

REPUBLIC OF ALBANIA

LAW ON INDUSTRIAL PROPERTY GENERAL PROVISIONS

Article 1 Object

This Law provides for the grant and protection of the following industrial property rights :

- patents for inventions and utility models,
- trade marks and service marks,
- industrial designs,
- appellations of origin.

Article 2 Forms of Protection

(1) Inventions and utility models shall be protected by patents granted by the Patent Office.

Industrial designs, trade marks and service marks and appellations of origin shall be protected by their registration in the Patent Office.

The protection referred to in this paragraph concerning industrial designs shall not exclude any other rights provided for in the law, in particular, rights based on the Law of Copyright.

(2) The provisions of this Law are equally valid and applicable for legal and natural persons that are foreign nationals from :

(a) contracting states of international treaties and conventions which have been acceded to by the Republic of Albania ;

(b) states, to which the application of the principle of reciprocity is applicable.

The existence of reciprocity shall be proved by the party invoking reciprocity.

PART I

PATENTS FOR INVENTIONS AND FOR UTILITY MODELS

CHAPTER I

PATENTABILITY OF INVENTIONS

Article 3 Conditions of patentability

- (1) In order to be patentable, an invention shall be novel, shall involve an inventive step and shall be industrially applicable.
- (2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph (1) :
- (a) discoveries, scientific theories and mathematical methods ;
 - (b) aesthetic creations ;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers ;
 - (d) presentations of information.
- (3) The provisions of paragraph (2) shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a patent application or patent relates to such subject-matter or activities as such.
- (4) A patent shall not be granted in respect of an invention the publication or exploitation of which would be contrary to public order or morality.
- (5) No patents shall be granted for substances obtained through internal nuclear transformations for military purposes.
- (6) No patents shall be granted for inventions of surgical, diagnostic or therapeutical methods practised on the human or animal body, as they shall be regarded as inventions which are not susceptible of industrial application within the meaning of paragraph (1). This provision shall not apply to inventions relating to substances and devices for use in any of these methods.
- (7) No patents shall be granted in respect of plant or animal varieties or essentially biological processes for the production of plants or animals ; this provision does not apply to microbiological processes or the products thereof.

Article 4 Novelty

- (1) An invention shall be considered novel if it does not form part of the prior art. For the determination of novelty, items of prior art may only be taken into account individually.
- (2) The prior art shall consist of everything which, before the filing date or, where priority is claimed, the priority date of the application claiming the invention (hereinafter **priority date**), has been made available to the public by means of publishing, use, demonstration or in any other way.
- (3) The prior art shall also include the content of any patent application as, filed in, or with effect for, the Republic of Albania, to the extent that such application or the patent granted thereon is published subsequently, 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).

Article 5 Inventive step

An invention shall be considered to involve an inventive step if, having regard to the prior art, it would not have been obvious to a person skilled in the art at the filing date or, where priority is claimed, the priority date of the application claiming the invention.

Article 6 Industrial applicability

An invention shall be considered industrially applicable if it can be made or used in any kind of industry. **Industry** shall be understood in its broadest sense and shall cover any productive activities and services.

Article 7 **Grace period**

(1) Disclosure of information which otherwise would affect the patentability of an invention claimed in that application shall not affect the patentability of that invention where the information was disclosed no earlier than **12 months** prior to the filing date or, where priority is claimed, the priority date of the application :

(a) by the inventor or any person who, at the filing date of the application, had the right to the patent ;

(b) by a Patent Office and 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.

(2) The effects of paragraph (1) may be invoked at any time.

(3) Where the applicability of paragraph (1) is contested, the party invoking the effects of that paragraph shall have the burden of proving, or of making the conclusion likely, that the conditions of that paragraph are fulfilled.

CHAPTER II

RIGHT TO A PATENT. MENTION OF INVENTOR.

Article 8 **Right to a Patent**

(1) The right to a patent shall belong to the inventor or his successor in title. Joint inventors shall, unless they agree otherwise, have equal rights.

(2) Where two or more applications have been filed by different persons in respect of the same invention and the inventors concerned made the invention independently of each other, the right to a patent for that invention shall belong to the applicant whose application has the earliest filing date, or, where priority is claimed, the earliest priority date, as long as his application is not withdrawn or abandoned, considered to be withdrawn or abandoned, or rejected.

Article 9 **Employee inventions**

(1)(a) When an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer.

(b) When the invention has an economic value much greater than the parties could have reasonably foreseen at the time of concluding the contract, the inventor shall have a right to special remuneration, which shall be fixed by the Court in the absence of agreement between the parties.

(2)(a) When an employee whose employment contract does not require him to engage in inventive activity makes, in the field of activities of his employer, an invention by using data or means available to him through his employment, the right to the patent for that invention shall belong to the employee, except if, within a period of four months from the date at which the employer received the report referred to in subparagraph (2)(b) or the date at which the invention became otherwise known to the employer, whichever date is earlier, the employer notifies the employee by a written declaration of his interest in the invention.

(b) The employee who makes an invention of the kind referred to in subparagraph (2)(a) shall immediately submit it to his employer in a written report.

(c) If, within the period referred to in subparagraph (2)(a), the employer makes the declaration of interest, the right to the patent shall be considered as having belonged to him from the beginning. The employee shall have a 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, the remuneration shall be fixed by the Court.

(3) Any contractual provision which is less favorable to the inventor than the provisions of this Article shall be null and void.

Article 10 **Mention of inventor**

(1) Any publication of the Patent Office, containing the application or the patent granted thereon, shall mention the inventor or inventors as such.

(2) Where an inventor requests in a declaration signed by him and filed with the Patent Office, that such publications should not mention him as inventor, the Patent Office shall proceed accordingly.

CHAPTER III

THE APPLICATION AND PROCEDURE UP TO GRANT

Article 11 **Requirements of application**

(1) An application for a patent shall contain :

- (a)** a request for the grant of a patent ;
- (b)** a description of the invention for which a patent is applied for ;
- (c)** one or more claims ;
- (d)** any drawings, if necessary, referred to in the description or the claims, in order to elucidate the essence of the invention and its claims ;
- (e)** an abstract of the invention ;
- (f)** where the application is filed with the Patent Office through a patent attorney, it shall be accompanied by the respective authorization.

(2) The application shall be subject to the payment of the prescribed fees.

(3) The application shall satisfy the conditions laid down in the **Regulations**.

Article 12 **Filing date**

(1) The filing date of a patent application shall be the date on which documents filed by the applicant contain :

- (a)** an indication that a patent is sought ;
- (b)** information identifying the applicant ;
- (c)** a description and one or more claims, even though the description and

the claims do not comply with the other requirements of this Law and of the Regulations.

(2)(a) If the Patent Office finds that, at the time of receipt of an application, the requirements referred to in paragraph (1) have not been fulfilled, it shall invite the applicant to comply with the requirements as prescribed in the Regulations.

(b) If the applicant complies with the invitation referred to in subparagraph (2)(a), the filing date of the application shall be the date of receipt of all missing elements. If the applicant fails to comply with the invitation, the application shall be treated as if it had not been filed.

(3) If, subject to paragraph (2), a decision not to file an application has been made, the applicant may, on payment of the prescribed fee, appeal to the Board of Appeal of the Patent Office within a three month period. The Board of Appeal shall examine the appeal within three months after the date the appeal is filed and its decision shall be final.

(4) Where the application is conferred to an filing date, the Patent Office shall notify the applicant accordingly.

Article 13

Disclosure and description

(1)(a) The application shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

(b) Where the application refers to biologically reproducible material which cannot be disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art and such material is not available to the public, the application shall be supplemented by a deposit of such material with a recognised depository institution as prescribed in the Regulations.

(2)(a) The application shall contain a description.

(b) The description shall have the prescribed contents, as defined in the Regulations, and such contents shall be presented in the prescribed manner and order, as defined in the same Regulations.

Article 14

Claims

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

(2) The claims shall be clear and concise, and shall be supported by the description

(3) The claims shall be presented as prescribed in the Regulations.

Article 15

Abstract

The abstract shall merely serve the purpose of technical information. It shall not be taken into account for the purpose of interpreting the claims.

Article 16

Unity of invention

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

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

Article 17

Division of initial application

- (1) The applicant may divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the disclosure in the initial application.
- (2) Any divisional application shall be entitled to the filing date or, where priority is claimed, the priority date of the initial application.
- (3) Priority documents and any required translations thereof that are submitted to the Patent Office in respect of the initial application shall be considered as having been submitted in respect of all divisional applications.

Article 18 **Right of priority**

- (1) The application may contain a declaration claiming the priority, pursuant to the **Paris Convention for the Protection of Industrial Property**, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention.
- (2) Where the application contains a declaration under paragraph (1), the Patent Office may require that the applicant furnish, within a three months period, a certified copy of the earlier application.
- (3) The effect of the declaration referred to in paragraph (1) shall be as provided in the Paris Convention.
- (4) If the Patent Office finds that the requirements under this Article pertaining thereto have not been fulfilled, it shall invite the applicant to file the required correction, within a time period as prescribed in the Regulations. If the applicant does not comply with the said invitation, the declaration referred to in paragraph (1) shall be considered not to have been made.

Article 19 **Amendment or correction. Withdrawal of application.**

- (1) The applicant shall have the right, on his own initiative, to amend or correct the application up to the time when the application is in order for grant, on payment of the prescribed fee.
- (2) No amendment or correction of the application may go beyond what has been disclosed in the application as filed.
- (3) Amendments or corrections may be also made upon the request of the Patent Office.
- (4) The applicant may withdraw the application at any time during its pendency.

Article 20 **Publication of applications**

- (1)(a) Patent Office shall publish all applications filed with it.
 - (b) No application shall be published if it is withdrawn or rejected before the expiration of 17 months from the filing date or, where priority is claimed, the priority date of the application.
 - (c) If, by the time an application should be published, a patent has been granted on that application, the Patent Office shall publish only the patent specification in the prescribed manner, and shall allow any interested person to inspect the file of the application.
- (2) The Patent Office shall publish each application filed with it promptly after the expiration of 18 months from the filing date or, where priority is claimed, from the priority date of the application. However, where, before the expiration of the said period of 18 months, the applicant presents a written request to the Patent Office that his application be published, the Patent Office shall publish the application promptly after the receipt of the request.
- (3) 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.
- (4) The publication of the application shall be done in a manner as prescribed in the Regulations.

- (5) The Court may decide to stay any proceedings brought before it in respect of unauthorized acts performed in relation to an invention that is the subject of a published application until a final decision has been made by the Patent Office to grant or refuse a patent on the application.
- (6) The patent application shall be deemed never to have had the effects set out in paragraph (3) if it is withdrawn or finally rejected.

Article 21

Examination of the application and grant of the patent

- (1) The Patent Office shall examine whether the application complies with the requirements of **Articles 3 (2), (3), (4), (5), (6), (7), 11, 13, 14, 15 and 16**. The Patent Office shall not perform an examination of the application as to the patentability of the invention under **Articles (3) (1), 4, 5 and 6**. A patent shall be granted without a guarantee of its validity.
- (2) Where the application complies with the requirements referred to in paragraph (1), the Patent Office shall decide to grant the patent subject to the payment of the prescribed fee for grant. The decision of the Patent Office on the grant of patent shall be within four months from the date of the publication of the application.
- (3) If the application does not conform or only partially conforms to the requirements of paragraph (1), the Patent Office shall notify the applicant, specifying the discrepancies and setting a three month period for providing a reply. The application shall be rejected if the applicant fails to correct the deficiencies indicated by the Patent Office.
- (4) The decision, in accordance with paragraph (3), may be, on payment of fee, appealed to the Board of Appeal of the Patent Office within a three month period. If the applicant is not satisfied with the decision of the Board of Appeal, he may appeal this decision within six months.
- (5) As soon as the Patent Office has adopted a decision on the grant of the patent, it shall publish a notification that the patent has been granted and publish the patent specification in the prescribed manner.

Article 22

Patent register

- (1) The Patent Office shall maintain a patent register in which patents granted shall be recorded, numbered in the order of their grant.
- (2) The patent register shall include such matters constituting or relating to the patent as are prescribed and entries of all corrections, amendments, change in ownership or other matters that the Patent Office is empowered or required by this Law to record.
- (3) The patent register shall be **prima facie** evidence of all matters directed or authorized by or under this Law to be entered therein.
- (4) The patent register shall be open to public inspection, subject to such rules as may be prescribed.
- (5) Certified copies of any entry in the patent register shall be given by the Patent Office to any person requiring the same on payment of the prescribed fee and a copy so certified shall be admissible in evidence in all courts and proceedings without further proof or production of the original.

Article 23

Secret patents

- (1) Patent application which relate to the defense and security of the Republic of Albania shall be deemed secret and shall be filed with the Ministry of Defence.
- (2) If the Patent Office receives an application for an invention it deems to be a secret invention, it shall notify the applicant on the matter and invite him to express his views on the findings within the time limit :
- (a) if the applicant agrees with the findings of the Patent Office, the application shall be forwarded for further consideration to the Ministry of

Defence ;

- (b) if the applicant does not agree with the findings of the Patent Office and substantiates his opinion with evidence that is accepted by the Patent Office, the Patent Office shall resume the procedure for the grant of the patent in accordance with the provisions of this Law ;
 - (c) if the applicant does not agree with the findings of the Patent Office and fails to substantiate his opinion or fails to substantiate it with sufficient evidence, the Patent Office shall issue a decision on its incompetence and forward the application to the Ministry of Defence.
- (3) If the Ministry of Defence finds that the invention should not be deemed secret, the application shall be forwarded to the Patent Office, which shall deal with it in accordance with the provisions of this Law.
- (4) All the secret patent applications and secret patents shall be processed under special Regulations.
- (5) If, after a patent for a secret invention has been granted, the Ministry of Defence finds that the invention should no longer be deemed secret, the complete file relating to the patent shall be forwarded to the Patent Office. Upon receipt of such file, the Patent Office shall enter the patent in the Patent Register, issue a patent certificate to the patentee and publish the specifications of the patent in accordance with Article 21, fifth paragraph.
- (6) Domestic legal and natural persons may seek protection for a secret invention abroad only with the approval of the Ministry of Defence.

Article 24

Exploitation of secret inventions

- (1) Ministry of Defence and Ministry of Public Order shall have the exclusive right to work and dispose of secret inventions.
- (2) The rightful claimant to a secret invention protected by a patent shall be entitled to a lump sum as compensation regardless of the scope of the use of the invention for the needs of national defence.
- (3) The amount of compensation referred to in the second paragraph of this Article shall be agreed upon by the applicant and by the responsible Ministry (according to paragraph (1)). If agreement cannot be reached, the applicant shall be entitled to request a competent court to determine the amount of compensation.

Article 25

Inspection of files

- (1) The file relating to a patent application may be inspected before the grant of the patent only with the written permission of the applicant.
- (2) Where an application is withdrawn in accordance with Article 19 (4), the file relating to it may be inspected only with the written permission of the person who withdrew the application.

Article 26

Opposition to the grant of patent

- (1) Within nine months from the date the announcement of the grant of patent is published, any person, on payment of the prescribed fee, shall have the right to file with the Board of Appeal of the Patent Office a substantiated notice of opposition to the patent granted. The opposition shall be filed in written form in two copies.
- (2) An opposition against the grant of patent may only be filed with the Board of Appeal, if the requirements of **Article 3** (2), (3), (4), (5), (6), (7) and **Articles 8, 13** (1) and **19** (2) of this Law have not been observed.
- (3) Pursuant to paragraph (1) of this Article, a copy of the opposition shall be forwarded to the applicant who shall prepare observations within three months. On the request of the applicant, this term may be extended

for one more month. The Board of Appeal shall examine the opposition within three months from the date of receipt of the applicant's observations. The applicant and the opponent shall be notified of the opposition examination 30 days before the fixed date of the proceedings. Both parties shall have the right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations.

(4) According to the results of the opposition examination, the Board of Appeal shall either revoke the patent in whole or in part or reject the opposition.

(5) A decision of the Board of Appeal referred to in paragraph (4), may be appealed within six months from each interested part.

CHAPTER IV EFFECTS OF A PATENT

Article 27 Rights conferred by a patent

(1) Where the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts :

- (a)** the making of a product incorporating the protected invention ;
- (b)** the offering or the putting on the market of a product incorporating the protected invention, the using of such a product, or the importing or stocking of such a product for such offering or putting on the market ;
- (c)** the inducing of other parties to perform any of the above acts.

(2) Where the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts :

- (a)** the using of a process which is the subject matter of the patent ;
- (b)** in respect of any product directly obtained by such process, any of the acts referred to in paragraph (1)(b), even where a patent cannot be obtained for the said product ;
- (c)** the inducing of other parties to perform any of the above acts.

(3) The owner of a patent shall have no right to prevent third parties from performing, without his authorization, the acts referred to in paragraphs (1) and (2) in the following circumstances :

- (a)** where the act concerns a product covered by the patent after it has been put on the market by the owner of the patent, or with his express consent, in the Republic of Albania or in any territory specified in the bilateral or multilateral agreements which have been acceded to by Republic of Albania ;
- (b)** where the act is done privately and for non-commercial purposes, provided that it does not significantly prejudice the economic interests of the owner of the patent ;
- (c)** where the act is done for purely experimental purposes or for scientific research ;
- (d)** where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(4) A patent shall also confer on its owner the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means, relating to an element of that invention, for carrying it out, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention. This provision shall not apply

when the means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

Article 28

Term of patents and maintenance fees

- (1) The term of a patent shall be **20 years** as from the filing date of the application.
- (2) The maintenance of a patent shall be subject to the payment of the prescribed fees. These fees shall be due each year on the date corresponding to the filing date.
- (3) Any maintenance fee may be paid within a period of six months beginning on the date when it became due, paying in this case a supplementary fee for the delay.
- (4) If a maintenance fee is not paid according to paragraphs (2) and (3), the patent shall lapse on the date when the fee became due.
- (5) The term of a patent for invention related to pharmaceutical products can be extended over 20 years, but no more than **5 years**.

Article 29

Extent of protection

- (1) The extent of the protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings so as to combine fair protection for the owner of the patent with a reasonable degree of certainty for third parties.
- (2) For the period up to the grant of the patent, the extent of the protection conferred by a patent application shall be determined by the latest filed claims contained in the publication under Article 20. However, the patent as granted or as amended in invalidation proceedings shall determine retroactively the protection conferred by the patent application, in so far as such protection is not thereby extended.
- (3) In determining the extent of protection, due account shall be taken of any statement limiting the scope of the claims made by the applicant or the owner of the patent during procedures concerning the grant or the validity of the patent.

Article 30

Prior user

- (1) A patent shall have no effect against any person who in good faith, for the purposes of his enterprise or business, before the filing date, or, where priority is claimed, the priority date of the application on which the patent is granted, and within Albania was using the invention or was making effective and serious preparations for such use. Any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.
- (2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

Article 31

Limitation of rights with respect to means of transport and transit goods

The rights under the patent shall not extend to the use of the patented invention on any foreign vessel, aircraft or land vehicle which temporarily or accidentally enters the waters, airspace or land of Albania provided that the patented invention is used exclusively for the needs of the vessel or in the construction or operation of the aircraft, spacecraft or land vehicle.

CHAPTER V

CHANGE IN OWNERSHIP AND JOINT OWNERSHIP OF PATENT APPLICATION OR PATENT

Article 32

Change in ownership of patent application or patent

- (1) Any contract assigning a patent application or a patent shall be made in writing and shall be signed by the parties to the contract. Otherwise it shall not be valid.
- (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 owner of the application or patent shall be entitled to institute any legal proceedings concerning the patent only if the change in the ownership has been recorded in the patent register. The Patent Office shall publish the change of the ownership of the patent.

Article 33

Judicial assignment of patent application or patent

If a patent application has been filed or a patent granted to a person who is not entitled to the patent under Article 8 or 9, the person entitled to it under this provisions may request the Court to order the assignment to him of the patent application or patent.

Article 34

Joint ownership of patent application or patent

- (1) Where there are joint applicants of a patent application, each of them may without the agreement of the others separately assign or transfer by succession his share of the application, but the joint applicants may only jointly withdraw the application or conclude licence contracts with third parties under the application.
- (2) Where there are joint owners of a patent, each of them may without the agreement of the others separately assign or transfer by succession his share of the patent or institute court proceedings for an infringement of the patent against any person exploiting the patented invention in the Republic of Albania. The exploitation of the patented invention in the Republic of Albania by one of the joint owners shall not require the agreement of the other joint owners, but the joint owners may only jointly surrender the patent or conclude licence contracts with third parties under the patent.
- (3) The provisions of this Article shall be applicable only in the absence of an agreement to the contrary between the joint applicants or owners.

CHAPTER VI

CONTRACTUAL LICENCES AND LICENCES OF RIGHT

Article 35

License contract

- (1) For the purposes of this Law, "licence contract" means any contract by which a party ("the licensor") gives to the other party ("the licensee") his agreement for that other party to perform in the Republic of Albania any of the acts referred to in Article 27 in respect of an invention claimed in a patent or a patent application.
- (2) A licence contract shall be made in writing and shall be signed by the parties to the contract. Otherwise it shall not be valid.
- (3) The fact that a licence contract has been concluded may be recorded in the patent register on payment of the prescribed fee. The licensee shall be entitled to institute any legal proceedings concerning the licence contract only if it has been recorded in the patent register.

(4) Secret patents may be licensed or assigned if there is written consent by the Ministry of Defence or Ministry of Public Order.

(5) If the owner of the patent fails to pay the prescribed maintenance fee under Article 28 in due time, and a licence contract has been entered in the patent register in favour of a third person, the Patent Office shall inform the licensee that the fee has not been paid and that he may pay the fee within six months from the date of the notification in order to preserve the validity of the licence right. In case of a dispute on ensuring the registered rights of the licensee, the court may, if deemed essential for ensuring those rights, decide that the patent be transferred to the licensee.

Article 36

Rights of licensee

(1) In the absence of any provision to the contrary in the licence contract, the agreement given by the licensor to the licensee shall extend to the performance in respect of the invention of all the acts referred to in Article 27 without limitation as to time, in the entire territory of the Republic of Albania, and through any application of the invention.

(2) In the absence of any provisions to the contrary in the licence contract, the licensee may not allow a third person to perform in respect of the invention any of the acts referred to in Article 27.

Article 37

Rights of licensor

(1) In the absence of any provision to the contrary in the licence contract, the licensor may allow a third person to perform in respect of the invention any of the acts referred to in Article 27 and shall not be prevented from performing them himself.

(2) If the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in the licence contract, the licensor may neither allow a third party to perform nor perform himself in respect of the invention any of the acts referred to in Article 27 which are covered by the said contract.

Article 38

Licences of right

(1) Where the owner of a patent files a written statement with the Patent Office that he is prepared to allow any person to use the invention as a licensee in return for appropriate compensation, the maintenance fees which fall due after receipt of the statement shall be reduced according to the Regulations.

(2) The statement may be withdrawn at any time upon written notification to this effect to the Patent Office, provided that no one has informed the owner of the patent of his intention to use the invention.

(3) The statement may not be filed as long as an exclusive licence is recorded in the patent register.

(4) On the basis of the statement, any person shall be entitled to use the invention as a licensee under the conditions laid down in the Regulations. Any licence so obtained shall be treated as a contractual licence.

(5) No request for recording an exclusive licence in the patent register shall be admissible after the statement has been filed, unless the said statement is withdrawn.

CHAPTER VII

NON - VOLUNTARY LICENCES

Article 39

Non - voluntary licences

(1) On the request of any person who proves his ability to work the patented invention in the Republic of Albania, made after the expiration of a period of four years from the filing date of the application for the patent or three years from the grant of the patent, whichever is later, the Patent Office may grant a non-exclusive, non-voluntary licence if the patented invention is not worked or is insufficiently worked in the Republic of Albania. The grant of the non-voluntary licence shall be subject to the payment of equitable remuneration to the owner of the patent.

(2) A non-voluntary licence shall not be granted if the Patent Office is convinced that circumstances exist which justify the non-working or insufficient working of the patented invention in the Republic of Albania.

(3) In deciding whether to grant a non-voluntary licence, the Patent Office shall give both the owner of the patent and the person requesting the non-voluntary licence an adequate opportunity to present arguments.

(4) Any non-voluntary licence shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

Article 40

Exploitation by Government or by third parties authorized by Government

Where the national security or public safety so requires, the Minister may authorize, even without the agreement of the owner of the patent or of the applicant, by notice published in the Official Journal, a government agency or a person designated in the said notice to make, use or sell an invention to which a patent or a patent application for a patent relates, subject to payment of equitable remuneration to the owner of the patent or the applicant. The decision of the Minister may be the subject of an appeal to the Court.

CHAPTER VIII INFRINGEMENT

Article 41

Acts of infringement

(1) Subject to this Law, the performance of any act referred to in Article 27(1), (2) and (4) in Albania by a person other than the owner of the patent, and without the consent of the latter, in relation to a product or process falling within the scope of protection of the patent shall constitute an infringement of the patent.

(2) Subject to this Law, the performance of any act referred to in Article 27(1), (2) and (4) in Albania by a person other than the applicant, and without the consent of the applicant, in relation to a product or process falling within the scope of provisional protection conferred on a published patent application under Article 20 (3) shall constitute an infringement of that provisional protection.

Article 42

Infringement proceedings

(1) The owner of a patent and the applicant for a patent shall have the right to institute proceedings in the Court against any person who has infringed or is infringing the patent or the provisional protection conferred on a published patent application. The owner of the patent and the applicant shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur ("imminent infringement"). The proceedings may not be instituted after five years from the act of infringement.

(2)(a) If the owner of the patent proves that an infringement has been committed or is being committed, the Court shall award damages and shall grant an injunction to prevent further infringement and any other remedy provided in the general law.

(b) If the owner of the patent proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the general law.

(3)(a) Unless the licence contract provides otherwise, any licensee may request the owner of the patent to institute Court proceedings for any infringement indicated by the licensee, who must specify the relief desired.

(b) Such licensee may, if he proves that the owner of the patent received the request but refuses or fails to institute the proceedings within three months from the receipt of the request, institute the proceedings in his own name, after notifying the owner of the patent of his intention. The owner of the patent shall have the right to join in the proceedings.

(c) Even before the end of the three-month period referred to in subparagraph (3)(b), the Court shall, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, if the licensee proves that immediate action is necessary to avoid substantial damage.

(4) Where the subject matter of the patent is a process for obtaining a product, the burden of establishing that a product was not made by the process shall be on the alleged infringer if either of the following conditions is fulfilled :

(a) the product is new, or,

(b) a substantial likelihood exists that the product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

Article 43

Declaration of non-infringement

(1) Any interested person shall have the right to request, by instituting proceedings against the owner of the patent, that the Court declare that the performance of any specific act does not constitute infringement of the patent.

(2) If the person making the request proves that the act in question does not constitute an infringement of the patent, the Court shall grant the declaration of the non-infringement.

(3) The owner of the patent shall have the obligation to notify any licensees of the proceedings. The licensees shall have the right to join in the proceedings in the absence of any provisions to the contrary in the licence contract.

(4) If the act in question is already the subject of infringement proceedings, the defendant in the infringement proceedings may not institute proceedings for a declaration of non-infringement.

CHAPTER IX

CHANGES IN PATENTS. SURRENDER AND INVALIDATION.

Article 44

Changes in patents

(1) The owner of a patent shall have the right to request the Patent Office to make changes in the patent in order to limit the extent of the protection conferred by it.

(2) The owner of a patent shall have the right to request the Patent Office to make changes in the patent in order to correct mistakes or clerical errors, made in good faith. Where the change would result in a broadening of the extent of protection conferred by the patent as granted, no request may be made after the expiration of two years from the grant of the patent and the change shall not affect the rights of any third party which has relied on the patent as granted.

- (3) No such change in the patent may go beyond what has been disclosed in the application as filed.
- (4) If, and to the extent to which, the Patent Office changes the patent according to paragraphs (1) or (2), it shall publish the changes.

Article 45 **Surrender**

- (1) The owner of a patent may surrender the patent by written declaration submitted to the Patent Office. The surrender may be limited to one or more claims of the patent.
- (2) The Patent Office shall record the surrender and publish notification of it as soon as possible. The surrender shall take effect from the date of receipt of the declaration by the Patent Office.

Article 46 **Invalidation**

- (1) The Court may, at the request of any person, invalidate a patent, in whole or in part, on any of the following grounds :
- (a) the subject-matter of the patent is not patentable under Articles 3 (1), 4, 5 and 6 ;
 - (b) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 13(1)) ;
 - (c) the subject-matter of the patent goes beyond what has been disclosed in the patent application as filed (Article 44 of this Law).
- (2) The Court may require the owner of the patent to submit to it for the purpose of examination publications and other documents showing the prior art which have been referred to either in connection with an application for a patent or other title of protection filed, for the same or essentially the same invention, by the owner of the patent, with any other national or regional patent office, or in connection with any proceedings relating to the patent or other title of protection upon such application.

Article 47 **Effect of invalidation**

- (1) Any invalidated patent, or claim or part of a claim shall be considered to be null and void from the date of the grant of the patent.
- (2) When a decision of the Court to invalidate a patent, in whole or in part, becomes final, the Court shall notify the Patent Office which shall record the decision in the patent register and shall publish it as soon as possible.

CHAPTER X **INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY**

Article 48 **Application of the Patent Cooperation Treaty**

- (1) For the purposes of this Chapter "international application" means an application filed under the Patent Cooperation Treaty (hereinafter referred to as the "PCT").
- (2) Where reference is made in this Law to the PCT, such reference shall include the Regulations under the PCT.

(3) In the Republic of Albania, any international patent application shall be equivalent to an application filed with the Patent Office in accordance with Article 12 of this Law. Such an international application shall be considered to have the effect of a regular national application as of its international filing date and this date shall be considered to be the filing date of the application with the Patent Office, provided the Republic of Albania is indicated in the international application as a "designated" state (within the meaning of Article 4 (1)(ii) of the PCT) or "elected" state (within the meaning of Article 31(4)(a) of the PCT).

(4) The provisions of the PCT and of Regulations under the PCT shall have full effect and shall apply in accordance with the provisions of this Law.

(5) In the case of conflict between the provisions of the PCT and the provisions of this Law and of any implementing legislation, the provisions of the PCT shall prevail.

Article 49

Designated Office and Elected Office

(1) Where the Republic of Albania is indicated in the international application as a "designated" state or "elected" state and the applicant, in accordance with Chapters I to IX of this Law, wishes to obtain a patent of the Republic of Albania, he shall, within one month after the expiration of the time limits applicable under Articles 22 or 39 of the PCT, submit to the Patent Office a translation into the Albanian language of the description, claims, abstract of the invention and textual matter on the drawings, if any, and pay the prescribed filing fee.

(2) The international application shall be considered as withdrawn if, within the time limit referred to in this Article, the translation into the Albanian language of the description, claims, abstract of the invention and textual matter on the drawings is not submitted to the Patent Office.

(3) Further examination of the international application in the Patent Office shall be carried out in accordance with the provisions of Article 21 of this Law.

(4) Any international application designating Albania which has been published under Article 21 of the PCT shall give rise to the same rights as an application published under Article 20 of this Law as from the date on which a translation into the Albanian language of the claims of the international application has been published by the Patent Office. This translation shall be published within three months from the date of its submission to the Patent Office.

Article 50

International applications filed with the Patent Office as Receiving Office

(1) If the applicant of the international application is a national or resident of the Republic of Albania, then, in accordance with Article 10 of the PCT, the international application may be filed with the Patent Office as a "receiving" Office.

(2) Subject to Rule 14 of the Regulations under the PCT, the applicant shall pay the transmittal fee to the Patent Office within a month from the filing of the international application.

(3) International applications filed with the Patent Office as a "receiving" Office shall be filed in the language as prescribed in the agreement between the International Bureau of the World Intellectual Property Organization and the International Searching Authority specified by the Patent Office as referred to Rule 35 of the PCT.

CHAPTER XI

REGISTRATION OF EUROPEAN PATENTS

Article 51

Extension of European patents

Protection of inventions in the Republic of Albania may also be obtained by extending the effects of European patent applications and patents in accordance with a Regulation to be enacted after the signing of the respective Agreement between the Government of the Republic of Albania and European Patent Organization.

CHAPTER XII PATENTABILITY OF UTILITY MODELS

Article 52 Conditions of patentability

(1) A utility model shall be patentable if it is new and industrially applicable.

(2) Protection by utility models is made available to models capable of affording effectiveness or ease of application or use to machines or parts of machines, to instruments, to utensils and every day objects, where they consist of special forms, arrangements, configurations or combinations of elements, satisfying the requirements as per the preceding paragraph.

A patent granted for a machine as a whole shall not imply protection of the parts of the machine.

The effects of a utility model patent shall extend to models having equivalent utility, on condition that they are based on the same innovative concept.

(3) Patents for utility models are not granted for the methods and the objects as per **Article 3** (2), (3), (4) of this Law.

Article 53 Novelty and industrial applicability

The novelty and the industrial applicability of the utility models are defined as per the provisions of Articles 4 and 6 of this Law.

Article 54 Legal protection

Legal protection for utility models is provided by patents for models with a duration of **10 years**, starting from the filing date.

Article 55 Transformation

Upon a written applicant's request, a patent application for invention can be transformed into a patent application for utility model until a decision is made with regard thereto.

Article 56 Treatment of the utility models

The treatment of inventions is equally applicable for the utility models, unless something else has been provided in the present Chapter.

CHAPTER XIII THE REVIEW OF DISPUTES IN COURT

Article 57
The review of disputes in Court

- (1) The Regional Court of Tirana shall have exclusive jurisdiction for any dispute concerning a patent application or patent, in particular for :
- (a) any action for infringement or a declaration of non - infringement of a patent or patent application ;
 - (b) any action or counterclaim for invalidation of a patent ;
 - (c) any action concerning the right to the patent, the ownership or assignment of a patent application or patent ;
 - (d) any action concerning a licence contract ;
 - (e) the grant of non - voluntary licences ;
 - (f) the review decisions of Board of Appeal of the Patent Office.
- (2) Decisions of the Regional Court of Tirana on any type of disputes referred to in this Article, may be appealed to the Court of Appeal.

Article 58
Terms for instituting actions in courts

- (1) Within the period of patent duration, an action may be instituted in Court without any time limitation, if the dispute has arisen :
- (a) on invalidation of patents (Article 46) ;
 - (b) on the grant of licences.
- (2) In other cases of disputes, which are not referred to in paragraph (1) of this Article, the term for instituting an action in Court is limited to three years unless this Law or the legislative acts in force provide for other terms.

PART II
INDUSTRIAL DESIGNS

CHAPTER XIV
DEFINITION , CONDITIONS AND RIGHT TO PROTECTION

Article 59
Definition and conditions of protection

- (1) For the purposes of this Law, " industrial design " (hereinafter referred to as " design ") means the features of the appearance of a product which are not dictated solely by the technical function of the product and which confer to it a special appearance. The designs may be two or three dimensional or a combination of them.
- (2) (a) In order to be protectable, an industrial design must be new and usable in industrial or handicraft products.
- (b) An industrial design shall be considered to be new if it is not identical or closely similar to an industrial design which by publication or by public use has been made available to the public, anywhere in the world, before the filing date or, where priority is claimed, before the priority date of the application for the registration of the former design.
- (c) Subparagraph 2(b) of this Article shall not apply in respect of any publication or public use which was made by the creator of the industrial design or his successor in title within a period of 12 months prior to the filing date of the application or, where priority is claimed, the priority date.

(3) Protection shall not be granted in respect of industrial designs, the publication or exploitation of which would be contrary to public order or morality.

Article 60 **Right to protection**

(1) The exclusive right to an industrial design shall belong to the creator of the industrial design or his successor in title. Joint creators shall , unless they agree otherwise , have equal rights.

(2) Where two or more applications have been filed by different persons in respect of the same industrial design and the creators concerned , created the design independently of each other , the right to protection that design shall belong to the applicant whose application has the earliest filing date or where priority is claimed , the earliest priority date , as long as his application is not withdrawn or rejected.

Article 61 **Industrial designs created pursuant to a commission or by an employee**

(1)(a) Where a design is created in execution of a commission or an employment contract, the right to protection for that design shall belong, unless they agree otherwise, to the person having commissioned the work or to the employer.

(b) Where the design has an economic value much greater than the parties could have reasonably foreseen at the time of concluding the contract, the employee shall have a right to special remuneration, which shall be fixed by the Court in the absence of agreement between the parties.

(2)(a) When an employee whose employment contract does not require him to engage in inventive activity makes, in the field of activities of his employer, a design by using data or means available to him through his employment, the right to protection for that design shall belong to the employee, except if, within a period of four months from the date at which the employer received the report referred to in subparagraph (2)(b) or the date at which the design became otherwise known to the employer, whichever date is earlier, the employer notifies the employee by a written declaration of his interest in the design.

(b) The employee who makes a design of the kind referred to in subparagraph (2)(a) shall immediately submit it to his employer in a written report.

(c) If, within the period referred to in subparagraph (2)(a), the employer makes the declaration of interest, the right to protection for that design shall be considered as having belonged to him from the beginning. The employee shall have a right to equitable remuneration taking into account his salary, the economic value of the design and any benefit derived from the design by the employer. In the absence of agreement between the parties, the remuneration shall be fixed by the Court.

(3) Any contractual provision which is less favorable to the inventor of the design than the provisions of this Article shall be null and void.

Article 62 **Mentioned of the creator of the design**

Any publication of the Patent Office, containing the application or the registration granted thereon, shall mention the creator or the creators of the design as such, provided that any creator may request, in a declaration signed by him and filed with the Patent Office, that such publications should not mention him as creator, in which case the Patent Office shall proceed accordingly.

CHAPTER XV **APPLICATION FOR REGISTRATION**

Article 63 **Filing date**

(1) As the filing date of the application for registration of a design shall be considered the date when the Patent Office receives documents which include :

- (a) a request to register a design ;
- (b) the name and address of the applicant ;
- (c) a description of the design ;
- (d) in order to clarify the essence of the design, drawings of the general view of the article, a confection scheme or a sample of the article ;
- (e) an indication of the product or products in which design is intended to be incorporated ;
- (f) where priority is claimed in the application, words to that effect , together with the identification of the Patent Office with which the application whose priority is claimed (" the priority application ") was filed, the filing date of the priority application and, if available the number of the priority application ;
- (f) signature of the applicant.
- (g) where the application is filed in the Patent Office through a representative (as referred to in Chapter XXVIII) , it shall be accompanied by the respective authorization.

(2) The application shall identify the creator or creators of the design.

(3) Two or more designs may be subject of the same application, provided that they relate to the same class of the International Classification established by the Locarno Agreement.

(4) The application shall be subject to the payment of the prescribed fee.

(5) The application and all further concerning procedures (correspondence) will be presented in the prescribed manner as defined in the Regulations.

(6) The priority right shall be known for countries party to the Paris Convention for the Protection of Industrial Property.

Article 64

Temporary protection of industrial designs exhibited at international exhibitions

(1) The applicant for registration of an industrial design who has exhibited a product or products incorporating on the industrial design at an official or officially recognized international exhibition and who applies for registration of that industrial design within six months from the day on which the product or products incorporating the industrial design were first exhibited in the exhibition shall, on his request, be deemed to have applied for registration on that day.

(2) Evidence of the exhibition of products incorporating the industrial design shall be given by a certificate issued by the competent authorities of the exhibition, stating the date on which the industrial design was first shown in connection with products included in the exhibition.

Article 65

Examination as to formalities

(1) Within 3 months after receipt of the application, the Patent Office shall conduct a preliminary examination of the application, as to conformity of the application with the requirements of Article 63 of this Law and in accordance with set procedure, establish the filing date of the application and if the applicant has the right of priority, the filing date of priority.

(2) If the application does not conform the prescribed requirements of Article 63 of this Law , the Patent Office shall notify the applicant to correct the non-conformities within 3 months from the day of communication and

if the essential deficiencies are not eliminated, the Patent Office shall reject the application and shall notify the applicant of this in writing.

(3) Within a period of 3 months from the date of receipt the rejection, the applicant has the right, upon the payment of the prescribed fee, to submit a substantiated appeal in the Board of Appeal of the Patent Office.

(4) The decision of the Board of Appeal concerning the above-mentioned paragraph will be final.

Article 66

Registration of the industrial design. Postponement of publication

(1) The Patent Office shall, within a set period as prescribed in the Regulations, examine the conformity of the application with the requirements of Article 59 (3) of this Law and shall adopt the decision in accordance with the results of the examination. The applicant shall be notified of this in writing and if the decision is positive he shall be notified to pay the registration fee.

(2) As soon as possible after the decision to register the design or designs, the Patent Office shall publish the design or the designs in the prescribed manner.

(3) Within a period of 2 months from the date of receipt the rejection of the registration, the applicant has the right, upon the payment of the prescribed fee, to submit a substantiated appeal to the Board of Appeal of the Patent Office. The decision of the Board of Appeal concerning this paragraph, may be appealed in the Court within 6 months.

(4) Together with the filing of the application, a request may be made for postponement of the publication of the registered design or designs, for a period of up to 12 months from the day following the application filing date. In the case of such request, the Patent Office shall, upon registration, publish information on the owner of the registered design. After the expiration of the period of the postponement, the registered design or designs shall be published unless the application has been withdrawn before the expiration of the said period.

CHAPTER XVI

Effect of Registration

Article 67

Rights conferred by registration

(1) The owner of the registered design shall have the right to prevent third parties from making, importing, offering to supply or distributing, or having in their possession for these purposes, any products that incorporate the registered design or closely similar design, when such acts are undertaken for commercial purposes.

(2) The paragraph (1) of this Article shall not have effect in respect of mentioned products in that paragraph, which have been put on the market in the territory of the Republic of Albania, or in any territory specified in bilateral or multilateral agreement of the Republic of Albania.

(3) The rights conferred by the registration shall not extend to equipment on ships, aircraft and any other vehicles not registered in the territory of the Republic of Albania, when these temporarily enter in the territory of the Republic of Albania, as well as the importation of spare parts and accessories for the purpose of repairing such vehicles and the execution of repairs on such vehicles.

Article 68

Term of registration and renewal

(1) The registration is made for **5 years** counted from the filing date.

(2) The registration may be renewed, on payment of the prescribed fee, for additional terms of five years each up to a total term of **15 years** counted from the filing date.

**CHAPTER XVII
LICENCE CONTRACTS**

**Article 69
License contracts**

- (1) For the purposes of this law , " licence contract " means any contract by which the owner of an registered design (" the licensor ") gives to the other party (" the licensee ") his agreement for that other party to do any of the acts referred to in **Article 68** (1) of this Law.
- (2) A licence contract shall be made in writing and shall be signed by the parties to the contract. Otherwise it shall not be valid.
- (3) The fact that the contract has been concluded shall be recorded in the Register of industrial designs on payment of the prescribed fee. The licensee shall be entitled to institute any legal proceedings concerning the licence contract only if it has been recorded in the Register of industrial designs.

**CHAPTER XVIII
INFRINGEMENTS**

**Article 70
Infringement proceedings**

- (1) The owner of the registered design shall have the right to institute proceedings in the Court against any person who has infringed or is infringing his rights under Article 67 of this Law. The owner shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur ("imminent infringement ").
- (2)(a) If the owner of the registered design proves that an infringement has been committed or is being committed, the Court shall award compensations. In these compensations will be included the profit of the person who has performed the infringement, the damage which has incurred the owner of the design except the one is included in the profit of the breaker and the expenses including the law costs. The Court shall grant an injunction to prevent further infringement and any other remedy provided in general Law.
- (b) If the owner of the registered design proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the general law.

**CHAPTER XIX
Renunciation and Invalidation**

**Article 71
Renunciation**

- (1) The owner of the registered design may renounce it by written declaration submitted to the Patent Office. The renunciation shall take effect from the date of receipt of the declaration by the Patent Office. In the case of a registration covering several designs, the renunciation may be in respect of all or some of the registered designs.
- (2) The Patent Office shall record the renunciation in the Register of industrial designs and publish it.

**Article 72
Invalidation**

- (1) The Court may, on the request of any person, invalidate a registration on the ground that the registered design is not protectable under Article 59 of this Law.
- (2) Any invalidated registration shall be considered to be null and void from the date of the registration.
- (3) When the decision of the Court to invalidate the registration becomes final the Court shall notify the Patent Office of the decision in the Register of industrial designs and publish it.

PART III TRADEMARKS AND SERVICE MARKS

Chapter XX CONDITIONS OF PROTECTION AND RIGHT TO PROTECTION

Article 73 The constituent elements of a mark

- (1) Any sign or any combination of the signs capable of distinguishing the goods or services of one natural or legal person from those of another natural or legal person and of being represented graphically may serve as a mark for goods or a mark for services (hereinafter referred to as " mark ").
- (2) A collective trademark is a trademark registered by an industrial or commercial cooperation, or an association or the like organisation of several enterprises, and which is used in order to designate the goods and services of this association. Each enterprises of this association may also simultaneously have its own trademarks. Particular provisions on collective trademarks are prescribed in specific articles of this Law, but in other cases, the provisions prescribed to trademarks also apply to collective trademarks.
- (3) The following signs may constitute a mark :
 - (a) - words, including personal names, letters, numeral, abbreviations ;
 - figurative signs, including devices, shapes of goods or of their packaging ;
 - combinations of colours and shades of colours ;
 - any combination of the signs referred to in items (a) to (c) of this Article.
- (4) Specific types of trademarks, such as, sound and light signals or other signs may be registered, if they can be graphically represented.

Article 74 Non - registrable marks

- (1) A mark shall not be registered as a trademark if:
 - (a) it is devoid of distinctive character ;
 - (b) it consists exclusively of signs or indications, which may serve in trade , to designate the kind, quality, quantity, intended purpose, value , geographical origin, or the time of production of the goods or of rendering the services, or other characteristics of the goods or services ;
 - (c) it consists exclusively of signs or indications which have become customary in the current language or in **bona fide** and established practices of the trade;
 - (d) it consists of shapes or forms imposed by the inherent nature of the goods or services or necessary to obtain a technical result ;
 - (e) signs protected by Copyright if not authorized by the owner thereof.
- (2)
 - (a) The distinctive character of a sign shall be assessed in relation to the goods and services which the sign is intended to distinguish.
 - (b) Distinctive character may be acquired by use.

Article 75
Absence of violation of public interests

- (1) A sign shall not be protected as a mark or element of a mark if such protection would violate a public interest.
- (2) The following, in particular, shall not be protected as a mark or element of a mark :
- (a) - state names (complete or abbreviated) ;
 - state emblems ;
 - official hallmarks adopted by states ;
 - abbreviations and emblems of intergovernmental organizations ;
 - religious symbols ;
 - (b) surnames, portraits, pseudonyms of persons well - known by the general public if not authorized by the owner thereof or their successors in title, except in cases when above-mentioned persons have died more than 50 years ago ;
 - (c) signs that violate the public order or morality ;
 - (d) signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services which they intend to distinguish.
- (3) The signs referred to in subparagraph (2)(a) of this Article may only be included in a mark as unprotected elements of the mark, with the permission of the competent authorities.

Article 76
Conflict with earlier rights

- (1) A sign shall not be protected as a mark, if its use as a mark would be in conflict with earlier rights.
- (2) The following , in particular, shall be considered as an earlier right :
- (a) an identical or similar mark of a third party , in respect of identical or similar goods or services, or under the conditions of Article 83 (1)(b), in respect of goods or services which are neither identical nor similar which has an earlier filing date or priority date and which has been registered or subsequently will be registered ;
 - (b) a well - known mark within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property, of a third party.

Article 77
Right to protection

- (1) The exclusive right to a mark under this law shall be acquired by registration effected by the Patent Office.
- (2) The exclusive right to a mark may be acquired under joint ownership.

Chapter XXI
The procedure for registration

Article 78
The filing date

- (1) As the date of filing of the application shall be considered the date when the Patent Office receives documents which include :
- (a) a request to register a trademark ;

- (b) the name and address of the applicant ;
 - (c) a representation of the mark ;
 - (d) the names of the goods and services for which the registration is sought grouped according to the classes of the International Classification of Goods and Services and using , wherever possible , terms of the Alphabetical List of Goods and Services established in respect of the said classification ;
 - (e) a declaration claiming priority , the identification of the Patent Office with which the application whose priority is claimed ("the priority application") was filed , the filing date of the priority application and , if available, the number of the priority application ;
 - (f) the signature of the applicant ;
 - (g) where the application is filed in the Patent Office through a representative (as referred to in Chapter XXVIII), it shall be accompanied by the respective authorization.
- (2) The representation of the application for the registration of a mark and all further concerning procedures (the correspondence) will be presented according the prescribed manner as defined in the Regulation of the Patent Office.
- (3) When applying a collective trademark, one shall submit Regulations on the use of a collective trademark which have been confirmed by the executive authority. The Regulations shall indicate the trademark users , the provisions for the use of the trademark and information on the control of the use of the trademark. The collective trademark owner shall notify the Patent Office of the amendments which are made later in the Regulations.
- (4) No filing date of the application for registration a trademark shall be accorded until the required fee is paid.
- (5) The priority right will be admitted for the countries party to the Paris Convention for the Protection of the Industrial Property.

Article 79

Temporary protection of marks exhibited at international exhibition

- (1) The applicant, in order to register a mark, who has exhibited goods bearing the mark or services to be rendered under the mark, at an official or officially recognized international exhibition, may applies for registration of that mark within six months from the day on which the goods or services offered under the mark were first exhibited in that exhibition. This will be the filing date of the application for registration a trademark or a service mark.
- (2) Evidence of the exhibition of goods bearing the mark or services to be rendered under the mark shall be given by a certificate issued by the competent authorities of the exhibition, stating the date on which the mark was first shown in connection with goods or services included in the exhibition.

Article 80

Division of initial application

Any application referring to several goods or services can be divided into two or more applications (the divisional application) by distributing among the latter the goods or services referred to in the initial application and which are in the same class according to the International Classification of the Goods and Services. The divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority , if any.

Any divisional application shall be subject to the payment of the prescribed fee.

Article 81
Examination as to formalities

- (1) Within 3 months after the receipt of the application, the Patent Office shall conduct a preliminary examination of the application, examine the conformity of the application with the requirement of Article 78 of this Law and in accordance with the set procedure, establish the filing date of the application and if the applicant has the right to priority, the filing date of priority.
- (2) If the application does not conform the requirement of the Article 78 of this Law, the Patent Office shall notify the applicant to correct the nonconformities within 3 months and if the essential deficiencies are not eliminated, the Patent Office shall reject the application and shall notify the applicant of this in writing.
- (3) Within a period of three months from the date of receipt of the rejection , the applicant has the right, upon payment of fee, to submit a substantiated appeal to the Board of Appeal of the Patent Office. The decision of the Board of Appeal referring this paragraph will be final.
- (4) If the application conforms to the requirement of Article 78 of this Law , The Patent Office shall send a written notice to the applicant on the acceptance of the application for examination and shall publish the mark.

Article 82
Registration of the mark

- (1) The Patent Office shall examine the conformity of the accepted application to the requirements of **Article73** (3)(4) and **Article75** (2)(a)(b)(c) of this Law.
- (2) In the course of examination, the Patent Office is entitled to request from the applicant additional materials and documents necessary for examination , thereby indicating the term for their submission.
- (3) Within a period of 5 months from the filing date, the Patent Office , in accordance with the results of the examination, shall adopt the decision to register the trademark or to reject the registration thereof and shall publish the trademark. The applicant shall be notified of the decision in writing and if the decision is positive, shall be invited to pay a fee for registration and publication of the mark.
- (4) Within a period of two months after the date of receipt of the registration rejection , the applicant shall have the right, upon paying the prescribed fee , to file a substantiated appeal with the Board of Appeal.
- (5) The decision of the Board of Appeal concerning the above-mentioned paragraph, may be appealed in the Court within 6 months.

CHAPTER XXII
EFFECT OF REGISTRATION OF MARK

Article 83
Rights conferred by registration

- (1)(a) The owner of a registered mark shall have the right to prevent a third party from using , without his authorization, in the course of trade, as a mark or as a trade name, an identical or similar sign for goods or services which are identical or similar to those in respect of which the mark is registered , where such use would result in a likelihood of confusion. Where the use relates to an identical sign for identical goods or services , the likelihood of confusion shall be assumed.
- (b) The owner of a registered mark shall have the right to prevent a third party from using, without authorization, in the course of trade as a mark or as a trade name, an identical or similar sign for goods or services which are neither identical nor similar to those in respect of which the mark is registered, where the mark has become highly reputed and the use is detrimental to the distinctive character or repute of the mark.

(2) Notwithstanding paragraph (1) of this Article, the owner of the registered mark shall not have the right referred to in that paragraph in respect of goods which have been put in the territory of the Republic of Albania or in any other territory determined in an bilateral or multilateral agreement of the Republic of Albania, by the owner of registered mark, or with his consent, provided that neither the goods nor the manner in which the mark is applied to the goods are altered.

(3) The owner of the registered mark shall not have the right to prevent the third party from correct using its name, address, pseudonym, or an exact indication concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply of its goods and services insofar as such use is confined to the purpose of mere indication and cannot mislead the public as to the source of goods or services.

(4) Each natural or legal person may own one or more trademarks.

(5) Exclusive rights on a trademark shall be certified with a registration certificate issued by Patent Office.

Article 84

Changes in names or addresses

Where there is no change in the person of the owner of the registered mark , but there is a change in his name or address, the request for the recordal of the change by the Patent Office in its register of marks be made in a communication signed by the owner or his representative and indicating the registration number of the registration concerned and the change to be recorded.

Article 85

Change in ownership

Where there is a change in the person of the owner the request for the recordal of the change by the office in its register of marks be made in a communication signed by the owner or his representative or by the person who acquired the ownership (the new owner) or his representative and indicating the registration number of the registration concerned and the change to be recorded.

Article 86

Term of registration and renewal

(1) The registration of a trademark and service mark is made for **10 years** counted from the filing date.

(2) The application for the renewal of a registration contain the following elements :

(a) a request for the renewal of the registration ;

(b) the name and the address of the owner of the registered mark ;

(c) the date and the registration number of the registration concerned ;

(d) the name and the address of the representative, if any ;

(e) the names of goods and/or services grouped according the International Classification of the Goods and Services , for which the renewal of the registration is sought ;

(f) the signature of the owner of the registered mark or his representative , if any.

(3) The registration of a mark may be renewed , on payment of the prescribed fee, for additional terms of **10 years**.

CHAPTER XXIII LICENSE CONTRACTS

Article 87

License contract

(1) For the purpose of this Law , " license contract " means any contract by which the owner of the registered mark (" the licensor ") gives to the other party (" the licensee ") his agreement for that other party to perform any of the acts referred to in Article 84 of this Law, in respect of the registered mark.

(2) A license contract shall be made in writing and shall be signed by the parties to the contract, otherwise it shall not be valid.

(3) The fact that a licence contract has been concluded shall be recorded in the register of marks on payment of the prescribed fee. The licensee shall be entitled to institute any legal proceedings concerning the licence contract, only if it has been recorded in the register of marks.

Article 88 **Nullity of license contracts**

The license contract shall not be valid if it does not provide for an obligation by the licensor to ensure effective control of the quality of the goods or services of the licensee in connection with which the registered mark is used.

CHAPTER XXIV **INFRINGEMENT**

Article 89 **Infringement proceedings**

(1) The owner of the registered mark shall have the right to institute proceedings in the Court against any person who has infringes or is infringing his rights under the conditions of Article 83 of this Law. The owner shall have the same right against any person who has performed acts or is performing acts which make it likely that such infringement will occur (" imminent infringement ").

(2)(a) If the owner of the registered mark proves that an infringement has been committed or is being committed, the Court shall award compensation. In these compensations will be included the profit of the person who has performed the infringement, the damage which has incurred the owner of the mark except the one is included in the profit of the breaker and the expenses including the law costs. The Court shall grant an injunction to prevent further infringement and any other remedy provided in the general law.

(b) If the owner of the registered mark proves imminent infringement, the Court shall grant an injunction to prevent further infringement and any other remedy provided in general law.

CHAPTER XXV **RENUNCIATION. INVALIDATION. REVOCATION.**

Article 90 **Renunciation**

(1) The owner of the registered mark may renounce the registration by written declaration submitted to the Patent Office. The renunciation shall take effect from the date of receipt the declaration by the Patent Office. The renunciation may be in respect of all or some of the goods or services for which the mark is registered.

(2) The Patent Office shall record the renunciation in the register of marks and publish it.

Article 91 **Invalidation**

(1) The Court may, on the request of any person, invalidate a registration on the ground that the registration does not comply with **Article 73 (3), 74, 75 and 76** of this Law.

(2) Any invalidated registration shall be considered to be null and void from the date of the registration.

(3) When the decision of the Court to invalidate the registration becomes final the Court shall notify the Patent Office of the decision. The Patent Office shall record the decision in the register of marks and publish it.

Article 92 Revocation

(1) The registration of a mark may be revoked if the owner of the registered mark has not used it in connection with the goods or services referred to in the registration during a period of five years, without good reason.

(2) A request to revoke the registration of a mark on the ground of the above- mentioned paragraph may be submitted in the Court by any interested party. The Court shall inform the Patent Office of its decision within 1 month from the date the decision is adopted.

(3) A registration may not be revoked on the ground of paragraph (1) of this Article, in the case of any of the following uses of the registered mark in connection with the goods or services referred to in the registration :

- (a)** use made under a licence contract recorded in the register of marks ;
- (b)** use of the mark in a modified form which does not alter its distinctive character ;
- (c)** use of the marks in publicity and business correspondence.

(4) Any revoked registration shall cease to have effect on the date which the revocation becomes effective.

(5) The Patent Office shall record the revocation in the register of marks and publish the revocation of the mark and any other alteration made on the ground of this Article.

CHAPTER XXVI APPELLATION OF ORIGIN

Article 93 Appellation of origin

(1) The appellation of origin is used to mark the natural, agricultural products, the industrial and handicrafts products.

(2) The appellations of origin protect :

(a) geographical names of products, whose distinctive properties are mainly due to the location or region where they are produced , if such properties are a natural consequence of either the climate or soil or of established manufacturing procedures or processes;

(b) the name of a product which has become generally known through long term use in the course of trade as an indication that the product originates from a certain location or region.

(3) Geographical names which have become generally known through long - term use in the course of trade as designations for certain kinds of products may not be protected by appellations of origin.

(4) The Patent Office shall grant the right to use the appellation of origin after obtaining of the expert opinion of the competent authorities, which must include :

- (a)** products which may be marked under that appellation of origin ;
- (b)** locations or regions in which products marked under the appellation of origin originate ;
- (c)** production requirements a product must fulfill in order to be marked under the appellation of origin ;
- (d)** the required marking of products and further detailed requirements

for grant of the right to use the appellations of origin.

(5) An appellation of origin shall be established :

(a) by entering the geographical name and kind of product to which the name relates in the register of appellations of origin ;

(b) on behalf of a foreign person, on the basis of an international agreement on reciprocal protection of appellation of origin concluded by the Republic of Albania.

(6) An appellation of origin is a collective right and may be used as such only by those who produce or market the product for which an appellation of origin has been established.

PART IV MISCELLANEOUS

CHAPTER XXVII PATENT OFFICE

Article 94 Patent Office

(1) The Patent Office of the Republic of Albania shall be a legal person under the dependence of the Committee for Science and Technology of the Republic of Albania. The tasks of the Patent Office shall be determined and regulated by this Law and the Regulations thereunder. The Chairman of the Committee for Science and Technology shall appoint the Director of the Patent Office, establish the structure of the Patent Office and adopt its Regulation. The Patent Office shall have an own seal, which shall be used for sealing patents and certificates for the registration of trademarks, industrial designs, as well as other Patent Office documents.

Article 95 Restrictions on Patent Office employees

(1) While fulfilling their duties in the Patent Office, as well as within one year after termination of their labour relations with the Patent Office, the officials and employees of the Patent Office may not file applications for patents, trademarks and industrial designs. They may not, directly or indirectly (except through inheritance), acquire patents, trademarks and industrial designs, respectively granted or registered by the Patent Office, as well as acquire any rights arising from a patent, trademark and industrial design.

(2) With regard to patents, trademarks and industrial designs, respectively granted or registered, or, to applications for patents, trademarks and industrial designs to be filed, the employees of the Patent Office shall not enjoy the right of priority relating to patents, trademarks and industrial designs or applications dated earlier than one year after they have terminated their employment with the Patent Office.

Article 96 Patent Office Director

(1) The Director of Patent Office shall supervise all activities and fulfil the obligations laid down in this Law and in the Regulation of the Patent Office.

(3) Within the framework of this Law, the Director shall, without any specific authorization, represent the Patent Office in court, arbitrage, State institutions, as well as in relations with natural persons and legal entities.

Article 97
Board of Appeal

A Board of Appeal shall be established for the review of the disputes relating to patents, trademarks and industrial designs within the structure of the Patent Office, which shall act in accordance with regulations adopted by the Committee for Science and Technology and Ministry of Justice.

CHAPTER XXVIII
REPRESENTATION

Article 98
Representation before the Patent Office

(1)(a) Where the applicant appoints (authorizes) a representative relating to his application, the appointment shall be expressed either in the application or in a written declaration signed by the applicant, which is to be filed with the Patent Office, indicating and the number of application.

(b) Where the owner of a patent, trademark or industrial design appoints a representative relating to his patent or registration, the appointment shall be expressed in a written declaration (authorization) signed by the owner of the patent, trademark or industrial design, indicating and the number of application.

(2)(a) The applicant or the owner of the protected industrial property right may limit the powers of a representative to certain acts.

(b) Where a limitation is made subsequently to the appointment, it shall be made in a communication signed by the applicant or the owner of the protected industrially property right. This limitation shall have effect upon receipt by the Patent Office of that communication.

(3) Natural or legal persons not having either a residence or their principal place of business within the Republic of Albania shall be represented by a patent attorney and shall act through him in all proceedings before the Patent Office.

(4)(a) Natural persons having their residence or principal place of business within the Republic of Albania may be represented in proceedings before the Patent Office directly or by a patent attorney.

(b) Legal persons having their residence or principal place of business within the Republic of Albania may be represented in proceedings before the Patent Office by an authorized employee who need not to be a patent attorney.

Article 99
Patent attorneys

(1) Professional representation in proceedings before the Patent Office may only be undertaken by patent attorneys entered on the Register of patent attorneys.

(2) Natural or legal persons who fulfil all the conditions laid down in the Regulations, shall be eligible for entering on the Register of patent attorneys.

(3) Any patent attorney entered on the Register may request that he be deleted from the Register.

(4) The Register of patent attorneys shall be kept in the Patent Office and shall be accessible to any person. The Patent Office shall regularly publish a list of patent attorneys.

CHAPTER XXIX
INTERNATIONAL AGREEMENTS

Article 100

Priority of international agreements

If an international agreement to which the Republic of Albania is a party provides rights other than, or different from, those laid down by this Law, the provisions of the international agreement shall be applicable.

CHAPTER XXX OFFENSES

Article 101 Offenses

(1) Any natural or legal person who performs an act which he knows constitutes an infringement of the patent, mark or design shall commit an offense and shall be punishable from the Court by a fine between 20 000 and 100 000 "Lek" (Albanian currency).

(2) The proceedings may not be instituted after 5 years from the commission of the offense.

(3)(a) In the event of repetition the maximum penalties shall be doubled.

(b) Repetition shall be deemed to have occurred when, within preceding 5 years, the offender has been convicted of another infringement as referred to in paragraph (1).

CHAPTER XXXI FINAL PROVISIONS

Article 102 Rules

The Chairman of the Committee for Science and Technology shall be competent to adopt and amend Regulations, not inconsistent with this Law, prescribing all matters which by this Law are required or permitted to be prescribed, or which are necessary or desirable to be prescribed for carrying out or giving effect to this Law, or for the conduct of any business relating to the Patent Office.

Article 103 Transitional provisions

Any application filed with the Patent Office before the date on which this Law comes into force shall be treated in accordance with the provisions of this Law.

Article 104 Annulments

(1) On the date when this Law comes into force the following shall be repealed :

- The "Decree on Marks in production and Trademarks" No.2490, on 22.07.1957, changed by the decrees No.3530, on 02.07.1962 and No.4253, on 11.04.1967 ("The right to inventions and rationalizations");

- The Articles 329 to 335 of the Civil Code, adopted by the Law No.6340, on 26.06.1981 and Law 333 (a) adopted by the Decree No.7316, and all other legal provisions which are contrary to this Law.

(2) All the rights on the legal protection of the industrial property, which are required or accepted to the Bureau of Patents and Marks of the Chamber of Commerce, shall be valid yeaned in the Republic of Albania up their expiration.

(3) On the date when this Law comes into force, all the activities of the Chamber of Commerce relating to legal protection of industrial property shall be administered in the competence of the Patent Office.

Article 105
Entry into force

This Law shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Albania, except for the provisions of Chapter X, which shall enter into force on the day of acceding the Republic of Albania to PCT.