision on the suspension of the patent granting procedure.

Entry of the Patent Application into the Register of Patent Applications Article 32

32.1. A patent application to which the filing date has been accorded by a decision shall be entered into the Register of Patent Applications kept by the Office.

32.2. The content of the register of patent applications and the manner of keeping it shall be defined by the AI .

Priority Certificate Article 33

33.1. At the request of the applicant, the Office shall issue a certificate of the right of priority acquired on the basis of the filing date of the patent application, accorded in compliance with the provisions of Article 31 of this Law.

33.2. The requirements for and the method of issuing the certificate referred to in paragraph (1) of this Article, as well as the content thereof shall be defined by the AI.

Division of the Patent Application Article 34

34.1. The applicant may on his own initiative, or upon a request by the Office, divide the subject-matter of the patent application having the accorded filing date (the primal application) into two or more applications (a divisional application) and on the basis of each of them shall carry out a separate procedure, a decision to that effect being issued by the Office.

34.2. The subject-matter of a divisional patent application shall not go beyond the content of the primal application.

34.3. The division of the primal patent application shall be allowed up to the decision concerning a request for the grant of a patent.

34.4. Any divisional application shall be entitled to the filing date and, where priority is claimed, the priority date of the primal application provided its content does not go beyond the disclosure in the primal application as filed.

34.5. Priority documents that are submitted to the Office in respect of the primal application shall be considered as having been submitted in respect of any divisional application.

Amendment, correction and withdrawal of application
Article 35

35.1. The applicant shall have the right, on his own initiative, to amend or correct the application up to the decision concerning a request for the grant of a patent.

35.2. No amendment or correction of the application shall extend beyond the content of the application as filed.

35.3. The applicant may, up to the decision concerning a request for the grant of a patent, withdraw the application at any time during its pending with no right to claim paid fees.

Preconditions for the Publication of a Patent Application
Article 36

36.1. The examination of pre-requisites for the publication of a patent application shall establish whether the application complies with the following requirements:

- a. does it contain all the elements referred to in Article 26 of this Law drafted in the prescribed manner, and necessary attachments prescribed by this Law,
- b. whether the inventor is mentioned,
- c. whether a proper priority claim has been filed within the meaning of Article 22 of this Law, if a priority right is claimed,
- d. does the application, at first sight, comply with the rule on the unity of invention referred to in Article 29 of this Law,
- e. whether the subject-matter of the application is the invention which may be, at first sight, protected by a patent within the meaning of Articles 7, 8 and 9 of this Law.

36.2. If the examination establishes that the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall invite the applicant to correct the deficiencies expressly indicated in the invitation within the reasonable time limit. This time limit shall not be less than 2 months nor more than 3 months as from the date of receipt of the invitation.

36.3. On the reasoned request of the applicant the Office may extend the time limit referred to in paragraph (2) of this Article for a period, which it considers to be justified.

36.4. If the applicant does not correct the deficiencies referred to in paragraph (2) of this Article within the prescribed time limit, the Office shall issue a decision on the rejection of the patent application.

36.5. The Office shall issue a decision on the refusal of a patent application if the application has been filed for an invention, which, at first sight, may not be protected by a patent within the meaning of Articles 7, 8 and 9 of this Law.

36.6. If the applicant does not comply with the invitation referred to in paragraph (2) of this Article to correct the priority claim, the Office shall not grant the priority right.

CHAPTER VII:
PUBLICATION OF A PATENT APPLICATION

Article 37

37.1. A patent application complying, according to the examination, with all the requirements referred to in Article 36 of this Law, the decision to that effect being issued by the Office, shall be published in accordance with the AI in the Official Bulletin after the expiration of 18 months as from its filing date, or from the date of granted priority respectively.

37.2. After the patent application has been published it becomes available to the public.

37.3. No application shall be published if it is withdrawn or finally rejected before the technical preparations for publication have been completed.

37.4. The patent application referred to in paragraph 1 of this Article may be, at a request of the applicant, published even before the expiration of the said time limit, but not before the expiration of 3 months as from the date of its filing to the Office.

37.5. A patent application published, or otherwise made available to the public in spite of the fact that it had been withdrawn or deemed to have been withdrawn, shall be treated as not forming part of the state of the art.

37.6. The content of the publication of a patent application shall be defined by the AI

37.7. The patent application shall provisionally confer upon the applicant from the date of its publication the same rights as would be conferred by a patent. The patent application shall be deemed never to have had these effects if it is withdrawn or finally rejected.

CHAPTER VIII:
GRANT OF A PATENT

Grant of a Patent
Article 38

38.1. The applicant may, within 6 months as from the date of publication of a patent application in the Office official gazette, file a request for the grant of a patent.

38.2. If, within the prescribed time limit, the requests referred to in paragraph (1) of this Article has not been filed, or the administrative fee and the procedural charges have not been paid in compliance with Article 19 of this Law, the patent application shall be considered to be withdrawn, and the Office shall issue a decision on the suspension of the procedure for the grant of the patent.

38.3. The content of the request referred to in paragraph (1) shall be defined by the AI.

38.4. The Office shall, as prescribed in the AI for granted patent:

- a. record the grant of the patent in the Patent Register;
- b. publish in Official Bulletin reference to the grant of the patent;

- c. issue to the applicant a certificate of the grant of the patent and a copy of the patent specification;
- d. make available copies of the patent specifications to the public, on payment of the prescribed fee;
- e. publish the patent specification.

38.5. The content and the manner of keeping the Patent Register, the content of the publication, the content and form of the certificates and the patent specifications referred to in paragraph (4) shall be specified by the AI.

Information Services Article 39

39.1. The Office shall, at a request, make available to any legal and natural persons copies of patent applications published in its Official Bulletin as well as copies of granted patents specifications.

39.2. Before the publication of a patent application in the Official Bulletin, the Office may make available to any interested legal or natural person the following data: the number of the application, its filing date or in case the priority has been claimed, the number and the date, and the country in which or the organization with which the first application has been filed, the indications on the applicant and the title of the invention.

39.3. Scope and manner of providing these services as well as charges therefore, shall be specified by the AI.

CHAPTER IX: CONFIRMATION OF THE GRANTED PATENT

Confirmation of a granted patent Article 40

40.1. The patent owner shall submit to the Office within a period of ten years from the filing date of the application, written evidence that the patented invention complies with the requirements of Articles 1 to 9 of this Law.

40.2. Shall be considered written evidence as referred to in paragraph (1) of this Article any patent for the same invention granted by the European Patent Office or any other patent office being the member of the European Patent Convention and also acting as an International Preliminary Examining Authority under the Patent Cooperation Treaty (PCT), upon an examination as to whether that invention complies with the same requirements as or corresponding requirements to those referred to in Articles 1 to 9.

40.3. In the absence of the submission of such confirming written evidence as referred in paragraphs (1) and (2) of this Article, the patent and the application on which it is based shall be deemed not to have had, as from the outset, the effects specified in Article 37, paragraph (7) and Article 41 of this Law.

40.4. Where the extent of protection conferred by the patent as granted under Article 38 of this Law extends beyond that of the patent submitted as evidence under paragraphs (1) i (2) of this Article, the patent owner shall amend the specification by limiting the extent of protection in order to bring it into conformity with such evidence.

40.5. The patent shall be unenforceable against third parties until the specification has been brought into conformity with the evidence as prescribed under paragraph (4) of this Law.

CHAPTER X: THE EFFECTS OF A PATENT AND A PATENT APPLICATION

Exclusive Rights Conferred by a Patent Article 41

41.1. A patent shall constitute a property right.

41.2. The patent owner shall be entitled to exploit the protected invention.

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

- a. making, offering for sale, selling, using, exporting or importing and stocking for such purposes, the product carried out according to the invention,
- b. using the process which is the subject matter of the invention, or offering the use thereof,
- c. offering for sale, selling, using , exporting or importing and stocking for such purposes, the product which is obtained directly from a process which is the subject-matter of the invention.

41.4. Any other person not having the patent owner's consent shall be also prohibited from offering and supplying the product (substance, composition, part of the appliance) constituting an essential element of the invention, to persons not entitled to exploit the said invention, if the offerer or the supplier knows or should have known from the circumstances of the case that such product is intended for putting into function the invention of another person.

41.5. The provisions referred to in paragraph (4) of this Article shall not apply if the offered or supplied product is a ordinary commercial product, except where the supplier or offerer induces other persons to commit acts referred to in paragraph (3) of this Article.

41.6. In the absence of proof to the contrary, a product shall be considered to have been obtained by a protected process, if it is new and if a substantial likelihood exists that the product was made by a protected process, and that the patent owner has been unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was obtained by the protected process shall exist, in particular, where the protected process is the only process known.

Exclusive rights related to patents in the field of biotechnology
Article 42

42.1. If a biological material possessing specific characteristics as a result of the invention is protected by a patent, the exclusive rights referred to in Article 41, paragraphs (3) and (4) of this Law shall extend to any biological material derived from that biological material through propagation (repeoeaction) or multiplication in an identical or divergent form and possessing those same characteristics.

42.2. If a process that enables a biological material to be produced possessing specific characteristics as a result of the invention is protected by a patent, the exclusive rights referred to in Article 41, paragraphs (3) and (4) of this Law shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

42.3. If a product containing or consisting of genetic information is protected by a patent, the exclusive rights referred to in Article 41, paragraphs (3) and (4) of this Law shall extend to all material, save as the human body, at the various stages of its formation and development and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, in which the product is incorporated and in which the genetic information is contained and performs its function.

Rights conferred by a Patent Application
Article 43

43.1. By the publication of the patent application in compliance with Article 37 of this Law, the patent applicant shall acquire temporary rights, on the basis of which reasonable compensation for damages may be claimed from any third party, which has exploited the invention contrary to Articles 41 and 42 of this Law, within the period from the date of publication of the patent application and the date of publication of a mention of the grant of the patent , in a manner, that could be prohibited after the grant of the patent.

43.2. The patent application shall not have the effects set out in paragraph (1) of this Article when it has been refused, rejected, withdrawn, or deemed to be withdrawn.

Extent of protection
Article 44

44.1. The scope of the patent owner's exclusive rights shall be determined by the claims which are finally accepted in the patent granting procedure, whereas the description and drawings shall serve to interpret patent claims. The terms of the claims shall not be confined to their strict literal wording, neither shall the description and drawings be taken into account only for the purpose of clarifying vagueness in the claims. The claims shall neither be taken as guidelines indicating that the scope of the exclusive rights may extend to the matter which a person skilled in the art might take as the intended scope of protection.

44.2. Within the time period from the date of publication of a patent application up to the patent grant, the scope of protection shall be determined by the claims contained in the patent application, published in compliance with this Law.

44.3. However, the patent as finally granted or as amended in nullity proceedings in which it has been partially revoked, shall determine retroactively the rights conferred by the patent application within the time period from the date of publication of a patent application up to the patent grant, in so far as the scope of protection is not thereby extended.

License Contract and Transfer of Rights Article 45

45.1. The right to exploit the protected invention shall be assigned by a license contract.

45.2. A patent may be the subject of a transfer, complete and partial.

45.3. The license contract and the contract on the transfer of a patent shall be concluded under the conditions and in a manner as prescribed by the Law on Obligations.

45.4. The conclusion of the license contract or the contract on the transfer of a joint patent shall require the consent of all the owners thereof.

45.5. The provisions of this Article shall also apply in an appropriate manner to the conclusion of a license contract, and a contract on the transfer of the right conferred by a published patent application.

CHAPTER XI: LIMITATION OF THE EFFECTS OF A PATENT

Exceptions from the Exclusive Rights Article 46

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

- a. acts in which the invention is exploited for private and non-commercial purposes,
- b. acts done for the purposes of research and development and for experiments relating to the subject-matter of the protected invention, including where such acts are necessary for obtaining registration or authorization for putting on the market a product being a human or a veterinary drug or a medical product,
- c. direct and individual preparation of a medicine in a pharmacy on the basis of an individual medical prescription and acts relating to the medicine so prepared.

Right of the prior user Article 47

47.1. A patent shall have no effect against the person who had, prior to the filing date of the application, or prior to the date of granted priority exploited or manufactured, in good faith and within her/his economic activities, the product which is the subject-matter of the invention or, had made real and serious preparations for such exploitation of the invention in Kosovo.

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

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

Limitation of Effects in Respect of Patents in the Field of Biotechnology Article 48

48.1. The exclusive rights deriving from the provision set out in Article 42 of the Law shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the territory of Kosovo by the owner of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

48.2. By way of derogation from Article 42 of this Law the sale or other form of commercialization of plant propagating material to a farmer by the owner of the patent or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm.

48.3. By way of derogation from Article 42 of this Law, the sale or any other form of commercialization of breeding stock or other animal reproductive material to a farmer by the owner of the patent or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose, including making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity.

Exhaustion of the Patent Owner's Exclusive Rights Article 49

The exclusive rights conferred by a patent extending to acts concerning a product covered by the patent which are performed within the territory of Kosovo, shall be considered exhausted after that product has been put on the domestic market by the patent owner or with his express consent, unless there are legitimate grounds other than patent rights for the patent owner to prohibit further commercialization of the product.

Vehicles in the International Traffic
Article 50

The use of the products made according to the protected invention in the construction or equipment of a vessel, aircraft or land vehicle belonging to any of the member States of the Paris Union or the WTO members shall not be considered to be the patent infringement where such transport means finds itself temporarily or accidentally in the territory of Kosovo, provided that the built-in product serves exclusively for the purposes of the said transport means.

CHAPTER XII:
PROVISIONS AS TO PATENTS AFTER GRANT

Term of patent and maintenance fees
Article 51

51.1. Subject to this Article, a patent shall expire 20 years after the filing date of the application for the patent.

51.2. The maintenance of rights conferred by an application and a granted patent shall be subject to payment of an annual administrative fee and procedural charges, in the manner prescribed by the AI.

51.3. The annual fee and procedural charges referred to in paragraph (2) of this Article shall be payable for the third and every subsequent year, counting from the application filing date.

51.4. If the patent owner fails to pay the administrative fee and procedural charges in compliance with the preceding paragraph, he may pay them in the grace period of 6 months, provided that he also pays an additional administrative fee and additional procedural charges.

51.5. The Office shall remind the patent owner of nonpayment of an annual administrative fee and procedural charges for the maintenance of a patent and consequences thereof, and on the possibility of payment according to paragraph (4) of this Article.

Pre-Term Termination of a Patent
Article 52

52.1. If the patent owner does not pay a prescribed administrative fee and procedural charges for the maintenance of a patent, the patent shall lapse on the day following the day on which the time limit for the payment referred to in Article 51 of this Law has expired.

52.2. If the patent owner surrenders a patent, it shall terminate on the day following the day on which a certified written declaration concerning the surrender thereof has been filed to the Office.

52.3. If a particular right on behalf of third persons has been entered into the register, the patent owner may not surrender a patent without a prior certified written consent of those persons.

52.4. A patent shall terminate on the day of the patent owner's death, or on the day of the loss of the capacity of the legal person respectively, unless transferred to heirs, respectively successors in title.

52.5. The provisions of the paragraph (4) of this Article shall apply mutatis mutandis to a patent applicant.

Changes in patents Article 53

53.1. The proprietor of a patent may request the Office, in accordance with the Implementing AI, to make changes in the patent in order to limit the extent of the protection conferred by it.

53.2. The proprietor of a patent may request the Office to make changes in the patent in order to correct mistakes or clerical errors made in good faith.

53.3. The proprietor of a patent may request the Office, in accordance with the AI, to make changes in the name or address of the proprietor entered in the Patent Register, as long as such modification does not imply a change of proprietor.

53.4. No change in the patent shall extend beyond the content of the application as filed.

53.5. If, and to the extent to which, the Office accepts the changes related to the patent according to paragraphs 1 to 4 above, it shall enter the changes in the Patent Register and publish them.

Change in ownership of patent application or patent Article 54

54.1. Any contract assigning a patent application or a patent shall be in writing. Otherwise it shall not be valid.

54.2. Any change in the ownership of a patent application or a patent shall be recorded in the Patent Register on payment of the prescribed fee. The new proprietor of the application or patent shall be entitled to institute any legal proceedings concerning the application or patent only if he has been recorded in the Patent Register.

54.3. The transfer or assignment of a patent application or patent shall not affect rights acquired by third parties before the date of such transfer or assignment and shall have effect vis-à-vis third parties only after entry in the Patent Register.

CHAPTER XIII:
LICENSES

Non-Voluntary Licenses
Article 55

55.1. The competent court in Kosovo may grant a compulsory license for lack or insufficiency of exploitation of a patent to any person filing a request for the grant of a compulsory license, or to the Government of Kosovo, if the patent owner has not exploited the invention protected by a patent in the territory of Kosovo on reasonable terms or has not made effective and serious preparations for its exploitation.

55.2. A request for the grant of a compulsory license based on paragraph 1 of this Article can be filed after the expiration of a period of three years as of the date on which the patent was granted.

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

55.4. On a reasoned request, the court may grant a compulsory license in respect of a first patent to the owner of a patent or to the owner of a plant variety right who cannot use his patent (second patent) or his plant variety right without infringing the first patent, provided that the invention claimed in the second patent or a protected plant variety involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent or to the protected plant variety. The competent court may take any measure it regards as useful to verify the existence of such a situation.

55.5. In the case of a compulsory license as provided in paragraph 4 of this Article, the owner of the first patent shall be entitled to a reverse non-voluntary license on reasonable terms to use the invention protected by the second patent or protected plant variety.

55.6. The court may authorize a compulsory license if the exploitation of the patented invention is necessary in situations of extreme urgency (national security, public interest protection in the field of health, food supplying, environmental protection and improvement, specific commercial interest) or when it is necessary to remedy a practice determined after judicial or administrative process to be anticompetitive.

55.7. In the case of semi-conductor technology, a compulsory license may be granted only in the cases set out in paragraph 6 of this Article.

55.8. A compulsory license may be granted only if a person filing a request has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions and if such efforts have not been successful within a reasonable period of time. The court may derogate from these conditions in the situations set out in paragraph 6 of this Article. The right holder shall be informed of the granting of a compulsory license as soon as reasonably possible.

Conditions Applicable to the Grant of a Compulsory License
Article 56

56.1. A Compulsory license shall be non-exclusive, and its scope and duration shall be exclusively limited to the purpose for which it was authorized.

56.2. A compulsory license shall be transferred only with the production plant or the part thereof respectively, in which the invention, that compulsory license is granted for, has been exploited.

56.3. A compulsory license shall be granted predominantly for the purposes of supplying the domestic market unless it is necessary to correct a practice determined after judicial or administrative process to be anti-competitive.

56.4. The competent authority shall, on a reasoned request of an interested person, cancel a compulsory license, subject to adequate protection of the legitimate interests of the persons so authorized, if and when the circumstances that led to its authorization cease to exist and are unlikely to recur.

56.5. The patent owner has the right to remuneration, taking into account the economic value of the authorization and need to correct anti-competitive practice.

56.6. A compulsory license according to Article 55 paragraph 4 of this Law shall be non-transferable except with a transfer of the second patent or the protected plant variety.

CHAPTER XIV:
DECLARATION OF NULLITY OF A PATENT

Reasons for the Declaration of Nullity of a Patent
Article 57

A patent may be declared null and void at any time, on the proposal of any natural or legal person or a State Attorney, if the patent has been granted:

- a. for a subject matter which may not, within the meaning of Articles 7, 8 and 9 of this Law, be protected by a patent,
- b. for an invention which, on the filing date of the patent application or on the date of the granted priority respectively, was not new or did not include an inventive step,
- c. for an invention which is not industrially applicable,
- d. for an invention which is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art,
- e. for a subject-matter extending beyond the content of the patent application as filed or, if the patent was granted on a divisional application, beyond the content of the earlier application as filed;
- f. on behalf of a person not entitled to the patent protection for the invention.

Proposal for the Declaration of Nullity of a Patent
Article 58

58.1. The procedure concerning the declaration of nullity of a patent shall begin by filing the proposal with the Office.

58.2. The proposal referred to in paragraph 1 of this Article shall, in accordance with the Regulation, contain the data concerning the applicant, the owner of a patent, the number of the decision, and the registration number of the patent, the reasons for the proposal of the declaration of nullity of the patent supported by necessary evidence.

Procedure Concerning the Proposal for the Declaration of Nullity of a Patent
Article 59

59.1. If the proposal for the declaration of nullity of a patent is not drafted in compliance with the provision referred to in Article 58, paragraph (2), of this Law, or if the administrative fee and procedural charges have not been paid in compliance with Article 19 of this Law, the Office shall invite the proponent to correct the deficiencies within 30 days as from the day of receipt of the invitation.

59.2. If the proponent does not correct the proposal within the time limit specified in paragraph 1 of this Article, the Office should reject the proposal by a decision.

59.3. The Office shall communicate the correct proposal to the patent owner and shall invite him to submit his response within a period, which shall not be less than 30 days and shall not exceed 60 days, as from the day of the receipt thereof.

59.4. In the course of the procedure concerning the declaration of nullity of a patent, the Office shall invite the parties as many times as necessary to submit, within the period referred to in paragraph 3 of this Article, their comments on the submissions of the other party.

59.5. The Office shall hold a hearing if it considers that it is necessary for the establishment of the facts essential for its decision.

59.6. On a reasoned request, the Office may extend the time limits referred to in paragraphs 1 and 3 of this Article for the time it considers to be justified.

59.7. The Office shall, if it considers that it is necessary for the establishment of the facts essential for its decision, invite the proponent to submit to the Office within appropriate term, written evidence to prove the Article 57 of this Law.

59.8. Shall be considered written evidence as referred to in paragraph 7 of this Article if the European Patent Office has made it, or any other patent office being the member of the European Patent Convention and also acting as an International Preliminary Examining Authority under the Patent Cooperation Treaty (PCT).

Article 60

60.1. If the person having filed the proposal for the declaration of nullity of a patent withdraws the proposal in the course of the procedure, the Office may continue the proceedings of its own motion.

60.2. The same applies where the patent owner has surrendered the patent or the patent has lapsed.

Decision Concerning the Proposal for the Declaration of Nullity of a Patent Article 61

61.1. On the basis of the results of the procedure, the Office shall issue a decision on the declaration of nullity of a patent, entirely or partially, or the decision on the refusal of the proposal.

61.2. The patent application and the patent granted thereon shall not have from the outset, the effects specified in Articles 41 to 43 of this Law to the extent that the patent has been declared null and void.

CHAPTER XV: CANCELLATION OF THE DECISION ON THE GRANT OF A PATENT

Reasons for the Cancellation of the Decision on the Grant of a Patent Article 62

The decision on the grant of a patent may be cancelled in effect for the future prior to the expiration of the term of a patent, if it is established:

- a. that the viable biological material deposited in the authorized institution in compliance with the provision referred to in Article 27, paragraph (3) of this Law no longer exists or that the said material is no longer available to the public,
- b. that its availability to the public through the authorized institution in which it has been deposited was discontinued in the period longer than it is prescribed.

Proposal and Procedure Concerning the Cancellation of the Decision on the Grant of a Patent Article 63

63.1. The procedure concerning the cancellation of the decision on the grant of a patent shall begin by filing a proposal with the Office.

63.2. The provisions of this Law relating to the content of the proposal and to the procedure concerning the declaration of nullity of a patent shall apply mutatis mutandis, on both, the content of the proposal and the procedure concerning the cancellation of the decision on the grant of a patent.

Decision on the Proposal Concerning the Cancellation of the Decision
on the Grant of a Patent
Article 64

64.1. On the basis of the results of the procedure the Office shall issue a decision on the cancellation of the decision on the grant of a patent, or the decision refusing the proposal as unfounded.

64.2. The decision on the cancellation of the decision on the grant of a patent shall have legal effect as from the date on which the Office has established that the viable biological material no longer exists, or is no longer available to the public for other reasons, or that the discontinuance of availability of the viable biological material to the public has taken place within a period longer than the prescribed one.

CHAPTER XVI: ENFORCEMENT OF RIGHTS

An Action for the Establishment of the Patent Protection Rights
Article 65

65.1. The inventor respectively his successor in title shall be entitled to require, through an action before the competent court, the establishment of the right to the patent protection of the invention, if a patent application has been filed by the person not entitled to such right or, in case of the jointly created invention, by the person who is not the sole person entitled to such right.

65.2. The action referred to in paragraph 1 of this Article may be brought up to the decision on the grant of a patent.

65.3. The action shall be disposed of as soon as possible.

Right to Resume the Procedure for the Grant of a Patent
by Virtue of the Final Court Decision
Article 66

The inventor or his successor in title respectively whose right to the grant of patent protection for the invention has been established by a final court decision shall be entitled to resume the procedure for the grant of a patent within 3 months as from the date on which the court decision becomes final or to file a new application for the same invention claiming the filing date and priority date, if any, of the application filed by the applicant not being entitled to the grant of the patent.

Article 67

67.1. The inventor shall be entitled to require through a civil action before the civil court the ordering of the entry of his name into the patent application and all the documents issued for a patent as well as into the appropriate Office registers, if the person mentioned as such in the application is not the inventor.

67.2. The right to the action referred to in paragraph 1 of this Article shall also belong to the inventor of the joint invention who is not mentioned in the patent application.

67.3. The request referred to in paragraph 1 of this Article may be accompanied by a request for the final court decision to be published in the official Gazette at the expense of the defendant.

67.4. There shall be no time limit for an action referred to in paragraphs (1) and (2) of this Article. After the death of the inventor the right to an action shall belong to his heirs.

Action Concerning the Infringement of a Patent Article 68

68.1. The patent owner or the holder of an exclusive license shall be entitled to a civil action before the competent court against any person who infringes the patent by performing any of the acts referred to in Article 41, paragraphs 3 and 4 of this Law.

68.2. The right to the action referred to in paragraph 1 of this Article, after the publication of a patent application, shall belong to the applicant of a published application or the holder of an exclusive license.

Claims Contained in the Action Article 69

69.1. An action for the infringement of a patent may contain a claim for:

- a. the establishment of the existence of an infringement,
- b. the prohibition of specified acts infringing the patent,
- c. the compensation for damages in cases where the infringement was committed intentionally or by negligence,
- d. the seizure and destruction of the products resulting from or acquired by the infringement of a patent, and articles (implements and tools) predominantly used for the manufacturing of the products infringing a patent,
- e. an order requiring to the infringer to inform the plaintiff of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution, unless this would be out of proportion to the seriousness of the infringement,
- f. the laying of accounts,
- g. the publication of the court decision at the expense of the defendant.

69.2. The patent applicant shall be entitled to claim compensation for damages suffered by him as from the publication date of the patent application in the manner provided for in Article 37 of this Law.

69.3. In respect of details concerning the compensation for damages caused by the infringement of a patent not regulated by this Law, the corresponding provisions of the Law on Obligatory Relations shall apply.

Burden of Proof Article 70

70.1. If the subject matter of the infringement is a patent protected process for the obtaining of a new substance, any equal substance or any substance of equal composition shall be considered as resulting from the protected process, unless proved to the contrary.

70.2. The burden of proof shall lie on the defendant, preparing such a product or composition.

Ordering of a Provisional Measure Article 71

71.1. The action referred to in Article 69 of this Law may constitute a claim for ordering, before the court final decision comes into effect, a provisional measure comprising:

- a. the order to cease and desist from acts infringing the patent,
- b. the seizure or exclusion from circulation respectively of products resulting from or acquired by the infringement of a patent and of the articles (implements and tools) predominantly used in the manufacture of the products infringing a patent,
- c. the order to the infringer to inform the plaintiff of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution, unless this would be out of proportion to the seriousness of the infringement.

71.2. Subject to the provision referred to in paragraph 1 of this Article, the proposal for ordering a provisional measure may be filed even before the action, provided that the action is brought within 15 days as from the day of filing a proposal.

71.3. The court may order provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

71.4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay, and not later than within 7 days after the execution of the measures.

71.5. The court may require the proponent to provide any reasonably available evidence in order to satisfy itself with a sufficient degree of certainty that the proponent is the right holder and that the proponent's right is being infringed or that such infringement is imminent, and to order the proponent to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

71.6. In respect of details concerning the ordering of provisional measures not regulated by this Law the corresponding provisions of the Law on Enforcement (Execution) shall apply.

Limitation Period and Urgency of the Procedure for Bringing an Action Article 72

72.1. The action concerning the infringement of a patent may be brought within 3 years as from the day of learning about the infringement and the infringer, but not later than the expiration of the period of 5 years as from the day on which the infringement was committed.

72.2. The action for the infringement of a patent shall be disposed of as soon as possible.

Misdemeanors Article 73

73.1. Any legal person shall be punished for a misdemeanor by a fine amounting from 1.000 to 5.000 EUR if it contrary to the provisions of this Law:

- a. makes, offers for sale, sells, or imports and stocks for such purposes a product which is manufactured according to the protected invention (Article 41, paragraph (3), subparagraph a), and Article 42),
- b. uses or offers for use a process which is the subject-matter of the protected invention (Article 41, paragraph (3), subparagraph b), and Article 42),
- c. offers for sale, sells, uses, exports or imports and stocks for such purposes a product which is obtained directly from the process which is the subject-matter of the protected invention (Article 41, paragraph (3), subparagraph c), and Article 42),
- d. offers or delivers a product which constitutes the essential element of the protected invention (Article 41, paragraph 4, and Article 42).

73.2. Any natural person shall be punished for a misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 200 to 800 EUR.

73.3. A responsible person in the legal entity shall also be punished for a misdemeanor referred to in paragraph (1) of this Article by a fine amounting from 500 to 1000 EUR.

73.4. Articles intended or used for the commitment of the misdemeanor referred to in paragraphs (1), (2) and (3) of this Article shall be seized and destroyed, the final decision to that effect being issued by the judicial authority.

Article 74

74.1. The commitment of misdemeanors referred to in Article 73 of this Law shall, in addition to a fine, be subject to the pronouncement of the protective measure ordering the seizure of products resulting from or acquired by the commitment of misdemeanors, and of objects (tools and implements) predominantly used in the manufacture of products infringing a patent, irrespective of whether they are the property of the infringer or not.

74.2. The decision referred to in paragraph (1) of this Article may comprise the ordering of the destruction of the seized articles and objects.

CHAPTER XVII:
COMMON AND FINAL PROVISIONS

Reinstatement of Rights
Article 75

75.1. If the applicant or the owner of a patent has, in spite of due care required by the circumstances, failed to perform, within a time limit prescribed by this Law or regulation enacted by virtue of this Law, an act in the course of the procedure before the Office, the direct result of which is a loss of rights conferred by the patent application or the patent, the Office shall authorize the reinstatement of rights, provided that the applicant:

- a. files a proposal for the reinstatement of rights and completes the omitted acts within a prescribed time limit;
- b. indicates circumstances that prevented him to perform the omitted act in time;
- c. pays the administrative fee and procedural charges in compliance with Article 19 of this Law;

75.2. A proposal for reinstatement of rights shall be filed within 3 months, counting from the day on which the reason of failure ceased to exist, and if the applicant has later learned of failure, counting from the day it learned of it.

75.3. After the expiration of one year from the date of failing to comply with the time limit, a proposal referred to in paragraph (1) of this Article shall not be filed.

75.4. Before doing so, the Office shall notify the person filing a proposal for reinstatement of rights about the reasons for which it intends to refuse the proposal, entirely or partially, and shall invite him to comment on those reasons within 2 months from the day on which he receives the invitation.

75.5. A proposal for reinstatement of rights shall not be filed in connection with the failure to comply with the following acts:

- a. filing of the proposal referred to in paragraph (1) of this Article,
- b. filing of request for the extension of a time limit
- c. filing of request referred to in Article 21 of this Law,
- d. filing one of the requests referred to in Article 38 of this Law,
- e. payment of the administrative fee and charges for the maintenance of a patent,
- f. furnishing of translation referred to in Article 31, paragraph (1), subparagraph c) of this Law,
- g. all the acts in the procedures before the Office, involving several persons.

75.6. Any person who has in good faith exploited an invention or has made real and serious preparations for exploiting the invention which is the subject-matter of a published application, may, in the period between the loss of right referred to in paragraph 1 of this Article, and a publication of the fact concerning acceptance of the proposal for reinstatement of rights, continue such exploitation, without compensation for damages, for the purposes of his own business and needs related to it.

75.7. The contents of the proposal, the requirements and procedure related to the proposal referred to in paragraph 1 of this Article, and the publication of indications concerning the reinstatement of rights shall be specified by the AI.

Representation before the Office
Article 76

76.1. Natural or legal persons not having their residence or principal place of business within Kosovo shall be represented by a patent agent and shall act through him in all proceedings before the Office, subject to the exceptions provided by the AI

76.2. Natural or legal persons having their residence or principal place of business within Kosovo may be represented in proceedings before the Office by an employee who need not be a patent agent.

76.3. Any representative shall be authorized in accordance with the AI.

Industrial Property Agents
Article 77

77.1. Only natural persons entered on the Register of Patent Agents kept by the Office can act as Patent agents.

77.2. Any person who fulfils the conditions laid down in the AI may be entered on the Register of Patent Agents.

Summons
Article 78

Any administrative or judicial summons addressed to an applicant or patent proprietor who is represented before the Office by a patent agent according to Article 52, shall be sent to the address of said patent agent. Said summons shall, for all purposes, be considered as received by the applicant or the patent proprietor within the time period established by the administrative or Judicial Authority.

Additional provision
Article 79

The required fees for registration and maintenance of a patent and any other entry into the Patent Register established in this Law and for any service that may be provided by the Office, shall be regulated by sub-normative acts.

Patent applications and patents dated before the date of entry into force of this Law
Article 80

80.1. A person who on the date of entry into force of this Law is the owner of a patent granted in the (former FRY), may, within 12 months of the entry into force of this Law, file a request to the Office for entry into Patent Register the granted patent in accordance with the AI.

80.2. A person who on the date of entry into force of this Law has filed an application for the grant of a patent in the former FRY), may, within 12 months of the entry into force of this Law, file an application for the grant of a patent under this Law for the same invention.

80.3. A person who on the date of entry into force of this Law has filed an international application under the Patent Cooperation Treaty designating the (Former FRY) for a national patent or for extension of a European patent may, within 12 months of the entry into force of this Law, file an application to the Office for the grant of a patent for the same invention under this Law.

80.4. Such patent or patent application shall be accorded the filing date in the (Former FRY) or, where priority has been claimed, any priority date accorded to the application;

80.5. Patents thus granted under paragraph (1) of this Law shall remain in force for the unexpired portion of the period of protection provided under this Law, subject to the payment of annual maintenance fees provided for in this Law and AI

80.6. Patent applications thus filed under paragraph (1) of this Law shall be subject of the patent granting procedure under this Law, subject to the payment of annual maintenance fees provided for in this Law and AI.

Article 81

Minister of MTI will draft Administrative Instruction in accordance with articles of this law.

Entry into Force and Application of the Law Article 82

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary - General.

Law No.2004/49
27 September 2004

President of the Assembly

Academic Nexhat Daci