

# THE PATENT LAW<sup>1</sup>

## I INTRODUCTORY PROVISIONS

### 1. Subject Matter of Regulation and Definitions

#### *Subject Matter of Regulation*

##### Article 1

This Law shall regulate the legal protection of inventions.  
The invention shall be protected by a patent or petty patent.

#### *Definitions*

##### Article 2

For the purposes of this Law certain terms have following meanings:

- 1) applicant means the person whom the records of the competent authority show, pursuant to the applicable law, as the person who is applying for the patent or petty patent;
- 2) application means an application for a protection of an invention, and any reference to an application shall be considered as references to the patent application, petty patent application, the application for the patent of addition or divisional application;
- 3) competent authority means the administrative authority of the Republic of Serbia which is competent for intellectual property rights;
- 4) person means a natural and/or legal person;
- 5) representative means an authorized person to take actions in proceedings before the competent authority;
- 6) register means the collection of data kept and maintained by the competent authority, relating to the applications filed with competent authority, granted patents with certificates of supplementary protection and granted petty patents.;
- 7) entry into the Register means any act of including data into the register of the competent authority;
- 8) right holder means the person whom the register of the competent authority shows as the owner of the patent, petty patent, patent of addition and certificate of supplementary protection;
- 9) the procedure before the competent authority means any action in proceedings before the competent authority with respect to an application of patent or petty patent;
- 10) international application means the application filed under the Patent Cooperation Treaty;
- 11) designated office means the national Office of the State designated by the applicant under Chapter I of the Patent Cooperation Treaty;
- 12) elected office means the national Office of the State which is elected by the applicant under Chapter II of the Patent Cooperation Treaty;
- 13) receiving office means the national office or intergovernmental organization with which the international application is filed;

<sup>1</sup> Official Gazette of the Republic of Serbia, no. 99/11, dated December 27, 2011; in force since January 4, 2012.

14) European Patent Convention means the Convention on the Grant of European Patents signed in Munich on 5 October 1973, as amended by the act revising Article 63 on 17 December 1991 and by the Revision Act adopted in Munich on 29 November 2000;

15) European patent application is an application for a European patent filed under the European Patent convention, as well as an international application filed under the Patent Cooperation Treaty, for which the European Patent Office acts as a designed or elected office and in which the Republic of Serbia is designated;

16) European patent is the patent granted by the European patent Office under the European Patent Convention and based on the European patent application in which the Republic of Serbia is designated;

17) national patent or petty patent application is patent or petty patent application filed according to this Law with the competent authority;

18) national patent or petty patent is a patent or petty patent granted under the national patent or petty patent application;

19) certificate means the supplementary protection certificate granted for medicinal products intended for humans or animals or plant protection products;

20) medicinal product means any substance or combination of substances presented for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals;

21) basic patent means a patent which is in the request for the grant of certificates is determined by the owner of a patent which protects a product referred to in Article 113, paragraph 2 of this Law, the procedure for obtaining a product or application product;

22) plant protection product is active substance or preparation containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

(1) protect plants or plant products against all harmful organisms or prevent the action of such organisms,

(2) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);

(3) protection of plant products during storage, which is applied before or after harvest or picking except preservatives;

(4) destroy undesirable plants or destroy parts of plants, check or prevent undesirable growth of plants;

23) substance is chemical element and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;

24) active substance is substance or micro-organism, having general or specific action against harmful organisms, on plants, parts of plants or plant products;

25) preparation means mixture or solution composed of two or more substances intended for use as a plant protection product or as an adjuvant;

26) plants means live plants and live parts of plants, including fresh fruit, vegetables and seeds;

27) plant products means products of plant origin in an unprocessed state or having undergone only simple preparation, such as milling, drying or pressing, but excluding plants;

28) harmful organisms means any species, strain or biotype belonging to the animal kingdom or plant kingdom or pathogenic agent injurious to plants or plant products;

## 2. Right to a Protection of an Invention

### *Entitlement to a Protection*

#### Article 3

The right to protection of an invention belongs to the inventor or his successor in title, or in cases prescribed by this Law, to employer or his successor in title.

If an invention is the result of the joint effort of a number of inventors they have a joint right to protection. A person rendering technical assistance to an inventor shall not be considered to be an inventor.

If two or more persons have filed an application for a protection of the joint invention, it shall be considered, unless otherwise stipulated by them, that their aliquot parts are equal.

Appropriate provisions of the law regulating obligations and proprietary right shall apply to those issues concerning the mutual legal relations between two or more titular's of rights on the joint invention, that are not provided for by this Law.

If two or more persons have made an invention independently of each other, the right to protection of invention therefore shall belong to the person whose patent or petty patent application has the earliest date of filing.

Persons employed by the competent authority have no right to protection of their inventions neither while they are employed by the competent authority, nor one year after the termination of such employment.

### *Entitlement of Foreigners to a Protection of an Invention*

#### Article 4

Foreign natural and legal person who has no seat or residence in the Republic of Serbia, shall, in relation to the protection of invention in the Republic of Serbia, enjoy the same rights as domestic natural and legal person, where such treatment derives from international treaties binding the Republic of Serbia.

### *Representation*

#### Article 5

In proceedings before the competent authority, a foreign natural or legal person who has no seat or residence in the Republic of Serbia must be represented by a representative listed in the Register of Representatives kept by the competent authority or domestic attorney.

Notwithstanding the provisions of paragraph 1 of this Article, a foreign natural or legal person may act individually for the following actions:

- 1) file an application and perform other actions for the purposes of the accordance of the filing date of application;
- 2) receive notification by the competent authority referred to in procedure under item 1 of this paragraph;
- 3) pay fees and procedural costs.

In the case of taking actions referred to in paragraph 2 of this Article a foreign natural or legal person must appoint a representative for correspondence who has address in the territory of Republic of Serbia.

If a foreign natural or legal person does not appoint a representative or representative for correspondence in accordance with the provisions of paragraph 3 of this Article, the competent authority shall invite him in writing to appoint a representative or representative for correspondence and call his attention to the legal consequences to failure to proceed as requested within three months from the receipt of the invitation.

If a foreign natural or legal person fails to comply with invitation of the competent authority referred to in paragraph 4 of this Article, the competent authority shall render a conclusion rejecting his submission and providing for the delivery by public notice on the notice board of the competent authority.

Notwithstanding the provisions of paragraph 1 of this Article, the fee for the maintenance of the rights arising from the application and granted right may be paid by any person on behalf of the applicant or right holder.

### *Rights of the Inventor*

#### Article 6

The inventor shall have the right to be designated as such in the application for a protection of an invention, specifications, registers, certificates and publications related to his invention, in the accordance with the provisions of this Law (hereinafter: Moral Rights).

The inventor shall have the right to enjoy economic benefits from the invention for which he has filed an application or for which the patent or petty patent has been granted (hereinafter: Pecuniary Rights).

The rights of an inventor who came up with an invention within the course of employment and the rights of the employer with whom the invention has been made, shall be governed by this Law, by general rules of law and by contract concluded between the employer and employee or between their representatives.

## II PATENTABILITY

### *Patentable inventions*

#### Article 7

A patent is a right granted for an invention in any field of technology, which is new, involves an inventive step and is susceptible of industrial application.

The subject matter of an invention protected by a patent may be a product, a process, use of a product and use of a process.

In accordance with paragraph 1 of this Article, patent shall be granted for an invention for a product consisting of or containing biological material, or the process of which biological material is produced, processed or used, including:

- 1) a biological material isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature;
- 2) plants or animals, if the technical feasibility of the invention is not confined to a particular plant or animal variety;

3) a microbiological or other technical process or a product obtained by means of such a process.

Within the terms of this Law, biological material means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

The following, in particular, shall not be regarded as inventions, within the terms of this Law:

- 1) discoveries, scientific theories and mathematical methods;
- 2) a esthetic creations;
- 3) schemes, rules and methods for performing mental acts, playing games or doing business;
- 4) computer programs, and
- 5) presentations of information.

Subject matter or activities referred to in paragraph 5 of this Article shall exclude from patentability only to the extent to which the application for a patent relates to the subject matter or activity as such.

### *Human Body and its Elements*

#### Article 8

The human body, at any stage of its formation and development, and the simple discovery of one of its elements, including sequences or partial sequences of genes, shall not be regarded as invention that can be protected by a patent.

An element isolated from the human body or produced by means of a technical process, including the sequences or partial sequences of genes, may be patentable, even where the structure of that element is identical to that of a natural element.

The industrial application of a sequence or partial sequence of a gene must be disclosed in the patent application on the day of its filing.

### *Exceptions to Patentability*

#### Article 9

Patent or petty patent shall not be granted in respect of:

1) inventions whose commercial use would be contrary to public order or morality providing that the use shall not be considered contrary to public order or morality only because it is prohibited by law or any other regulation, particularly in respect of:

- (1) processes for cloning human beings;
- (2) processes for modifying of the genetic identity of germ cells of human beings;
- (3) uses of human embryos for industrial or commercial purposes;
- (4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;

2) inventions concerning methods for treatment by surgery or diagnostic methods or therapy practiced directly on the human or animal body, provided that this provision shall not apply to products or substances and compositions for use in any of these methods;

3) a plant or animal variety or an essentially biological process for the production of a plant or animal, provided that this provision shall not apply to microbiological processes or the products obtained by means of such process.

Plant variety referred to in item 3) of paragraph 1 of this Article means any plant grouping within a single botanical classification of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant breeders' rights are fully met, can be:

1) defined by the expression of the characteristics that results from a given genotype or combination of genotype,

2) distinguished from any other plant grouping by the expression of at least one of the said characteristics,

3) considered as a unit with regard to its suitability for being propagated unchanged;

Essentially biological process referred to in item 3) paragraph 1. of this Article for the production of plants or animals is a process consists entirely of natural phenomena such as crossing or selection;

Microbiological process referred to in item 3) paragraph 1. of this Article means any process involving or performed upon or resulting in microbiological material .

### III CONDITIONS FOR THE PROTECTION OF AN INVENTION

#### *Novelty*

#### Article 10

An invention shall be new if it does not form part of the state of the art.

Within the terms of this Law, the state of the art shall comprise:

1) everything made available to the public by means of written or oral description, by use or in any other way, prior to the date of the filing of an application for a protection of an invention;

2) the content of all applications in the Republic of Serbia as filed, with the filing date preceding the date referred to in the item 1) of this paragraph and published on or after that date, in the manner prescribed by this Law.

The provisions of paragraphs 1 and 2 of this Article shall not exclude the possibility for patent protection of substances or compositions included in the state of the art, for use in a method of treatment by surgery or diagnostic method or therapy under Article 9. paragraph 1. item 2) of this Law, provided their use for these methods is not comprised in the state of the art.

The provisions of paragraphs 1 and 2 of this Article shall also not exclude the possibility for patent protection of substances or compositions referred to in paragraph 3 of this Article for any specific use in a method of treatment by surgery or diagnostic method or therapy under Article 9 paragraph 1 item (2) of this Law, provided such use for these methods is not comprised in the state of the art.

#### *Non-prejudicial Disclosure of the Invention*

#### Article 11

An invention which was already part of the state of the art for a period of up to six months before the filing of the application shall also be deemed to be new, if its disclosure was due to or was a consequence of:

1) evident abuse in relation to the applicant or his legal predecessor;

2) the invention being displayed by the applicant or his legal predecessor at an official, or officially recognized exhibition, falling within the terms of the Convention on International

Exhibitions, signed in Paris on 22 November 1928, and last revised on 30 November 1972, provided that the applicant states, when filing the application, that the invention was exhibited and that he provides an appropriate certificate to support this statement within a period of four months from the filing date of the application.

The certificate that an exhibition or a fair in the Republic of Serbia was of an officially recognized international character shall be issued by the Chamber of Commerce of the Republic of Serbia.

The competent authority shall prescribe the particulars of the content of the certificate under paragraph 1 item 2) of this Article.

### *Inventive Step of the Invention*

#### Article 12.

An invention shall be considered to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the appropriate art.

In examining whether an invention involves an inventive step, the content of applications referred to in Article 10, paragraph 2, item 2) of this Law shall not be considered.

### *Industrial Application*

#### Article 13.

An invention shall be considered to be susceptible of industrial application if its subject matter can be made or used in any kind of industry, including agriculture.

## IV CONTENT, ACQUISITION AND SCOPE OF RIGHT

### *Content of Right*

#### Article 14

The owner of a patent or petty patent shall have the exclusive right to:

- 1) use the protected invention in production;
- 2) place on the market products made by the protected invention;
- 3) dispose of the patent or petty patent.

In exercising his exclusive right to the commercial use of a protected invention, the owner of a patent or petty patent shall have the right to prevent any third party not having his consent from:

- 1) making, offering for sale, placing on the market or using the product made by means of the protected invention or from importing or storing the product for such purposes;
- 2) using the patented process;
- 3) offering the patented process for sale;
- 4) producing, offering for sale, placing on the market, using, importing or storing for such purposes a product directly obtained by the patented process;
- 5) offering for sale or supplying products that constitute essential elements of an invention to parties unauthorized to use such invention, if the offerer or supplier knows or has

demonstrable grounds to know that such products are intended for the use of an invention owned by someone else.

### *Content of Right of the Patents in the Field of Biotechnology*

#### Article 15

If the patent concerns biological material possessing specific characteristics which are the result of a biotechnological invention, the rights laid down in Article 14, paragraph 2 of this Law, shall extend to any biological material derived from that biological material through propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

If the patent concerns a product containing or consisting of genetic information, the rights laid down in Article 14, paragraph 2 of this Law shall extend to all other material in which the product is incorporated, provided it contains genetic information that performs its function, except the human body at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene in which the product is incorporated, provided it contains genetic information that performs its function.

If the patent concerns a process that enables a production of biological material possessing specific characteristics as a result of the biotechnological invention, the rights laid down in Article 14, paragraph 2 of this Law shall also extend to biological material directly obtained through the process and to any other biological material derived from the directly obtained biological material through propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

Within the terms of this Law, biotechnological inventions are inventions which concern a product consisting of or containing biological material or a process by means of which a biological material is produced, processed or used.

### *Biological Material Obtained from the Propagation or Multiplication*

#### Article 16

The protection referred to in Article 15 of this Law shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market by the owner of the patent or with his consent, where the propagation or multiplication necessarily results from the application for which the biological material has been marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

### *Acquisition of Right*

#### Article 17

A patent or petty patent shall be obtained on publication of the mention of its grant in the Official Gazette issued by the competent authority (hereinafter: Official Gazette) and shall have effect as of the filing date of the application.

## *Provisional Rights*

### Article 18

The applicant shall be conferred provisional rights, the content of which shall be identical to those of a patent on publication of a patent application, and which shall be valid from the date of publication of the application to the date of publication of mention of the grant of a patent.

In the case that a patent is not granted, the rights arising from the application shall be deemed not to have existed.

## *Scope of Protection of Provisional Rights*

### Article 19

The scope of protection conferred by an application in the period up to the grant of a patent shall be determined by the content of the claims in the application published in accordance with this Law.

If a patent is granted with claims that have been amended during the procedure, the amended claims shall determine the scope of protection conferred by the application, provided they do not go beyond the protection referred to in paragraph 1 of this Article.

## *Scope of protection conferred by a patent or petty patent*

### Article 20

The scope of protection conferred by a patent or petty patent shall be determined by the content of the claims, whereby the description and drawing shall be used to interpret the claims.

If the subject matter of a patent is a process, the rights conferred by the patent shall extend to the product directly obtained by such process.

## V LIMITATION OF RIGHTS

### *Exceptions to Exclusive Rights*

### Article 21

The exclusive rights of a right holder referred to in Articles 14 and 15 of this Law shall not apply to:

- 1) the use of an invention or the use of products made by means of the invention for personal, non-commercial purposes;
- 2) research and development activities relating to the subject matter of a protected invention, including activities that are necessary for obtaining an authorization from the competent authority for placing on the market a product which is a drug intended for use on humans or animals, or a medicinal product or plant protection products defined by the law regulating plant protection products ;

3) the direct, individual preparation of a drug in a pharmacy based on a single prescription, and to the placement of such drug on the market.

The provisions of paragraph 1 shall apply only if they do not conflict with normal exploitation of the patent or petty patent, and do not unreasonably prejudice the legitimate interests of right holders, taking into account the legitimate interests of third parties.

#### *Exhaustion of Rights of the Right Holder*

##### Article 22

If a protected product is placed on the market in the territory of the Republic of Serbia by the right holder or with his consent, the person coming into possession of such product may use and dispose of it freely.

#### *The Right of Prior User*

##### Article 23

A patent or petty patent shall have no effect against a person acting in good faith who has, before the date of priority, already started exploiting a protected invention in production in the territory of the Republic of Serbia, or has made all necessary preparations to initiate such use.

The person referred to in paragraph 1 of this Article shall be entitled to continue exploiting the invention exclusively for production purposes, in his own plant or in the plant of another person for his own needs.

The person referred to in paragraph 1 of this Article cannot assign his right to exploitation of the invention to another person, except together with the enterprise or part of the enterprise in which the preparation for use or the use of the invention has taken place.

#### *Limitation of Rights to Facilitate International Traffic*

##### Article 24

A patent or petty patent shall have no effect against a person who uses devices made on the basis of a protected invention where such devices constitute an element in the structure or equipment of a vessel, aircraft or land vehicle or which serve exclusively for the operation of such vessel, aircraft or land vehicle belonging to a Member State to the Paris Union or member of the World Trade Organization (hereinafter: WTO) when it enters the territory of Republic of Serbia temporarily or accidentally.

#### *Limitation of Rights Concerning Biological Material*

##### Article 25

By acquiring protected plant propagating material from the owner of a patent or with his consent, a farmer shall obtain authorization to use the product of said propagating material for further propagation or multiplication on his own farm, under conditions prescribed by the law on the protection of, plant breeders' rights. whereas products obtained thereby may not be used for commercial purposes.

By acquiring protected animal reproductive material or breeding stock from the owner of a patent or with his consent, a farmer shall obtain authorization for use protected livestock or for

reproductive material for the purpose of his own agricultural activities, but not for sale within the framework or for the purpose of a commercial reproduction activity.

### *Compulsory License*

#### Article 26

If the right holder refuses to license the right of commercial use of a protected invention to other persons or sets unreasonable conditions for such licensing, the government authority competent in the field in which the invention shall be employed may, at the request of an interested party after considering the merits of each individual case, grant a compulsory license, in the following cases:

1) if the right holder himself or a person authorized by him does not use the protected invention or uses it insufficiently in the Republic of Serbia;

2) if the commercial use of an invention that has been subsequently protected in the name of another person is not possible, without the use of the protected invention in whole or in part;

3) when it is necessary to remedy a practice determined after judicial or administrative process to be anti-competitive

The request for the grant of a compulsory license cannot be filed before the expiration of a period of four years from the date of filing of the patent application or before the expiration of a period of three years from the grant of the patent or petty patent, whichever period expires last.

Before making a request under the paragraph 1 of this Article the interested person shall be required to prove that he has made efforts to obtain authorization for the use of the protected invention from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.

The interested person, referred to in paragraph 1, item 1) of this Article, may only be a person who proves that he has the appropriate technological capacity and production facilities for the commercial use of the protected invention.

The interested person referred to in paragraph 1, item 2) of this Article may only be the right holder of the second invention, under the following conditions:

1) that the second invention involves a technical advancement of special economic significance in relation to the first protected invention and that

2) the owner of the first invention is entitled, on reasonable terms, to a cross-license to use the second invention.

Authorization for the use of the earlier protected invention shall be non-assignable except with the assignment of the second patent.

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

Provisions of paragraphs 2. and 3. of this Article shall not apply to compulsory license granted when the public emergency endangers the survival of the state or its citizens or in cases of public non-commercial use.

Holder of patent shall be promptly informed on the procedure on granting compulsory license referred to in paragraph 8. of this Article.

In the case of semi-conductor technology, a compulsory license may be granted only in cases of public non-commercial use or when it is necessary to remedy a practice determined after judicial or administrative process to be anti-competitive.

## *Remuneration to the Right Holder*

### Article 27

The holder of a compulsory license shall be required to pay the right holder a mutually agreed remuneration. In the absence of an agreement on the amount and method of payment of such remuneration, the competent court shall decide, taking into account the merits of each individual case and the economic value of the compulsory license.

## *Scope and Duration of Compulsory License*

### Article 28

The scope and duration of a compulsory license shall be limited to the purpose for which it has been granted.

A compulsory license shall not be exclusive.

A compulsory license may be assigned only with the manufacturing plant that exploits the invention for which the license has been granted.

A compulsory license shall predominantly be granted for the supply of the domestic market.

A compulsory license may be terminated if and when circumstances that have led to its grant cease to exist and are unlikely to recur.

On reasoned request, the government authority competent in the field in which the invention shall be employed shall re-examine the further existence of circumstances referred to in paragraph 5 of this Article.

## *Compulsory License Granted to Plant Breeders*

### Article 29

Where a plant breeder cannot obtain or exploit a protected plant breeders' rights without infringing a prior patent concerning a biotechnological invention, he may file the request for the grant of a compulsory license to the government authority competent for the Agriculture for the use of the invention protected by the patent.

The compulsory license referred to in paragraph 1 shall not be exclusive and such license shall be issued in the scope which is necessary for the exploitation plant breeders' rights.

If such a license is granted, the owner of the patent shall be entitled to a compulsory cross-license to use the protected plant breeders' rights on reasonable terms.

Where the owner of a patent concerning a biotechnological invention cannot exploit it without infringing a prior protected plant breeders' rights, he may file the request for the grant of a compulsory license to the government authority competent for the Agriculture, that cannot be exclusive, for the use of the plant breeders' right, under the condition that he pays an appropriate remuneration. If such a license is granted, the holder of the plant breeders' right will be entitled to a compulsory cross-license to use the protected biotechnological invention on reasonable terms.

A requester for the compulsory license referred to in paragraphs 1 and 4 of this Article must prove that:

- 1) he has unsuccessfully made efforts to obtain a contractual license;
- 2) the plant variety or the biotechnological invention constitutes significant technical advance of considerable economic interest compared with the invention claimed in the patent or the protected plant variety.

The compulsory license referred to in paragraphs 1 and 4 of this Article may only be assigned with the manufacturing plant that exploits the invention for which the license has been granted.

For compulsory license referred to in paragraph 1 and 4 of this Article, the licensee shall pay appropriate compensation.

*Compulsory Licenses of Patents Relating to the Manufacture of Pharmaceutical Products  
for Export to Countries with Public Health Problems*

Article 30

Government authority responsible for the Health, may grant a compulsory license in relation to patents and Supplementary Protection Certificates concerning the manufacture and sale of pharmaceutical products, when such products are intended for export to importing countries having public health problems to any person who submits a request in accordance with the provisions of this Law. In deciding to grant compulsory license the Government authority responsible for the Health will take particular into account the need for execution of decisions of the WTO Council on 30 August 2003 on the implementation of item (6) of the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health on 14 November 2001 (hereinafter: the Decision).

Pharmaceutical product specified in paragraph 1 of this Article means any product of the pharmaceutical industry including medicinal products for human use, by which is meant any substance or combination of substances presented as having properties for treating or preventing disease in human beings and any substance or combination of substances which may be used to human beings, for the purpose of restoring, correcting or adjustment physiological functions by exerting a pharmacological, immunological or metabolic action, or to make a medical diagnosis, including active ingredients and diagnostic kits *ex vivo*.

Importing country referred to in paragraph 1 of this Article is any country to which the pharmaceutical product is to be exported. The following are eligible importing countries:

- 1) any least-developed country appearing as such in the United Nations list;
- 2) any member of the WTO, other than the least-developed country members referred to in to item (1) of this paragraph, that has made a notification to the Council for TRIPS of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way;
- 3) any country that is not a member of the WTO, but is listed in the OECD Development Assistance Committee's list (hereinafter the OECD) of low-income countries with a gross national product per capita of less than amount established by the OECD Development Assistance Committee, and has made a notification to the Government of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way.

Any WTO member that has made a declaration that it will not use the system as the importing WTO member is not an eligible importing country.

Importing countries that are not WTO members, and that are the least developed countries and developing countries and that are meet the requirements referred to in paragraph 3 of this Article must fulfil following additional conditions:

1) the importing country is obliged to make the notification pursuant to the Decision directly to the Government;

2) the importing country is obliged, to state in the notification that it will use the system to address public health problems and not as an instrument to pursue industrial or commercial policy objectives and that it will adopt the measures referred to in paragraph 4 of the Decision;

Government authority responsible for the Health, may at the request of the right holder, or on its own initiative, terminate a compulsory license if the importing country has failed to honour its obligations referred to in paragraph 5 item 2) of this Article.

The request referred to in paragraph 1 of this Article must include:

1) information about the requirements for the grant of compulsory licenses in other states for the same product with details of the quantities and importing countries concerned;

2) data on the requester and of any representative whom he has appointed to act for him;

3) the non-proprietary name of the pharmaceutical product or products which the person who has filed the request for the grant of compulsory license intends to manufacture and sell for export under the compulsory license;

4) the amount of pharmaceutical product which the requester intends to produce under the compulsory license;

5) the importing country or countries;

6) evidence of prior negotiation with the right-holder pursuant to paragraph 11 of this Article;

7) evidence of a specific request from authorized representatives of the importing country or countries or a non-governmental organization acting with the formal authorization of one or more importing countries or UN bodies or other international health organizations, indicating the quantity of product required.

Government authority responsible for the Health, shall notify the right holder without delay of the requirement for a compulsory license and before the grant of the compulsory license shall give the right-holder an opportunity to comment on the request and to provide the competent authority with relevant information regarding the request.

When deciding on the request for the grant of compulsory license government authority responsible for the Health, shall verify that:

1) each importing country cited in the request which is a WTO member has made a notification to the WTO pursuant to the Decision, or each importing country cited in the request which is not a WTO member has made a notification to the Government pursuant to this Article in respect of each of the products covered by the request. The foregoing does is without prejudice to the flexibility that least developed countries have under the Decision of the Council for TRIPS of 27 June 2002;

2) the quantity of product cited in the request does not exceed that notified to the WTO by an importing country which is a WTO member, or to the Government by an importing country which is not a WTO member;

3) taking into account other compulsory licenses granted elsewhere, the total amount of product authorized to be produced for any importing country does not significantly exceed the amount notified by that country to the WTO, in the case of importing countries which are WTO members, or to the Government, in the case of importing countries which are not WTO members.

The person who has filed the request for the grant of compulsory license is obliged to specify the data prescribed in paragraph 9 of this Article in the request for the grant of compulsory license.

A compulsory license may only be granted if the requester provides the evidence that he has made efforts to obtain authorization from the right holder and that such efforts have not been successful within a period of thirty days before submitting the request.

The provision referred to in paragraph 11. of this Article shall not apply in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

*Compulsory License Conditions for Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems*

Article 31

A compulsory license may only be granted as a non-exclusive, its scope and duration must be indicated in the decision and they are related solely to the purpose for which a compulsory license was granted. The amount of products manufactured under the license shall not exceed what is necessary to meet the needs of the importing country or countries cited in the request, taking into account the amount of products manufactured under other compulsory licenses granted elsewhere.

A compulsory license may be assigned only with the manufacturing plant that exploits the invention for which the license has been granted.

The decision on the grant of a compulsory license shall contain the actions to which the person who has filed the request for the grant of compulsory license is entitled and which are necessary for the purpose of manufacturing the product in question for export and distribution in the country or countries cited in the request. No product made or imported under the compulsory license shall be offered for sale or put on the market in any country other than that cited in the application, except where an importing country avails itself of the possibilities under item 6(i) of the Decision to export to fellow members of a regional trade agreement that share the health problem in question.

The decision on the grant of a compulsory license shall require:

1) that the products made under the compulsory license must be clearly identified, through specific labelling or marking, as being produced under compulsory license, must be distinguished from those made by the rights-holder through special packaging and/or special colouring or shaping, provided that such distinction is feasible and does not have a significant impact on price,

2) the packaging and any associated literature must bear an indication that the product is subject to a compulsory license, giving the name of the authority that has granted the compulsory license and any identifying reference number, and specifying clearly that the product is exclusively for export to and distribution in the importing country or countries concerned,

3) details of the product characteristics shall be made available to the customs authorities of the Republic of Serbia.

The decision on the grant of a compulsory license shall require that the licensee shall before shipment to the importing country post on a website, about which the licensee shall notify the Government authority responsible for the Health, the following information:

1) the quantities being supplied under the compulsory license and the importing countries to which they are supplied;

2) the distinguishing features of the product or products concerned.

If the product covered by the compulsory license granted in the Republic of Serbia is protected by patent or petty patent in the importing countries cited in the request, the product shall only be exported if those countries have issued a compulsory license for the import, sale and/or distribution of the products.

The decision on the grant of a compulsory license shall require that licensee shall pay the remuneration to the right holder as determined as follows:

1) in the cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use, the remuneration shall be a maximum of 4 % of the total price to be paid by the importing country or on its behalf;

2) in all other cases, the remuneration shall be determined taking into account the economic value of the use authorized under the license to the importing country or countries concerned, as well as humanitarian and non-commercial circumstances relating to the issue of the license.

After the decision to grant a compulsory license becomes final, the authority which the Government authority responsible for the Health delegates competence may, on the proposal for the preservation of evidence, submitted by the right holder, access to books and records kept by the licensee, for the sole purpose of checking whether all obligations cited in the decision to grant compulsory license, and in particular those relating to the final destination of the products, have been met. The books and records shall include proof of exportation of the product, through a declaration of exportation certified by the customs authority, as well as evidence of import.

The license conditions are without prejudice to the method of distribution in the importing country.

### *Refusal of the Request to Grant a Compulsory License*

#### Article 32

The Government authority responsible for the Health shall refuse the request to grant a compulsory license if the request does not contain the elements necessary for taking the decision referred to in Article 30. of this Law or if the conditions to grant the license prescribed by Article 31. of this Law are not met.

### *Notification*

#### Article 33

The Government authority responsible for the Health shall notify the Council for TRIPS of its final decisions to grant compulsory license for patents relating to the manufacture of pharmaceutical products for export to countries with public health problems, of the specific conditions attached to it, as well as on its modification and termination.

The information provided shall include the following details of the license:

1) the name and address of the licensee;

2) the product concerned;

3) the quantity to be supplied;

- 4) the importing country;
- 5) the duration of the license;
- 6) the website referred to in Article 31 paragraph 5 of this Law.

### *Prohibition of Importation*

#### Article 34

The import of products manufactured under a compulsory license granted under the paragraph 30 of this Law for the purposes of release for free circulation, re-export, placing under suspensive procedures or placing in a free zone or free warehouse shall be prohibited into the Republic of Serbia.

Paragraph 1 of this Article shall not apply in the case of re-export to the importing country cited in the request and identified in the packaging and documentation associated with the product, or placing under a transit or customs warehouse procedure or in a free zone or free warehouse for the purpose of re-export to that importing country.

### *Action by Customs Authorities*

#### Article 35

If there are sufficient grounds for suspecting that products manufactured under a compulsory license granted pursuant to this Law are being imported into the Republic of Serbia contrary to Article 34 paragraph 1 of this Law, customs authorities shall suspend the release of, or detain the products concerned for the time necessary to obtain a decision of the Government authority responsible for the Health on the character of the imported products, not exceeding ten working days. If special circumstances apply, the custom authority may extend the period of the detention by a maximum of ten working days.

The right holder and the manufacturer or exporter of the products concerned shall be informed without delay of the detention of the products referred to in paragraph 1 of this Article and shall be given ample opportunity to supply the custom authority with information and evidence on the relevant products.

If it is confirmed in the period of the detention, violation of the compulsory license contrary to the prohibition of the Article 34 paragraph 1 of this Law, custom authority shall ensure that the products are seized and disposed of in accordance with customs regulations.

The procedure of detention or seizure of the goods shall be carried out at the expense of the importer in accordance with customs regulations and for the costs for the procedure of detention or seizure jointly with the importer is liable any other person who attempted illicit importation.

If the products detained by customs authorities are subsequently found not to violate the prohibition referred to in Article 34 paragraph 1 of this Law and if the customs regulations has been complied with, the custom authority shall release the products in the territory of the Republic of Serbia.

The custom authority shall inform the Government authority responsible for the Health of any decisions on seizure or destruction in accordance with this Article.

## *Exceptions to the Prohibition of Importation*

### Article 36

Articles 34 and 35 of this Law, shall not apply to import of small quantities of goods contained in travellers' personal luggage for personal and non-commercial use within the limits laid down in respect of relief from customs duty.

## *Termination or Modification of the Compulsory License*

### Article 37

Right holder or licensee may request from the Government authority responsible for the Health to terminate the compulsory license if it finds that the opposing party does not comply with license conditions. In a decision on the termination of a compulsory license, the Government authority responsible for the Health shall, in consultation with the right holder, set a period in which the licensee shall at its expense, redirect all the products that are in his ownership in the country with the need as referred to in Article 30 paragraph 9 of this Law or otherwise disposed.

If the importing country submits a notification that the quantity of pharmaceutical products has become insufficient to meet its needs, the licensee may require modification of conditions of the license permitting the manufacture and export of additional quantities of the product to the extent necessary to meet the needs of the importing country concerned.

Procedure on request referred to in paragraph 2 of this Article is urgent

If additional quantity of products does not exceed 25%, originally approved amount of pharmaceutical products in deciding on the request referred to in paragraph 2 of this Article the provisions of Article 30 paragraph 9 of this Law shall not apply.

## *Legal Protection*

### Article 38

The Government authority referred to in Articles 26, 29 and 30 of this Law shall take the decision on the grant of a compulsory license, refusal of the request to grant a compulsory license, modification and termination of the compulsory license.

Decisions of the Government authority referred to in paragraph 1 of this Article on the grant of a compulsory license, refusal of the request to grant a compulsory license, modification and termination of the compulsory license may be appealed with the Government within 15 days of receipt of the decision.

Administrative dispute proceedings may be instituted against the decision on the appeal rendered by the Government within 30 days from the date of the receipt of the Government's decision.

## VI TERM AND CESSATION OF RIGHT

### 1. Term and Maintenance of Right

#### *Term of Right*

##### Article 39

The term of a patent shall be 20 years from the filing date of the application.

The term of a petty patent shall be 10 years from the filing date of the application.

The term of a patent of addition cannot exceed that of the basic patent.

If a patent of addition becomes a basic patent, its term shall not exceed the remaining term of the basic patent.

#### *Maintenance of Right*

##### Article 40

Prescribed fees shall be paid for the maintenance of rights arising from the application and granted right.

The fee for the maintenance of rights arising from the application and the granted right may be paid by any person on behalf of the applicant or right holder.

The fees under paragraph 1 of this Article shall be paid in respect of the third year and each subsequent year, calculated from the date of filing of the application.

The fees under paragraph 1 of this Article for the divisional application shall be paid for the current and each subsequent year from the date of filing the original application.

If the applicant or the right holder fails to pay the fee referred to in paragraph 1 of this Article, the fee may be validly paid within an additional time period of six months, provided a prescribed additional fee is paid at the same time. The proof of payment of these fees must be submitted to the competent authority.

### 2. Cessation of Right

#### *Non-Payment of Fee*

##### Article 41

If the applicant or the right holder fails to pay the prescribed fee for the maintenance of rights and to submit the proof of payment of these fees, within the time limit referred to in the Article 40, such rights shall cease on the day following the due date referred to in Article 40 paragraph 3 of this Law.

In the case referred to in paragraph 1 of this Article, the competent authority shall pass a decision on termination of rights which is final and may be subject to administrative dispute before the competent court.

*Withdrawal of the Application and Waiver of Right*

Article 42

If an applicant files a declaration in writing with the competent authority withdraws his application, such right shall cease on the day following the filing of the declaration.

If any right belonging to a third party has been entered into the Register, the applicant cannot withdraw his right without prior written consent from the party in whose name a license, pledge or any other right has been entered.

In the case from paragraphs 1 and 2 of this Article, the competent authority shall render conclusion to suspend the procedure.

If a right holder files a declaration in writing with the competent authority waiving his right, such right shall cease on the day following the filing of the declaration.

If any right belonging to a third party on the patent or petty patent has been entered into the Register, the owner of the patent or petty patent cannot waive his right without prior written consent from the party in whose name a license, pledge or any other right has been entered.

In the case from paragraphs 4 and 5 of this Article, the competent authority shall adopt decision which is final and may be subject to administrative dispute before the competent court.

*Death or Dissolution of a Right Holder or applicant*

Article 43

A right shall cease to exist on the day of the death of a natural person or on the day of the dissolution of a legal person who is the owner of the patent or petty patent, unless it has been transferred to heirs or successors in title.

In the case from paragraph 1 of this Article, the competent authority shall render decision on termination of rights which is final and may be subject to administrative dispute before the competent court.

Paragraph 1 of this Article shall apply accordingly to applicant who has died or ceased to exist in the grant procedure of the patent.

In the case from paragraphs 3 of this Article, the competent authority shall render conclusion to suspend the procedure.

VII TRANSFER OF RIGHTS

Assignment

Article 44

The assignment of right to file the application, rights arising from the application, right on patent or petty patent may be either in whole or in part the consequence of an assignment contract, a change of status of the applicant or right holder, as well as inheritance, court or administrative decision.

The assignment of rights under paragraph 1 of this Article shall be entered into the appropriate register of the competent authority upon the request of the right holder, applicant or assignee.

The entry of the assignment referred to paragraph 1 of this Article into the appropriate register of the competent authority, shall produce legal effect in relation to third parties.

The entry of the assignment referred to in paragraph 1 of this Article into the appropriate register of the competent authority shall be subject to a special decision.

On issues related to the contract on transfer of rights that is not regulated by this Law shall be subject to regulations regulating obligations.

### *Content of the Assignment Contract*

#### Article 45

The applicant or right holder may transfer rights arising from the application, right on patent or petty patent by the assignment contract under Article 44 paragraph 1 of this Law.

The assignment contract under paragraph 1 of this Article shall be drawn up in writing and it shall contain: the date of signing the agreement, name and surname or business name, domicile or residence or seat of the contractual parties, the patent or petty patent registration number, the number of the application, as well as the amount of fee, if stipulated.

### *License*

#### Article 46

The rights arising from the application, right on patent or petty patent may be with or without restrictions transferable by the license contract.

If two or more persons are right holders referred to in paragraph 1 of this Article on the same invention, the consent of all is necessary for concluding contractual license, unless otherwise stipulated by them.

The license contract under paragraph 1 of this Article shall be in writing and shall contain: the date of signing the agreement, name and surname or business name, domicile or residence or seat of the contractual parties, the patent or petty patent registration number, the number of the application, the term of validity of the license and the scope of the license.

The license contract under paragraph 1 of this Article shall be entered into the appropriate register with the competent authority at the request of the right holder, applicant or licensee.

The entry of the license contract under paragraph 1 of this Article into the appropriate register of the competent authority shall produce effect in relation to third parties.

The entry of the license agreement under paragraph 1 of this Article into the appropriate register of the competent authority shall be subject to a special decision.

Any issue related to the license contract that is not regulated by this Law shall be subject to regulations regulating obligations.

### Right of Pledge

#### Article 47

The patent, petty patent or right arising from the application may be the subject of a pledge on the basis of a pledge contract, court decision and decision by other state authority.

The pledge contract under paragraph 1 of this Article shall be drawn up in writing and shall contain: the date of signing, name and surname or business name, domicile or residence or the seat of the pledgee and pledger, as well as the debtor, if they are not the same person, the patent or petty patent registration number, the number of the patent or petty patent application and data about the claim secured by possessory lien.

The pledge under paragraph 1 of this Article shall be entered into the appropriate register of the competent authority upon the request of the right holder, applicant or pledgee.

The following data shall be entered into the register of the competent authority, and in particular: data on the pledger and debtor, when they are not the same person, as well as data on the pledgee, the patent or petty patent registration number, the number of the patent or petty patent application; data on the claim secured by possessory lien including a designation of the basic and the maximum amount.

In the register of the competent authority shall be entered also any changes of the data referred to in paragraph 4 of this Article.

The entry of the pledge under paragraph 1 of this Article into the appropriate register of the competent authority shall be subject to a special decision.

The pledgee shall acquire possessory lien upon entry into the appropriate register of the competent authority.

Any issue related to the pledge that is not regulated by this Law shall be subject to regulations regulating non-possessory pledge, ownership rights and obligations.

The competent authority shall prescribe the particulars of the type of data under paragraph 4 of this Article to be entered into the register of the competent authority.

#### *Procedure for the Entry of Assignment, License and Pledge into the Register*

#### Article 48

The procedure for the entry of an assignment, license and pledge into the register shall be initiated by written request.

The request under paragraph 1 of this Article shall include in particular: the patent or petty patent registration number or the patent or petty patent application number, data on the right holder or applicant, a designation specifying that registration is sought of the assignment of the patent or petty patent, or the rights arising from the application or a designation of the rights whose registration is sought.

The request under paragraph 1 of this Article shall be filed with the following:

- 1) evidence of legal title for the requested entry;
- 2) power of attorney if the procedure for the registration of the assignment, license or pledge is initiated through the representative;
- 3) proof of payment of the fee for the decision rendered on the request for the registration of the assignment, license or pledge.

The entry of the assignment of several patents or petty patents or applications into the register may be requested on the basis of a single request referred to in paragraph 1 of this Article, provided that the earlier right holder and the new right holder are the same in respect of every patent or petty patent or application and that the registration numbers or application numbers are designated in the request.

The entry of a license or a pledge in respect of several patents or petty patents or applications into the register may be requested on the basis of a single request referred to in

paragraph 1 of this Article, provided that the right holder, the licensee or pledgee are the same in respect of each patent or petty patent or application, and that the registration numbers or application numbers are designated in the request.

The competent authority shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the attachments to be filed with the request, and their content.

*Examination of the Request for Entry of Assignment, License and Pledge into the Register*

Article 49

A request for the entry into the register of an assignment, license or pledge shall be admissible if it contains the data referred to in Article 48 of this Law.

If the request for the entry into the register of the assignment, license and pledge is not admissible, the competent authority shall invite the requester in writing to remedy the deficiencies within the two month from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the register of an assignment, license or pledge and upon payment of the prescribed fee, the competent authority shall extend the time limit referred to in paragraph 2 of this Article, for a time period considered to be justified, but not exceeding two months.

If the person who has filed the request for entry into the register fails to proceed as requested within the set time limit, the competent authority shall render a conclusion rejecting the request.

*Deciding on the Request for Entry of Assignment, License and Pledge into the Register*

Article 50

If the request for the entry into the register of an assignment, license or pledge is admissible pursuant the Article 49 of this Law, the competent authority shall examine whether the legal title on which the request is based on, comply with the requirements prescribed by the Law for the entry of an assignment, license or pledge into the register.

If there is no legal basis to decide on the request for the entry of an assignment, license and pledge into the register or if the data arising from the request do not match the data in the registers, the competent authority shall notify in writing the requester about the reasons due to which the entry into the register cannot be granted and shall invite him to submit his observations regarding the reasons, within two month from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the register of an assignment, license or pledge and upon payment of the prescribed fee, the competent authority shall extend the time limit referred to in paragraph 2 of this Article, for a time period considered to be justified, but not exceeding two months.

The competent authority shall render a decision refusing a request for the entry of an assignment, license or pledge into the register, if the requester fails to submit his observations, within the set time limit, regarding the reasons for which the entry into the register cannot be approved, or if he submits his observations but the competent authority still considers that registration cannot be approved.

## VIII INVENTIONS OF IMPORTANCE FOR DEFENCE AND SECURITY OF REPUBLIC OF SERBIA

### *Secret Application*

#### Article 51

An application filed by a national of Republic of Serbia which is found to be important for the defence or security of the Republic of Serbia is considered to be secret application.

Application under paragraph 1 of this Article shall be filed with the authority competent in national defence.

### *Procedure in Respect of the Application*

#### Article 52

If the competent authority estimates in its examination of a patent or petty patent application that it falls under the category to be important for the defence or security of the Republic of Serbia it shall forward application to the authority competent in national defence, and such application shall retain the filing date accorded to it by the competent authority.

If the authority competent in national defence finds in its examination of an application filed that is not secret, it shall forward the application to the competent authority within three months from the reception of the application referred to in paragraph 1 of this Article.

If an application has ceased to be secret, authority competent in national defence shall forward such application to the competent authority without delay. Such application shall retain the filing date accorded to it by the competent authority.

### *Expert Opinion*

#### Article 53

In the examination of an application for a secret invention, the authority competent in national defence may request an expert opinion from the competent authority on whether the secret invention claimed in the application fulfils legal requirements for protection of patent or petty patent.

The competent authority shall prescribe the particulars of the expert opinion under paragraph 1 of this Article.

### *Secret invention*

#### Article 54

A secret invention shall not be published.

A national of Republic of Serbia may claim protection for a secret invention abroad only on approval of the authority competent in national defence.

Any issue related to the method, procedure and protection measures of a secret invention before the authority competent in national defence shall be subject to regulations regulating national defence of the Republic of Serbia.

### *Procedure Following the Grant of Right*

#### Article 55

If the authority competent in national defence establishes, upon the grant of a patent or petty patent for a secret invention, that the invention has ceased to be secret, it shall forward the file concerning the invention to the competent authority, which shall enter the patent or petty patent into the appropriate Register, publish the mention of the granted right and issue a corresponding certificate to the right holder, in accordance with the provisions of this Law.

### *Right to Use*

#### Article 56

The authority competent in national defence or in internal affairs shall have the exclusive right to use and dispose of a secret invention.

Any issue related to inventor's right to the remuneration for the protected secret invention shall be subject to regulations regulating national defence of the Republic of Serbia.

## IX INVENTIONS MADE IN THE COURSE OF EMPLOYMENT

### *Definition of Invention Made in the Course of Employment*

#### Article 57

An invention shall be considered to have been made in the course of employment if it constitutes:

1) an invention made by an employee in the course of his regular duties or specially assigned tasks concerning scientific and technical research and development, as well as an invention made under a research contract concluded with the employer;

2) an invention which does not fall under the provisions of item 1) of this Article but is made by an employee related to the activities of his employer or with the use of material and technical facilities, information and other conditions provided by the employer;

3) an invention made by an employee within a period of one year from the termination of his employment, which would be an invention under items 1) or 2) of this Article if it had been made during the employment.

### *Employer's Right to Protection of Invention Made in the Course of Employment*

#### Article 58

The right to the protection of an invention pursuant to Article 57, item 1) shall belong to the employer, unless otherwise provided by contract between the inventor and employer.

If an invention made in the course of employment has been protected in the name of the employer, the inventor shall have moral rights related to the invention and shall be entitled to remuneration depending on the effects of the commercial use of the invention.

The right to remuneration referred to in paragraph 2 of this Article shall belong to the inventor even if the employer assigns his rights or license to the third party a use of the protected invention.

*Employee's Right to Protection of Invention Made in the Course of Employment*

Article 59

The right to protection of an invention under Article 57, item 2) shall belong to the employee provided that the employer shall be entitled to commercial use of the invention and shall be obliged to pay the employee remuneration in accordance with a contract concluded with regard to the specific invention.

Notwithstanding the provisions of paragraph 1 of this Article, if the invention includes any trade secret of the employer for whom the inventor works, that employer shall be entitled to prohibit the disclosure of the invention, but shall be required to pay remuneration to the employee and the employee shall not be entitled to a protection of invention.

*Remuneration to the Employee*

Article 60

Criteria for determining the amount of remuneration and the method and time of payment thereof shall be established by a general act or a labour agreement between the employer and the employee or by a special agreement concluded between the employer and employee with regard to the specific invention.

In case of dispute regarding the amount, method and time of payment of the remuneration, the court shall decide, on request of the inventor or employer taking into account the extent to which the invention contributed to the increase of profits or savings within the enterprise.

The employee cannot waive his right to remuneration in advance.

*Acts of Employee*

Article 61

Employee who comes up with an invention in the course of employment shall be required to submit a written report to the employer immediately upon the creation of the invention, informing him thereof.

If the report referred to in paragraph 1 of this Article does not contain the prescribed elements, the employer shall set an appropriate time limit for the employee to remedy deficiencies thereof.

The competent authority shall prescribe the particulars of the content of the report referred to in paragraph 1 this Article.

## *Notification to Employee*

### Article 62

Within a period of two months from the receipt of the admissible report referred to in Article 61 of this Law, the employer shall be required to notify the employee in writing whether he considers the invention to be an invention referred to in Article 57, items 1) and 2) of this Law.

If the employee fails to deliver the report referred to in Article 61 of this Law to the employer, the time limit under paragraph 1 of this Article shall run from the date on which the employer gained knowledge of the invention.

## *Acts of Employer and Employee after the Notification*

### Article 63

When dealing with an invention referred to in Article 57, item 1) of this Law, the employer shall be required to inform the employee in the notification referred to in Article 62 paragraph 1 of this Law whether he shall file an application.

If the employer informs the employee, that he shall file an application, referred to in paragraph 1 of this Article, he shall file an application within six months from the date of the receipt of the notification referred to in Article 62 paragraph 1 of this Law and be required to inform the inventor of the content of the application prior to its filing, of all actions taken by the competent authority in the examination of the application and of the content of all documents filed with the competent authority prior to their filing, and the inventor shall be required to provide the employer with all information needed in the invention grant procedure.

If the employer does not wish to file an application and assess that the invention contains no trade secrets within the meaning of Article 59 paragraph 2 of this Law, he shall notify the inventor in writing, within the time limit referred to in Article 62 paragraph 1 of this Law, to the inventor who shall be entitled to protect such invention in his own name.

If the employer does not file an application within time limit referred to in paragraph 2 of this Article and assess that the invention contains no trade secrets within the meaning of Article 59 paragraph 2 of this Law, he shall notify the inventor in writing, without delay, to the inventor who shall be entitled to protect such invention in his own name.

If the employer assess that the invention contains trade secrets and decides not to file an application, he shall notify, within the time limit referred to in Article 62. paragraph 1 of this Law, the inventor in writing,

In the case referred to in paragraph 5 of this Article the employee shall not be entitled to protect such invention but he shall be entitled to remuneration from the employer.

If the employer decides to withdraw filed application or to waive the granted right, he shall notify the inventor in writing and shall assign to him rights arising from the application or the granted right.

In the case of failure to observe the time limit provided in Article 62 paragraph 1 of this Law, the inventor shall be entitled to protect the invention in his own name.

An employee who makes an invention pursuant to Article 57, paragraph 1, item 2) of this Law cannot file an application with the competent authority before he receives the notification referred to in Article 62 of this Law from the employer or before the expiry of the time limit for such notification.

If the employee referred to in paragraph 9 of this Article decides to withdraw a filed application, he shall notify to the employer in writing and shall assign to him rights arising from the application.

### *Employer's Right to Obtain an Exclusive License*

#### Article 64

With regard to the use of an invention protected in the name of the inventor, the employer is obliged to state, within a period of six months from the receipt of the admissible report on the invention under Article 61 of this Law, whether he is interested in obtaining an exclusive license from the inventor.

Until the expiry of the time limit referred to in paragraph 1 of this Article, the inventor shall not be entitled to assign the right to the invention to a third party or to license the use of the invention.

### *Use of an Invention Made in the Course of Employment*

#### Article 65

The use of an invention made in the course of employment cannot be initiated before the regulation of remuneration issue under Article 60 of this Law is settled or before the court takes a final decision.

In the case of commercial use of the invention under the Article 63 paragraphs 3, 4 and 5 of this Law, articles 59 and 64 of this Law, shall apply accordingly.

### *Requirement of Secrecy*

#### Article 66

The employer and inventor shall be required to maintain the secrecy of an invention made within the course of employment until the publication of the patent application or granted petty patent or until the invention becomes available for public inspection in some other manner.

If the employer displays justifiable interest in the invention not being published, the obligation of the employee to keep the secret shall continue upon the termination of his employment with that employer.

## X PROCEDURE FOR THE PROTECTION OF AN INVENTION

### 1. Common Provisions

#### *Legal Protection of an Invention*

#### Article 67

The legal protection of an invention shall be attained within the course of an administrative procedure conducted by the competent authority.

The conclusion of the competent authority pursuant to the provisions of of this Law may not be appealed, unless this Law provides otherwise.

The decisions of the competent authority pursuant to the provisions of this Law may be appealed with the Government within 15 days from the receipt of the decision, unless this Law provides otherwise.

Government decision on the appeal is final and administrative dispute proceedings may be instituted against such decision within 30 days from the date of receipt of the Government's decision.

### *Availability of Application*

#### Article 68

During the invention grant procedure, the competent authority shall not make an application available for inspection to any person or body, before the application has been published, except in the cases referred to in Article 52 paragraph 1 of this Law.

The competent authority shall make available for inspection applications referred to in paragraph 1 of this Article in the presence of an official on written request of the applicant or the person having his authorization.

Upon the written request of the applicant or authorised person subject to submission of the proof of the prescribed costs, the competent authority shall make available the copies of the documents and the files of patent applications referred to in paragraph 1 of this Article.

### *Fees and Procedural Costs*

#### Article 69

The administrative procedure before the competent authority shall be subject to payment of fees and procedural costs, in accordance with special regulations on administrative fees, procedural costs and information service costs subject to submission of the proof of payment.

For inspects patent applications, issuing copies of documents, reestablishment of rights, publication of patent applications and publication of granted rights, patent file printing and other activities conducted by the competent authority in accordance with this Law shall be paid compensation.

The amount and method of payment in paragraph 2 this Article shall be determined by the Government.

### *Registers*

#### Article 70

The competent authority shall keep a Register Patent Applications, a Register of Patents, a Register of Petty Patent Applications and a Register of Petty Patents.

The Register of Patent Applications shall include, in particular: the application number and the application filing date; data on applicant; data on inventor; title of the invention; data on any changes referring to the application (assignment, license, pledge, etc.).

The Register of Patents shall include, in particular: the patent registration number, number and data on the grant of patent; date of patent registration; data on patent holder; data on inventor; title of the invention; data on any changes referring to the patent (assignment, license, pledge, etc.); data on the decision on the request for revocation of the granted patent; data on the

ceasing of granted right; number and date of first permit to place the product on the market or an indication if the product has already been the subject of the certificate; date of the granted certificate; data on any changes referring to the supplementary protection certificate (assignment, license, pledge, etc.).

Register of Petty Patent Applications shall include, in particular: the application number and the application filing date; data on the applicant; data on inventor; title of the invention; data on any changes referring to the application (assignment, license, pledge, etc.)

Register of Petty Patents shall include, in particular: the petty patent registration number, number and data on the grant of petty patent; date of petty patent registration; data on petty patent holder; data on inventor; title of the invention; data on any changes referring to the petty patent (assignment, license, pledge, etc.); data on the decision on the request for revocation of the granted petty patent; data on the ceasing of granted petty patent.

The competent authority shall prescribe particulars and manner of keeping of registers referred to in paragraph 1 of this Article.

### *Publication in the Official Gazette*

#### Article 71

Particulars prescribed by this Law and by regulations under this Law, shall be published in the Official Gazette issued by the competent authority.

### *Availability of the Documentation and Information*

#### Article 72

The Registers referred to in article 70 of this Law shall be open to the public and any interested parties may have access to them.

The files of published patent applications, granted patents, petty patents and Supplementary Protection Certificates may inspect any person upon the oral or written request, in the presence of an official.

Upon the written request of an interested party, payment of the prescribed fee and costs and submission of the proof of payment, the competent authority shall issue the copies of the documents and the corresponding attestations and certificates with respect to facts contained in the official records kept by the authority.

The competent authority is obliged to make its documentation and information on the state of the art and on rights concerning the protection of inventions available to any person.

### *Reestablishment of Rights*

#### Article 73

If, in spite of having taken all due care required by given circumstances, the applicant or right holder fails to perform any procedural step within the prescribed time limit, resulting in the loss of rights arising from the application or granted right as a legal consequence of such omission, the competent authority shall render decision to allow the reestablishment of such rights if the applicant or right holder, within the prescribed period:

1) files the request for the reestablishment of rights and completes the all the omitted acts;

- 2) states the reasons that have impeded the performance of the omitted acts in due time;
- 3) submits evidence justifying the reasons why the reestablishment of rights is being required;
- 4) submits proof of fees payment for the request for the reestablishment of rights arising from the application or granted right and proof of costs payment.

The request for the reestablishment of rights shall be filed within three months from the date on which grounds for the omission ceased to exist or, if the person who requires reestablishment of rights learned about the omission subsequently, from the date on which he found out about the omission, but not later than 12 months from the date of non-observance of the time limit or, if the request relates to the non-payment of the maintenance fee at least 12 months from the date of expiry of the additional time limit for payment referred to in Article 40. paragraph 5 of this Law.

The competent authority shall render a conclusion rejecting the request for the reestablishment of rights, if such request is filed after expiration of the time limit prescribed in paragraph 2 of this Article.

If omitted acts were not committed within a period the paragraph 2 of this Article, the competent authority shall take the conclusion rejecting the request for the reestablishment of rights.

If the requester does not submit proof of payment of prescribed fees and costs referred to in paragraph 1 item 4) of this Article, the competent authority shall invite him in writing to submit such proofs within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of prescribed fees within set time limit, the competent authority shall take the conclusion rejecting the request for the reestablishment of rights,

The request for the reestablishment of rights cannot be filed for non-observance of time limits for the performance of the following procedural acts:

- 1) filing of the request under paragraph 1 of this Article;
- 2) filing of the request for the extension of a time limit;
- 3) filing of the request for continued processing;
- 4) all procedural steps involving several parties before the competent authority.
- 5) filing of the request for restoration of priority right and request for correction or addition of priority claim .

The competent authority shall render a conclusion rejecting the request for the reestablishment of rights if such request is filed for non-observance of time limits for the performance of the procedural acts referred to in paragraph 7. of this Article.

The competent authority cannot refuse the request referred to in paragraph 1 of this Article, fully or partially, without prior notification to the applicant specifying grounds for refusal and inviting him to file his observations thereof in writing within a period of 2 months.

Any person acting in good faith, who has, in the course of production, started exploiting an invention which is the subject matter of a published application, or has made all necessary preparations to initiate such exploitation within the period between the loss of rights and the publication of the notification on the reestablishment of rights, shall be entitled to continue exploiting the invention for production purposes only in his own production plant or in the plant of any other person for his own needs.

The data on the reestablishment of rights shall be published in the Official Gazette of the competent authority.

The competent authority shall prescribe the particulars of the request, requirements and procedure referred to in paragraph 1 of this Article, the data on the reestablishment of right which are to be published, and attachment submitted with the request and their content.

### *Continued Processing*

#### Article 74

If the applicant or right holder has failed to comply with a time limit set by the competent authority for an action in a procedure before the competent authority, in respect of an application or a granted right referred to in Article 107. paragraph 5 and Article 149. paragraph 9 of this Law, he may file a request for continued processing with respect to the application of granted right, and the competent authority shall render decision to allow the continuation of processing, provided that applicant or right holder:

1) files the request for continued processing and completes the omitted acts within prescribed time limit;

2) submits proof of payment of the prescribed fee.

Request for continued processing may be filed within tree months from the receipt of the notice of the competent authority that the applicant or the right holder did not comply with the time limit set by the competent authority.

The competent authority shall render a conclusion rejecting the request\_for continued processing, if such request is\_filed after expiration of the time limit prescribed in paragraph 2 of this Article.

If the omitted actions have not been complied within the time limit referred to in paragraph 2 of this Article the competent authority shall render the conclusion rejecting the request\_for continued processing

If the requester does not submit proof of payment of prescribed fees referred to in paragraph 1 item 2) of this Article, the competent authority shall invite him in writing to submit such proofs within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of prescribed fee within set time limit, the competent authority shall take the conclusion rejecting the request\_for continued processing.

The request for continued processing cannot be filed if it is omitted time limit:

1) referred to in paragraph 2 of this Article

2) for filing of the request for restoration of priority right and request for correction or addition of priority claim;

3) for filing of the request referred to in Article 73 of this Law:

4) for filing of another or any subsequent request for the extension of a time limit;

5) all procedural steps involving several parties before the competent authority.

The competent authority shall render a conclusion rejecting the request for continued the processing if such request is\_filed for non-observance of time limits for the performance of the procedural acts referred to in paragraph 7 of this Article

The competent authority shall notify the person under paragraph 1 of this Article of the reasons for intended refusal or in whole or in part of the request for continued processing, and invites him to file his observations thereof within a period of two months from the date of receiving the notification.

If the competent authority has approved the request referred to in paragraph 1 of this Article the provisions of Article 73 paragraph 10 of this Law shall apply accordingly.

The competent authority shall prescribe the particulars of the request, requirements and procedure referred to in paragraph 1 of this Article and attachment submitted with the request and their content.

### *Change of Name and Address of the Applicant and Right Holder*

#### Article 75

Upon the request of a right holder or applicant, the competent authority shall render a decision on the entry a change of the name and address of the right holder or applicant into the appropriate register of the competent authority.

The request for the entry the change referred to in paragraph 1 of this Article into the register shall include, in particular: the patent or petty patent registration number, the application number, data on the right holder or the applicant, designation of the kind of change, evidence for changing the name of the applicant or right holder.

On the basis of a single request under paragraph 1 of this Article for the entry of the change of name and address of the applicant and right holder into the register may be requested in respect of several patents or petty patents or several applications, provided the registration numbers or application numbers have been designated in the request.

If the request for the request of the entry of the change of name and address of the right holder and applicant into the register does not include the prescribed data, the competent authority shall invite the person who required the registration in writing to remedy the deficiencies within two months from the date of receiving the notification.

Upon a reasoned request of the person who required the entry into the register, upon payment of the prescribed fee and submission of the proof of payment of these fees, the competent authority shall extend the time limit referred to in paragraph 4 of this Article, for a time period considered to be justified, but not exceeding two months.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall render a conclusion rejecting the request.

If the applicant or right holder who is national of Republic of Serbia changes the address so that it is not in the territory of the Republic of Serbia, in the request for the entry of change of address into the register shall appoint a representative for correspondence with address on the territory of Republic of Serbia.

If national of Republic of Serbia does not appoint representative for correspondence in accordance with the provisions of paragraph 7 of this Article, the competent authority shall notify him in writing to appoint a representative for correspondence and warn him about legal consequences of failure to comply with such requirement referred to in notification, within three months from the date of receiving the notification.

If national of Republic of Serbia does not comply with notification of the authority in paragraph 8 of this Article, the competent authority shall specify delivery by the public notice on the notice board by the competent authority.

The competent authority shall prescribe the particulars of the request referred to in paragraph 1 of this Article, and shall determine the attachments to be filed with the request, and their contents.

## *Correction of Errors in the Submissions and Formal Documents*

### Article 76

Language errors, typing errors, as well as any other similar deficiencies in the submissions and formal documents can be corrected on a written request and on submission of proof of payment of prescribed fee of the applicant or right holder or ex officio.

The competent authority shall prescribe the particulars of the request referred to in paragraph 1 of this Article.

## 2. Initiation of the Procedure for the Protection of an Invention

### *Filing of an Application*

### Article 77

The procedure for the protection of an invention shall be initiated by the filing of an application with the competent authority.

Application for the protection of an invention shall be filed in the Serbian language.

The application for the protection of an invention can also be filed in the foreign language, provided that the applicant files its translation in the Serbian language.

If the applicant fails to submit a translation of the application referred to in paragraph 3 of this Article the competent authority shall invite the applicant to submit the translation within two months from the date of receipt of the invitation.

If the applicant fails to submit the translation of the application within time limit referred to in paragraph 4 of this Article the competent authority shall render conclusion rejecting the application.

Applications for the protection of inventions abroad shall also be filed with the competent authority, if it is thus stipulated by international agreements.

Legal protection of inventions in Republic of Serbia shall also be granted in respect of applications filed abroad, if it is thus stipulated by international agreements. An application filed in this manner shall have the same effects as a national application, unless otherwise stipulated by appropriate international agreements.

The competent authority shall prescribe the particulars of the means of filing the application.

### *Unity of invention*

### Article 78

With a single application may be required protection only for one invention.

A single patent application may be filed for a number of inventions only if the inventions are mutually so linked as to form a single general inventive concept.

## *Content of the Application for the Protection of an Invention*

### Article 79

An application for protection of an invention shall contain:

- 1) a request for the grant of right;
- 2) a description of the invention;
- 3) one or more patent claims for the protection of an invention;
- 4) a drawing referred to in the description and/or claims;
- 5) an abstract.

### *Request for the Grant of Right*

### Article 80

A request for the grant of right shall contain an explicit indication that a patent or petty patent is being sought, data concerning the applicant, data concerning the inventor or a statement to the effect that the inventor does not wish to be mentioned in the application, and the title of the invention which shall clearly and concisely state the technical designation of the invention and shall exclude all commercial names.

The competent authority shall not investigate whether the applicant is entitled to file the application for the protection of an invention.

If the applicant is not the inventor or is not the sole inventor, he shall be required to cite the names of all the inventors in the application and to file a statement indicating the ground of right to file the application.

If the inventor does not wish his name to be mentioned in the request for the grant of right and in other documents stipulated by this Law, the applicant shall be required to furnish the competent authority with the inventor's written statement to that effect.

During the grant procedure and during the entire term of the patent or petty patent, the inventor may withdraw his statement that he does not wish his name to be mentioned in the application, registers and other documents stipulated by this Law.

The competent authority shall prescribe the particulars of the request in paragraph 1 of this Article define the attachments to be filed with request for the grant of right and their content.

### *Prohibited Content in the Application*

### Article 81

The application cannot contain:

- 1) content or drawings contrary to law or moral;
- 2) statements that diminish the products or procedures of any third party or quality and the importance of the application or patent, or petty patent of that person, provided that the comparison to the state of the art, as such, is not considered diminishing;
- 3) statements that are obviously not important or necessary.

If the application has content referred to in paragraph 1 of this Article, the competent authority shall omit them during publication.

## *Description of the Invention*

### Article 82

An invention shall be described in a manner that is clear and complete enough for the invention to be carried out by a person skilled in the art.

If the invention concerns a biological material and cannot be carried out on the basis of the description of the invention, the description shall be deemed to fulfil the conditions laid down in paragraph 1 of this Article if a sample of the naturally reproducible biological material is deposited with a competent depository institution not later than the filing date of the application.

Competent depository institution referred to in paragraph 2 of this Article shall mean an institution designated in accordance with the provisions the Budapest Treaty on the International Recognition of the Deposits of Microorganisms for the Purpose of Patent.

The description of the invention contains in particular: title of the invention, the technical field to which the invention relates, the defined problem for which solution is required the protection, state of the art which as far as known to the applicant, can be regarded as useful to understand the invention, expostulation of the essence of the invention, short description of the drawings, if any and detailed describe at least one way of carrying out the invention, using examples where appropriate and referring to the drawings, if any.

The competent authority prescribes the particulars and manner of the description of the invention.

## *Patent Claims*

### Article 83

Patent claims, which shall be clear, concise and fully supported by the description of the invention, define the subject matter for which protection is sought.

The competent authority shall prescribe the particulars of the form and content of claims referred to in paragraph 1 of this Article.

## *Abstract*

### Article 84

An abstract shall briefly set out the essential content of the invention which shall serve exclusively to provide technical information and may not be taken for any other purpose, in particular for interpreting the scope of the protection sought or applying of Article 10, paragraph 2, item 2).

The competent authority is authorized to change the abstract, if it deems necessary.

The competent authority shall prescribe the particulars of the abstract.

## *Drawing*

### Article 85

The drawing is the collection of all the drawings.

The competent authority shall prescribe the particulars of the features of the drawing.

*Content of the Application for Protection of an Invention Required for the Accordance of a Filing Date*

Article 86

In order to be accorded a filing date, an application filed with the competent authority shall contain on such a date:

- 1) an indication that a grant of right is being sought;
- 2) the name and surname or business name and address of the applicant;
- 3) a description of the invention, even if the description does not fulfil the proscribed requirements or reference to a previously filed application.

The competent authority shall prescribe the particulars of the manner of referring to a previously filed application.

3. Special Types of Applications

*Divisional Patent Application*

Article 87

If an application which has been accorded a filing date referred to more inventions which are not mutually so linked as to form a single general inventive concept (the original application), the applicant may on his own initiative or upon request of the competent authority, divide from it one or more inventions and for each of them file separate application (divisional application).

A divisional application may be filed until the termination of the proceedings concerning the original application.

The subject matter of the divisional application may not extend beyond the content of the original application, as filed and then it shall retain the filing date of the original application and, where appropriate, shall enjoy the priority right.

The filing fee and search report based on the subject of the invention shall be paid for each divisional application within one month of its filing and the proof of payment shall be submitted to the competent authority

If the proof of payment referred to in paragraph 4 of this Article fail to submit to the competent authority in a due time the competent authority shall render conclusion rejecting the application.

*Application for the Patents of Addition*

Article 88

If an applicant or owner of a patent supplements or enhances the invention which is subject matter of the original application or of the basic patent, he may file an application for a patent of addition to cover the supplements or enhancements, which application shall not retain the filing date of the basic application.

An application for a patent of addition may be filed only upon the basic application or patent.

Waiver of the basic patent application shall lead to the termination of procedure concerning the application for the patent of addition. If the procedure concerning the basic application is terminated for any other reason, the applicant shall be entitled to file a request with the competent authority for the conversion of the application for the patent of addition into a basic application, within a period of three months from the date on which the decision to termination of procedure has become final.

A patent of addition may be obtained on the basis of the additional application, but may not be granted before the grant of the basic patent.

If the basic patent ceases to exist or if the decision on its grant is revoked, the patent owner shall be entitled to file a request for the conversion of the patent of addition into a basic patent with the competent authority, within a period of three months from the date of cessation of the patent or from the date on which the appropriate decision became final.

In the case that there is more than one application for the patent of addition or patent of addition, only one shall be converted into a basic application or patent, while the rest, as additional, shall be attached to the basic application or patent, at the request of the applicant or patent owner within the time limit specified in paragraph 5 of this Article.

#### 4. Priority

##### *Requirements for the Grant of Priority Right*

##### Article 89

Any person who has duly filed an application for any form of protection of an invention in any Member State of the Paris Union for the Protection of Industrial Property or in any Member State of the World Trade Organization, or his successor in title, shall be granted priority in Republic of Serbia from the date of the filing the first application, provided that he files a claim to that effect with the competent authority on filing an application for the protection of the same invention, and that the application for the same invention is filed with the competent authority within twelve months from the filing date of the first application.

A “duly filed” application referred to in paragraph 1) of this Article shall be considered to be an application that has been accorded a filing date under the national legislation of Member State of the Paris Union or member of the WTO, or under international agreements concluded between such states, regardless of the eventual legal outcome of the application.

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

In the case referred to in paragraph 3 of this Article on the basis of the previous application may not thereafter requesting right of priority.

## *Priority Claim*

### Article 90

An applicant who has filed an application for a protection of an invention and who intends to take advantage of the priority of a previous application in the Republic of Serbia shall file with the competent authority:

1) a priority claim containing essential data concerning the first application claiming priority (application number and filing date, a Member State of the Paris Union or WTO in or for which the application was filed) not later than up to the expiration of two months from the date of filing the application in the Republic of Serbia;

2) a copy of the first application certified by the competent authority of the Member State of the Paris Union or WTO in or for which it was filed, not later than up to the expiration of the period of three months of the filing of the application in the Republic of Serbia or 16 months from the earliest priority date claimed, whichever period expires first.

Where the first application is not in the Serbian language and the validity of the priority claim is relevant to the determination of the patentability of the invention concerned, the competent authority shall invite the applicant to file a translation of the first application into the Serbian language within two months from the receipt of the invitation.

The competent authority shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the attachments to be filed with the request, and their content.

## *Multiple Priority Claim*

### Article 91

The applicant may, subject to the requirements referred to in Article 89 of this Law, claim multiple priorities on the basis of several earlier applications filed in one or more of the Member States of the Paris Union, Member States of WTO, or international organization with which such an application has been filed.

Where multiple priorities have been claimed, time limits which run from the date of priority pursuant to this Law shall run from the earliest date of priority.

## *Request for the Restoration of the Priority Right*

### Article 92

If a patent application claiming priority of the first application is filed on the date, which is later than the date on which the priority period referred to in Article 89 paragraph 1 of this Law expired, the applicant may file a request for the restoration of the priority right.

The request referred to in paragraph 1 of this Article may be filed within two months from the date of expiration of the priority period, and before technical preparations for publication of the subsequent application have been completed.

The competent authority shall render decision to adopt a request for the restoration of the priority right, provided that the applicant:

1) states the reasons and file the evidence in support of the reasons for the failure to comply with the priority period in spite of due care required by the circumstances having been taken;

2) pays the prescribed fees and submits of the proof of payment to the competent authority.

The competent authority shall render a conclusion rejecting the request for restoration of the priority right, if such request is filed after expiration of the time limit prescribed in paragraph 2 of this Article.

If the requester does not submit proof of payment of prescribed fees referred to in paragraph 3 item 2) of this Article, the competent authority shall invite him in writing to submit such proofs within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of prescribed fees within set time limit referred to in paragraph 5 of this Article, the competent authority shall render a conclusion rejecting the request.

The competent authority cannot refuse the request referred to in paragraph 1 of this Article, fully or partially, without prior notification to the applicant specifying grounds for refusal and inviting him to file his observations thereof within a period of 2 months.

If the requester fails to submit his observations thereof within time limit under paragraph 7 of this Article or he submits his observations but competent authority considers that priority right cannot be restored, the competent authority shall take the decision that such request shall be refused fully or partially.

The competent authority shall prescribe the particulars of the content of the request, requirements and procedure under paragraph 1 of this Article, and shall determine the attachments to be filed with the request and their content.

### *Request for the Correction or Addition of a Priority Claim*

#### Article 93

An applicant may file a request for the correction or addition of a priority claim within a time limit of sixteen months from the priority date or, if the correction or addition would cause a change in the priority date, sixteen months from the priority date as so changed, whichever sixteen-month period expires first, provided that such a request is filed within four months from the filing date of the patent application.

In addition to the request referred to in paragraph 1 of this Article, the applicant shall pay the prescribed fee and submit of the proof of payment.

The competent authority shall render a conclusion rejecting the request for correction or addition of the priority right, if such request is filed after expiration of the time limit prescribed in paragraph 1 of this Article.

If the requester does not submit proof of payment of prescribed fees referred to in paragraph 2 of this Article, the competent authority shall invite him in writing to submit such proofs within time limit prescribed by the competent authority.

If the requester fails to submit the proof of payment of prescribed fees within time limit under paragraph 4 of this Article, the competent authority shall render a conclusion rejecting the request.

Prior to refusing a request for the correction or addition of a priority claim, the competent authority shall inform the applicant of the reasons for which it intends to refuse the request in

whole or in part, and shall invite him to file observations on such reasons within two months from the date of receipt of the invitation.

If the requester fails to submit his observations thereof within time limit under paragraph 6 of this Article or he submits his observations but competent authority considers that priority right cannot be corrected or added, the competent authority shall take the decision that such request shall be refused fully or partially.

If the priority date is changed due to the correction or addition of the priority claim, the time limits shall be counted from the priority date as changed.

The competent authority shall prescribe the particulars of the content of the request, requirements and procedure under paragraph 1 of this Article, and shall determine the attachments to be filed with the request and their content.

#### *Exceptions to Filing the Request for the Correction or Addition of a Priority Claim*

##### Article 94

The request referred to in Article 93 paragraph 1 shall not be filed:

- 1) after the applicant has filed a request for early publication, unless such a request for publication is withdrawn before the technical preparations for publication of the application have been completed;
- 2) if the request for urgent procedure has been made.

#### *Elements of the Invention for which Priority is Claimed*

##### Article 95

A claim for one or more priorities can only refer to those elements of the invention that have been clearly disclosed in any part of the application or applications for which priority is claimed.

If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, the fact that the constituent parts of the application as a whole clearly bring out such elements shall be sufficient for the grant of priority.

#### *Effect of Priority Right*

##### Article 96

The right of priority shall have the effect that the date of priority shall count as the date of filing of the patent application for the purposes of Article 10, paragraph 2, and Article 3 paragraph 5 of this Law.

## 5. Examination procedure

### *Accordance of the Date of Filing*

#### Article 97

Upon receipt of a application, the competent authority shall examine whether it meets the requirements laid down in Article 86 of this Law for accordance of its date of filing.

If the competent authority establishes that the requirements under Article 86 of this Law have not been fulfilled, the competent authority shall invite the applicant to rectify the deficiencies identified, within two months from the date of receipt of the notification, together with a warning on the legal consequences of failure to respond in the prescribed time limit.

If the applicant corrects the deficiencies within the time limit referred to in paragraph 2 of this Article, the competent authority shall make the conclusion whereby the date of receipt of the required corrections shall be accorded as the filing date of the patent application.

Where reference is made in the application to the drawings that were not attached to the application, the competent authority shall invite the applicant to file the drawings within a period of two months from the date of receipt of its notification. If the applicant responds accordingly, the date on which the drawing is filed shall be treated as the filing date of the application. If the drawings are not filed, any reference to them in the application shall be deemed not to have been made.

An application which has been accorded a filing date shall be entered in the Register of Patent Applications or in the Register of Petty Patent Applications.

If the applicant fails to act upon the invitation referred to in paragraph 2 of this Article within the prescribed time period, the competent authority shall render a conclusion rejecting the application, against which appeal may be filed with the Government within 15 days from the receipt of the conclusion.

Government decision on the appeal is final and administrative dispute proceedings may be instituted against such decision within 30 days from the date of receipt of the Government's decision.

### *Issuing Priority Documents*

#### Article 98

At the request of the applicant, the competent authority shall issue a priority document.

The request for issuing a priority document shall contain, in particular: particulars of the requester, number of the application for which issuing priority document is requested and proof of fee payment for issuing priority document.

Priority document shall contain, in particular: particulars of the applicant, number of the application and certification that the enclosed documents are identical to the original.

The competent authority shall prescribe the content of the request referred to in paragraph 2 of this Article and the content of the priority document under paragraph 3 of this Article.

## *Examination as to Formal Requirements*

### Article 99

Once the application has been accorded a date of filing, the competent authority shall examine whether:

- 1) the filing fee for the application has been paid and the proof of payment has been submitted;
- 2) a valid authorization for the representative or a statement on the appointment of a common representative has been filed, where appropriate;
- 3) the application contains designation of the inventor or a statement to the effect that he does not wish to be mentioned in the application;
- 4) a claim for a grant of priority, satisfying all formal requirements, has been filed;
- 5) a statement indicating the origin of the right for filing the application has been submitted;
- 6) the application has been filed pursuant to Article 5 of this Law, in the event that the applicant is a foreign national;
- 7) the content of the application satisfies all requirements prescribed by Article 79 of this Law;
- 8) the form of the application document has been fulfilled;
- 9) the drawing has been made subject to the provisions of Article 85 of this Law;
- 10) the abstract has been made subject to the provisions of Article 84 of this Law;
- 11) the requirements prescribed by Article 81 of this Law have been fulfilled;

If the examination under paragraph 1 of this Article shows that the application does not comply with the provision of that paragraph, the competent authority shall set out the reasons thereof in a communication to the applicant, inviting him to correct the deficiencies within a time limit no less than two months nor more than three months.

On a reasoned request by the applicant, the competent authority may extend the time limit under paragraph 2 of this Article, for a time period considered to be justified, but not exceeding three months.

If the applicant fails to remedy the defects referred to in paragraph 2 of this Article, the competent authority shall render a conclusion rejecting the application, against which appeal may be filed with the Government within 15 days from the receipt of the conclusion.

Government decision on the appeal is final and the administrative dispute proceedings may be instituted against such decision within 30 days from the date of receipt of the Government's decision.

The competent authority shall prescribe the particulars of the form of the application document under paragraph 1 item 8) of this Article.

## *Search Report*

### Article 100

If a patent application fulfils the requirements laid down in paragraph 1 of the Article 99 of this Law, the competent authority shall invite the applicant to file the request for search report based on the subject of the invention (hereafter: search report) and to pay the fee for drawing up the search report within one month from the date of the receipt of the invitation.

An applicant may file request for search report before receipt of the invitation referred to in paragraph 1 of this Article.

The competent authority shall, upon the receipt of the request and the proof of fee payment for drawing up the search report, draw up a search report in respect of the patent application on the basis of the claims, with due regard to the description and drawings and shall forward it to the applicant.

If the competent authority establishes that the patent application does not comply with the provisions of this Law so that it is impossible to carry out a complete search report on the basis of all or some of the subject-matter claimed, it shall either issue a reasoned declaration to that effect or, as far as is practicable, draw up a search report for only one part of the application or partial search report.

The partial report shall be drawn up even when the patent application does not comply with the requirement of unity of invention.

The declaration or the partial report referred to in paragraph 4 shall be considered, for the purposes of subsequent proceedings, as the search report.

The competent authority shall publish the search report together with the patent application. If the search report is not published at the same time as the application, it shall be published separately.

If the applicant has not, within the applicable time limit, filed the request and the proof of paying the fee for establishing the search report required under paragraph 1 of this Article, the competent authority shall render a conclusion rejecting the application..

The request under paragraph 1 of this Article may not be withdrawn.

The competent authority shall prescribe the particulars of the content of the request for drawing up the search report and the content of the search report.

## *Amendments to Pending Patent Application*

### Article 101

An application which has been accorded a filing date cannot eventually be amended by means of changing or extending the subject matter for which protection is being sought.

The particulars of the content of an application may be amended prior to the taking of a decision thereon, insofar as these amendments do not extend the subject matter as filed.

Before receiving the search report, the applicant may not amend the description, claims and drawing of an application and after receipt of the search report, the applicant may, of his own volition, amend the description, claims and drawing.

Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept for which initially protection has been sought.

## *Publication of Patent Application*

### Article 102

The patent application shall be published in the Official Gazette as soon as possible:

- 1) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or
- 2) at the request of the applicant, before the expiry of that period, but not before the expiry of three months from the filing date.

The patent application shall be published at the same time as the specification of the patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1 item 1) of this Article.

The competent authority shall prescribe the particulars of the content of the publication of a patent application.

## *Request for Substantive Examination of an application*

### Article 103

The request for substantive examination of an application shall be filed by the applicant within a period of six months from the date of receipt of the search report.

In the event of failure to observe the time limit under paragraph 1 of this Article, the applicant may file the request for substantive examination within an extended period of 30 days from the date of the receipt of a notification of the expiry.

The request shall not be deemed to be filed until the examination fee has been paid and the proof of payment has been submitted.

The request referred to in paragraph 1 of this Article may not be withdrawn.

If no request under paragraph 1 of this Article has been made in due time, the competent authority shall render conclusion rejecting the application.

## *Substantive Examination*

### Article 104

In the course of the substantive examination of an application, the competent authority shall examine whether the subject matter of the application:

- 1) constitutes an invention within the meaning of Articles 7 and 8 of this Law;
- 2) constitutes an invention for which, within the terms of Article 9 of this Law, patent protection shall not be granted;
- 3) constitutes an invention that is in accordance with Article 78 of this Law relating to unity of invention;
- 4) is disclosed in a manner sufficiently clear and complete pursuant to Article 82 of this Law and satisfies all requirements under Article 83 and 85 of this Law;
- 5) constitutes a technical solution of a specific problem, is new in accordance with Articles 10 and 11 of this Law, involves an inventive step as set out by Article 12 of this Law and is susceptible to industrial application as laid down in Article 13 of this Law;
- 6) complies with the requirements set out in this Law as to the priority right.

The substantive examination of a patent application shall be conducted within the limits set by the content of the patent claims.

The utility of the invention shall not be examined during the substantive examination procedure.

An applicant, who has filed an application for the same invention in any other state, may furnish the competent authority with a translation of the examination report issued in the said state.

If the competent authority establishes that the subject matter of an application does not meet the requirements under paragraph 1 of this Article, it shall inform the applicant thereof on results of the examination and invite him, as many times as is necessary, to rectify any deficiencies identified, within a time limit no less than two months nor more than three months.

Notification on results of the examination under paragraph 5 of this Article shall especially contain a reasoned statement covering all the grounds against the grant of the patent.

After receipt of the examination report under paragraph 5 of this Article, the applicant may, of his own volition, amend only once the description, claims and drawings, provided that the amendment is filed at the same time as the reply to the examination report. No further amendment may be made without the consent of the competent authority.

On a reasoned request from the applicant, the competent authority shall extend the time limit under paragraph 5 of this Article for a time period considered to be justified, but not exceeding three months.

### *Urgent Procedure*

#### Article 105

An application may be examined in an urgent procedure in the event of judicial proceedings or if inspection surveillance or customs procedures have been initiated upon the request of the court or the competent market inspection authority or the customs authority.

In the event of litigation for infringement of a published application, the applicant may file the request for examination of a patent application on an urgent procedure and with it applicant shall submit:

1) request for substantive examination of patent application with proof of payment of fees for substantive examination, if the request has not previously been submitted and

2) evidence that the court proceedings for infringement of a published application terminated the finality of competent authority on the application.

### *Observations by Third Parties*

#### Article 106

In proceedings before the competent authority, following the publication of the patent application, any third party may present observations concerning the patentability of the invention to which the application relates.

Person referred to in paragraph 1 of this Article shall file the observations in writing and give the reasons covering all the grounds against the grant of the patent and such observations may be considered by the competent authority.

The person referred to in paragraph 1 of this Article shall not be considered to be a party to the proceedings.

### *Decision to Grant a Patent*

#### Article 107

If the competent authority establishes in the substantive examination of the application that all requirements for the grant of a patent prescribed by this Law have been satisfied, it shall communicate to the applicant a draft of the final wording of the patent claims for adoption and shall invite the applicant to give his approval within a period of 30 days.

If the applicant fails to submit a written statement that he approves the wording and number of claims, within the prescribed time limit under paragraph 1 of this Article, the competent authority shall take a decision to grant a patent on the basis of the final wording of the claims it had communicated for approval.

If the applicant states that he does not approve the wording of the claims under paragraph 1 of this Article, he shall be required to state the reasons for his disapproval and to file an amended wording of the claims.

If the competent authority accepts the reasons or the amended wording of the claims, referred to in paragraph 3 of this Article, it shall take the decision to grant the patent, and if it does not, it shall notify the applicant, stating its grounds thereof, and shall take a decision to grant the patent according to the final wording of the patent claims communicated for approval.

The decision to grant a patent shall be taken by the competent authority provided that the proofs of payment for certificate for the granted right, costs of publication for granted right and costs for patent specification have been submitted.

If the applicant fails to pay the fees and costs under paragraph 5 of this Article within the set time limit and to submit the proof of payment the competent authority shall render conclusion rejecting the application

### *Decision to Refuse a Patent*

#### Article 108

If the competent authority establishes on the basis of the substantive examination conducted under Article 104 of this Law that not all requirements for the grant of a patent have been satisfied or that the defects identified have not been remedied, the competent authority shall take a decision to refuse the grant of a patent.

### *Entry of the Granted Right into the Register*

#### Article 109

The competent authority shall enter the prescribed data on granted right in the appropriate register.

## *Certificate of the Granted Right*

### Article 110

After the entry of the prescribed data on granted right referred to in Article 109 of this Law in the appropriate register, the patent owner or the petty patent owner shall be issued a certificate for the granted right, which shall contain, in particular: the patent or petty patent registration number; data on the patent owner or the petty patent owner; data on the inventor; the title of the invention and date of issuing of the certificate.

Certificate of the granted right shall be issued upon the payment of the prescribed fee.

The competent authority shall prescribe the particulars of the content of the certificate for the granted right under paragraph 1 of this Article.

## *Publication of Grant*

### Article 111

Granted right entered in the appropriate register shall be published in the Official Gazette.

The decision to grant a patent or a petty patent shall have effect from the date of publication of the grant.

The Official Gazette shall publish the following data, in particular: the patent or petty patent registration number, the date of filing of the application, the date of publication of a patent application, data on the right holder, data on the inventor and the title of the invention.

The granted right shall be published upon the payment of the prescribed costs.

The competent authority shall prescribe the particulars referred to in paragraph 3 of this Article, which shall be published in the Official Gazette.

## *Patent Specification*

### Article 112

After the publication of the granted right in the Official Gazette, the competent authority shall issue the specification, which shall particularly contain: the patent or petty patent registration number, the date of publication of mention of the grant of a patent, data on the right holder, data on the inventor and the title of the invention.

The patent specification shall be issued upon the payment of the prescribed costs.

The competent authority shall prescribe the particulars of the patent specification referred to in paragraph 1 of this Article.

## XI SUPPLEMENTARY PROTECTION CERTIFICATE

### *Placing on the Market a Medicinal Product for Human or Animal use or a Plant Protection Product*

#### Article 113

Any product protected by a patent and subject to authorization from the competent authority prior to being placed on the market on the territory of Republic of Serbia, as a medicinal product for human or animal use or a plant protection product, may under the terms and conditions provided for in this Law be subject of protection of a Certificate.

In respect of the Certificate product is the active substance or combination of substances or active substances of medicinal products or active substance referred to in Article 2 Paragraph 1 item 27) or a mixture of active substances of plant protection products.

### *Subject Matter of the Protection and the Legal Effect*

#### Article 114

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

Subject to paragraph 1 of this Article, the Certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

### *Entitlement to a Certificate*

#### Article 115

A Certificate shall be granted to the owner of the basic patent covering the product or to his successor in title.

The owner of two or more patents covering the same product may be granted only one certificate for that product. Where there are two or more requests for a certificate filed by different persons who are owners of different patents covering the same product, the same certificate for the product may be granted to each of these persons individually.

## *Conditions for Obtaining a Certificate*

### Article 116

On the request of the patent owner, a Certificate shall be granted if the following conditions are fulfilled on the filing date of the request:

- 1) the product is protected by a basic patent in force;
- 2) an authorisation to place the product on the market as a medicinal product for human or animal use, or a plant protection product, which is in force, has been granted in accordance with special regulations,
- 3) the medicinal product for human or animal use or plant protection product has not already been the subject of a certificate;
- 4) the authorisation referred to in item 2) of this Article, is the first authorisation to place the product on the market as a medicinal product for human or animal use, or a plant protection product;
- 5) the first authorization is granted after 1 January 2005;

### *Time Limit for the Filing of a Request for a Certificate*

### Article 117

The application for the Certificate shall be filed with the competent authority within 6 months from the date of the grant of the authorization, referred to in Article 116 item 2) of this Law.

If the authorization has been granted before the grant of the basic patent, a request for grant Certificate shall be filed, within six months from the date of publication of the mention of the grant of the patent referred to in Article 111 of this Law.

### *The Request for Certificate*

### Article 118

The request for the grant of the Certificate, shall contain in particular:

- 1) the data on requester: the name, surname and address for natural person, or name and seat for legal person;
- 2) the data on the representative, if any ;
- 3) the number of the basic patent and the title of the invention;
- 4) the number and date of the first authorisation to place the product on the market and if this authorisation is not the first authorisation for placing the product on the market, the number and date of that authorisation;

In addition to the request for Certificate shall be filled:

- 1) the authorization to place the product on the market, issued by the competent authority for placing the products on the market on the territory of the Republic of Serbia;
- 2) the proof of payment of the prescribed fee;

If the authorisation referred to in paragraph 2 item 1) of this Article is not the first authorisation for placing the product on the market, in addition to the request for Certificate evidences showing the identity of the product, the content of the authorization procedure, and the

copy of the notification about the publication of data concerning the authorization shall be submitted.

Data on request for Certificate shall be entered into the register of patents kept by competent authority and shall be published in the Official Gazette within six months from the date of filing the request.

The competent authority shall prescribe the particulars of the request for the Certificate which shall be entered into the Register of patents and published.

### *Procedure on the request for grant of Certificate*

#### Article 119

The competent authority shall carry out examination procedure upon the request for grant of Certificate and shall establish:

- 1) the request is filed within a period prescribed by Article 117 of this Law ;
- 2) the request is filed in the required form and contains all the indications prescribed by Article 118, paragraph 1, 2 and 3 of this Law;
- 3) the basic patent was in force at the time of filing of the request for the Certificate;

If the request for the Certificate does not contain the elements prescribed by paragraph 1 of this Article, the competent authority shall invite the applicant to remedy the deficiencies indicated in the invitation within a period of 30 days from the receipt of the invitation.

If the requester fails to remedy found deficiencies within a prescribed time limit, the competent authority shall issue a conclusion rejecting the application for the Certificate.

If the request for grant Certificate meets the conditions prescribed in paragraph 1 of this Article competent authority shall establish:

- 1) the conditions for obtaining the Certificate laid down in Article 116 of this Law were met on the filing date of the request;
- 2) the product for which the Certificate is applied for is protected by the basic patent;
- 3) the authorization to place the product on the market has been granted in the manner as prescribed by special regulation.

If the competent authority establishes that all of the conditions prescribed in paragraph 4 of this Article are met, it shall issue a decision on the grant of the Certificate which determines the duration of the Certificate.

If the competent authority establishes that not all of the prescribed conditions referred to in paragraph 4 of this Article are met, it shall refuse a request for the Certificate by a decision.

### *Decision on the grant of the Certificate*

#### Article 120

Decision on the grant of the Certificate shall contain:

- 1) the name and address of the applicant;
- 2) the number of the basic patent;
- 3) the title of the invention;
- 4) the number and date of the authorization to place the product on the market, and the name of the product identified in that authorization;
- 5) the number and date of the first authorization to place the product on the market, where necessary pursuant to the provisions of Article 118, paragraph 1, item 4) of this Law;

6) the duration of the Certificate.

#### *Publication*

##### Article 121

The competent authority shall publish in Official Gazette particulars on the grant of a Certificate, on the refusal of a request for a Certificate, and on the cessation of a Certificate.

The competent authority shall prescribe the particulars referred to in paragraph 1 of this Article.

#### *Entry into the Register*

##### Article 122

Datas on procedure for grant of Certificate, and the duration of the Certificate shall be entered into the Register of patents kept by competent authority.

The competent authority shall prescribe the particulars referred to in paragraph 1 of this Article which shall be entered into the Register.

#### *Duration of Protection*

##### Article 123

The Certificate shall take effect at the end of the lawful term of the basic patent. Duration of protection for granted Certificate is equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorisation to place the product on the market, reduced by a period of five years.

The duration of the Certificate referred into paragraph 1 may not exceed five years from the date on which it takes effect.

#### *Maintenance of the Certificate*

##### Article 124

For maintenance of the Certificate a prescribed annual fee shall be paid, which shall be due at the beginning of each year of its term.

#### *Cessation of the Certificate*

##### Article 125

The Certificate shall lapse:

- 1) on expiry of its term referred into Article 123 of this Law;
- 2) on its waiver by the Certificate holder, such right shall cease on the day following the filing of the declaration;
- 3) on failure to pay the annual fee for its maintenance referred to in Article 124 of this Law in time and the proof of payment has not been submitted;
- 4) if the product for which the Certificate was granted may no longer be placed on the market as a result of the termination of the authorization, for whatever reason.

The competent authority shall decide on the lapse of the Certificate either of its own motion or at the request of any person.

*Application of the Provisions of the Procedure for Granting and Termination of Rights*

Article 126

The procedural provisions concerning the grant and cessation of a right shall apply accordingly to the grant and cessation of the Certificate, unless otherwise stipulated by this Law.

*Revocation of the Decision on Grant of the Supplementary Protection Certificate*

Article 127

The decision on grant of the supplementary protection Certificate shall be revoked:

- 1) if it was granted contrary to the conditions set out by this Law;
- 2) if the corresponding patent covering the subject matter protected by the Certificate ceases within the terms of Articles 41, 42 and 43 of this Law;
- 3) if the corresponding patent covering the subject matter protected by the Certificate is revoked or limited to the extent that the product for which the Certificate was granted is no longer protected by the claims of the corresponding basic patent or, after the corresponding basic patent has expired, grounds for revocation which would have justified such revocation exist.

Procedural provisions of this Law applicable to the application for the revocation of a decision to grant a patent shall accordingly apply to the revocation of a supplementary protection Certificate.

XII REVOCATION

1. Revocation of Decision to Grant a Patent or a Petty Patent

*Grounds for Revocation*

Article 128

The competent authority may revoke at any time the decision to grant a patent or petty patent, in whole or in part, on the request of any person, if it establishes that:

- 1) the subject matter of protection is not an invention within the terms of Articles 7 and 8 of this Law;
- 2) the invention falls under the category of inventions excluded from protection as defined in Article 9 of this Law;
- 3) the invention was not new within the meaning of Articles 10 and 11 on the date of the filing of the patent application or on the date of priority, or did not involve an inventive step pursuant to Article 12 or was not industrially applicable in accordance with Article 13 of this Law;
- 4) the invention is not disclosed in a manner sufficiently clear and complete as defined in Article 82 of this Law;
- 5) the scope of rights granted exceeds the scope that could be supported by the description of the invention as disclosed on the filing date or priority date of the application, or if

protection was granted on a divisional application, the subject matter of which extends beyond the basic application as filed.

*Request for Revocation of a Decision to Grant a Patent or Petty Patent*

Article 129

The procedure for the revocation of a decision to grant a patent or a petty patent shall be instituted with the filing of a written request with the competent authority.

The request under paragraph 1 of this Article shall include in particular: datas on the requester; datas on the right holder; indication that the revocation of a decision to grant is sought; the reference number of a decision and the patent or petty patent registration number; the reasons for which revocation is requested, the appropriate evidences and the proof of prescribed fee payment.

*Procedure upon Request for the Revocation of a Decision to Grant a Patent or a Petty Patent*

Article 130

The request for the revocation of a decision to grant a patent or a petty patent shall be admissible if it includes datas under Article 129 of this Law.

Where the request for the revocation of a decision to grant a patent or a petty patent is not admissible, the competent authority shall invite the requester in writing to remedy deficiencies within 30 days from the date of receipt of such communication, stating the reasons thereof.

Upon a reasoned request by the requester, and upon his payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

If the requester fails to proceed in accordance with the invitation within the set time limit, the competent authority shall take a conclusion on rejecting the request.

The competent authority shall forward the admissible request and filed evidences to the right holder and invite him to submit his reply within 30 days from the date of receipt of the invitation.

During the revocation proceedings, the competent authority shall invite the parties, as many times as is necessary, to file their observations on the submissions of the opposite party within the time limit specified in paragraph 5 of this Article.

During the revocation procedure, the competent authority shall conduct a hearing only if it assesses it to be necessary for the establishment of facts relevant for the taking of a decision on the request.

If the competent authority establishes on the basis of the procedure for the revocation of the decision to grant a patent or a petty patent that all requirements for revocation referred to in Article 128 of this Law are fulfilled and that the patent or petty patent can not be maintained as amended, the competent authority shall take a decision to revoke the patent or petty patent in whole.

If the competent authority establishes on the basis of the procedure for the revocation of the decision to grant a patent or a petty patent that the requirements for revocation referred to in Article 128 of this Law are not fulfilled, the competent authority shall take a decision to refuse request for revocation of a decision to grant a patent or petty patent.

If the competent authority establishes that there are grounds that the patent or petty patent maintain as amended, it may invite the right holder to submit the patent claims as amended, within the time limit referred to in paragraph 5 of this Article. If the patent holder submits the patent claims as amended, the competent authority shall forward it to the requester.

If patent holder does not submit the patent claims as amended, the competent authority shall notify the parties to the procedure on the text of the patent claims with which it intends to maintain a patent or petty patent in force as amended and shall invite them to submit reasoned observations within 30 days of receipt of the notification.

If the parties approve of the text in which the competent authority intends to maintain the patent or petty patent in force as amended or if they fail to file the reasoned comments within the time limit referred to in paragraph 11 of this Article, the competent authority shall take the decision to revoke the decision on the grant of the patent or petty patent in part, by which patent or petty patent is maintained in force as amended according to patent claims which are communicated to the parties for a approval.

If the right holder states that he does not approve the wording of the claims under paragraph 11 of this Article, he shall be required to state the reasons for his disapproval and to file with the competent authority an amended wording of the claims.

If the competent authority accepts the amended wording of the claims as amended, it shall take the decision to revoke the patent or petty patent in part, by which patent or petty patent is maintained in force as amended, according to patent claims which are submitted by the right holder.

If the competent authority does not accept the amended wording of the claims as amended, it shall take the decision to revoke the patent or petty patent in part, by which patent or petty patent is maintained in force as amended, according to patent claims which are communicated to the parties for an approval.

The decision to revoke the patent or petty patent in part referred to in paragraph 12, 14 and 15 of this Article, shall be taken by the competent authority provided that prescribed costs for publication of prescribed datas referred to in the decision to revoke patent or petty patent in part and costs for amended specification for the patent have been paid.

Where the right holder fails to pay the fees and costs under paragraph 16 of this Article and to submit of the proof of payment within the set time limit, the patent or petty patent shall be revoked in whole and the competent authority shall render decision to that effect which is final and may be subject to administrative dispute.

Decision to revoke the patent or petty patent in part or in whole shall not produce any effect on court decisions relating to establishing infringement of rights, which were legally binding at the moment of the adoption of the above decision, nor on assignment and licensing agreements that have been entered into if, and to the extent that, such agreements have been executed, provided the plaintiff or patent or petty patent holder have acted in good faith.

### *Publication and Issuing Patent Specification as Amended*

#### Article 131

The competent authority shall publish particulars on the revoked patent or petty patent in the Official Gazette within three months from the date on which the decision becomes final.

If the patent or petty patent is maintained as amended under Article 130 of this Law, the competent authority shall publish the amended patent specification as soon as possible after the mention of the decision taken in the revocation procedure has been published.

The provisions of the Article 112 of this Law shall apply accordingly to the publication of new specification for the patent or petty patent which is maintained as amended.

The competent authority shall prescribe the particulars referred to in paragraph 1 of this Article.

### XIII PROTECTION OF RIGHTS UNDER CIVIL LAW

#### 1. Infringement Action

##### *Right to Bring an Infringement Action*

##### Article 132

The right holder or holder of an exclusive license shall be entitled to infringement action against any person infringing their right by means of any unauthorized action referred to in Articles 14 and 15 of this Law.

The applicant or the holder of an exclusive license shall be entitled to infringement action upon the publication of the patent application.

If more than one person are right holders or right holders of the published patent application on the same invention each of them is entitled to require in their own name and on their account the protection of rights under Civil Law.

##### *Infringement Claims*

##### Article 133

An action for the infringement may contain a claim for:

- 1) establishment of the existence of an infringement of right;
- 2) prohibition of acts infringing the right;
- 3) compensation for damages caused by infringement;
- 4) publication of the court decision at the expense of the defendant;
- 5) seizure or destruction of products made or obtained by infringement of right, without compensation of any sort;
- 6) seizure or destruction of material or articles (equipment, tools) predominantly used in the creation of infringing products, without compensation of any sort;
- 7) supplying of informations about third parties participating in the infringement of rights.

If an infringement of rights was committed intentionally or out of gross negligence, the plaintiff may, instead of the compensation referred to paragraph 1 item 3) of this Article, claim up to the triple amount of license remuneration he would usually receive for the exploitation of the invention.

The court shall, within the infringement claims under paragraph 1 item 4) of this Article, decide in which means of public communication the court decision will be published. If the court decides to publish the court decision in part it will determine, within the infringement claims, to publish the sentence and if necessary that part of the court decision which shows the nature of the infringement and who committed the infringement.

In considering the claims referred to in paragraph 1 items 5) and 6) of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of third parties.

The applicant shall be entitled to damages from the date of publication.

Any issue related to the damage compensation caused by infringement of right that is not regulated by this Law shall be subject to appropriate regulations regulating obligations.

### *Provisional Measures*

#### Article 134

On request of the person who proves reasonable probability that his right arising from the published application or granted right is or shall be infringed, the court may, pending a final decision, pronounce the provisional measure of:

1) seizure or withdrawal from the market of products made or obtained by infringement of right;

2) seizure or withdrawal from the market of articles (equipment, tools) predominantly used in the production of infringing products;

3) prohibition of the further performance of infringing acts.

A request for the grant of a provisional measure may be filed before the infringement action, provided that the infringement action is brought within thirty days from the court decision of the provisional measure.

Where there is risk of irreparable damage being caused or where there is demonstrable risk of evidence being destroyed, the court may pronounce a provisional measure without the defendant being heard, whereas the defendant must be notified about that without delay, at the latest within five days from the implementation of the provisional measure.

The court may instruct the person who has filed the request for the provisional measures to furnish additional evidence of the infringement of right committed or of the demonstrable risk of infringement of right.

An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not postpone the execution of the decision.

Appropriate provisions of the law regulating the execution procedure shall apply to those issues concerning the institution of provisional measures that are not provided for by this Law.

### *Precautionary Measures*

#### Article 135

At the request of the person against whom the infringement action has been brought or proceeding for provisional measures has been instituted, the court may order appropriate cash deposit amount to ensure compensation in the case of ungrounded request to pronounce provisional measures, to be borne by the plaintiff or the person who has requested the provisional measures.

## *Preservation of Evidence*

### Article 136

Upon the request of the person, who proves reasonable probability that his right arising from the published application or granted right is being infringed or shall be infringed the court may undertake to preserve evidence.

The preservation of evidence within the terms of paragraph 1 implies the inspection of premises, records, documents, databases, as well as the seizure of assets and the questioning of witnesses and experts.

The court may undertake to preserve evidence without prior notice or hearing of the person in possession of the evidence if the requester proves reasonable probability of danger that evidence thereof shall be destroyed or existing the threat of irreparable damage.

If the preservation of evidence was determinate in the manner prescribed in paragraph 3 of this Article, the court decision to preserve evidence shall be delivered to the person from whom evidence is collected at the time of such collection or as soon as possible if the person is absent

The order to secure of evidence may be requested before the infringement action, provided that the infringement action is brought within thirty days from the date of filing of the request in question.

Appropriate provisions of the law regulating the civil procedure shall apply to those issues concerning the institution of preservation of evidence that are not provided for by this Law.

## *Time Limit for Filing the Infringement Action*

### Article 137

The infringement action may be brought within a period of three years from the date of obtaining knowledge of the infringement and of the infringer, but not later than five years from the date on which the infringement occurred or from the date of the last infringement occurred when the infringement performed continuously.

The infringement proceeding referred to in paragraph 1 of this Article shall be urgent.

## *Burden of Proof*

### Article 138

If the subject matter of an infringement of right is a process for obtaining a new product, any identical product shall be deemed to have been obtained by means of the protected process, until proven otherwise.

The burden of proof shall be on the defendant who manufactures such product, whereby the legitimate interests of such defendant in protecting his manufacturing and business secrets shall be taken into account.

## *Right of Information*

### Article 139

The court may order, in response to a proportionate to the seriousness of the infringement, the infringer to provide the information on the origin and distribution networks of the goods or services which infringe the right arising from the published application or granted right.

Providing of information specified in paragraph 1 of this Article the court may order and to the other person who:

1) was found in possession of the infringing goods on a commercial scale which infringe the right arising from the published application or granted right;

2) was found to be using the infringing services on a commercial scale which infringe the right arising from the published application or granted right;

3) was found to be providing on a commercial scale services used in infringing activities which infringe the right arising from the published application or granted right;

4) was indicated by the person referred to in item 1), 2) or 3) of this Article as being involved in the manufacture or distribution of the goods or the provision of the services which infringe the right arising from the published application or granted right.

The information referred to in paragraph 1 of this Article shall comprise in particular:

1) datas of the producers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

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

If persons referred to in paragraphs 1 and 2 of this Article unreasonably fail to comply with a court order and do not provide the requested information they will be responsible for the damage thus caused.

## 2. Action for the Establishment of the Right to Protection

### Article 140

The inventor, his successor in title or employer shall be entitled to require through a civil action before the court the establishment of his right to the protection of a given invention instead of or, together with the person who has already filed an application for that invention.

If the decision to grant a patent has already been taken by the competent authority the inventor, his successor in title or employer referred to in paragraph 1 of this Article may require through a civil action before the court the establishment that he is the right holder instead of or together with the person registered as the right holder.

Action under paragraph 1 of this Article may be brought before the right has been granted and the action under paragraph 2 of this Article may be brought prior to the expiry of the right.

The proceedings under paragraph 1 and 2 of this Article shall be urgent.

The final court decision upholding the claims referred to in paragraphs 1 and 2 of this Article shall be communicated to the competent authority, which shall enter changes concerning the applicant or right holder into the appropriate register.

### 3. Action for the Protection of Employer's or Employee's rights

#### Article 141

An employer or employee entitled, under the provisions of this Law, to the protection or commercial use of an invention made in the course of employment, may require through a civil action before the court the establishment and protection of his rights.

Action under paragraph 1 of this Article, for the establishment of employee or employer rights may be brought within two years from the date of the publication of the patent application, but not after the expiry of two years from the date of termination of employment during which the invention was made.

The final court decision upholding the claims referred to in paragraphs 1 and 2 of this Article shall be communicated to the competent authority, which shall enter the changes of ownership into the appropriate register.

### 4. Action for Recognition of the Status of Inventor

#### Article 142

If any other person has been designated as the inventor in the patent or petty patent application or in any other document provided for by this Law, the inventor shall be entitled to require through a civil action before the court the establishment of his status as inventor and order the entry of his name in the patent or petty patent application and in other relevant documents and registers in accordance with the provisions of this Law.

There shall be no time limit for an action referred to in paragraph 1 of this Article.

In the case of the death of the inventor, his heirs shall be entitled to bring an action referred to in paragraph 1 of this Article.

### 5. Stay of the Civil Proceedings

#### Article 143

The court shall stay the proceedings on action for infringement of rights arising from the published application, pending a decision by the competent authority on such application.

If procedures defined in Articles 128 of this Law have been initiated before the competent authority, the court shall stay the proceedings on action referred to in Articles 132 paragraph 1, 133, 140 paragraph 2 and 142 of this Law pending a final decision of the competent authority.

### 6. Revision

#### Article 144

Revision is always allowed against second-instance final court decisions made in disputes relating to the protection and use of inventions.

## XIV THE EUROPEAN PATENT APPLICATION AND THE EUROPEAN PATENT

### *Effects of European Patent Applications and European Patents in the Republic of Serbia*

#### Article 145

A European patent application and a European patent shall, subject to the provisions of this Law, have the same effect and be subject to the same conditions as a national patent application and a national patent.

#### *Filing of a European Patent Application*

#### Article 146

A European patent application may be filed:

- 1) with the European Patent Office;
- 2) with the competent authority.

Competent authority shall forward the European patent application to the European Patent Office within:

- 1) six weeks of filing, where the subject of the application is evidently not liable to secrecy under this Law;
- 2) four months of filing or if priority has been claimed, fourteen months of the date of priority, where the application requires further examination as to its liability to secrecy.

A European patent application filed with the competent authority shall have the same effect as if it has been filed on the same date with the European Patent Office, provided that it has been transmitted by the competent authority in accordance with the provisions of paragraph 2 of this Article to the European Patent Office in due time.

A European divisional patent application and the new European patent application referred to in Article 61 paragraph 1 item b) of the European Patent Convention shall be filed directly with the European Patent Office.

If the competent authority estimates that the invention falls under the category of inventions being important for the defence and security of the Republic of Serbia, it shall not transmit the European patent application to the European Patent Office in accordance with paragraph 2 of this Article, but shall act in accordance with provisions of this Law relating to inventions of importance for defence and security of the Republic of Serbia, and shall notify the applicant thereof.

The European patent application, which is to be filed with the competent authority in accordance with the provisions of this Article, may be filed in any of the official languages referred to in Article 14, paragraph 1 of the European Patent Convention or if it is filed in another language referred to in Article 14, paragraph 2 of the European Patent Convention, must be translated into one of an official languages and filed within two months from the filing of European patent application.

## *Fees and Procedural Costs for European Patent Applications*

### Article 147

The fees and costs payable in respect of European patent applications shall be paid to the European Patent Office in accordance with provisions of the European Patent Convention and regulations to the European Patent Convention.

## *Priority Right and Provisional Protection of European Patent Applications*

### Article 148

A European patent application, which has been accorded a date of filing and in which has been designated the Republic of Serbia shall be equivalent to a regular national patent application, with priority claimed for a European patent application, if such claim has been made, whatever the outcome of proceedings relating to the application may be.

A published European patent application shall confer upon the applicant the same provisional protection under this Law as is conferred by a national patent application, from the date on which a translation of the claims of the published European patent application into the Serbian language is communicated by the applicant to the person using the invention in the Republic of Serbia.

The European patent application shall be deemed not to have had the effect specified in paragraph 2 of this Article, *ab initio*, if it is withdrawn, deemed to be withdrawn, if it is finally refused or if the designation of the Republic of Serbia has been withdrawn or deemed withdrawn.

## *Effects of European Patent and Procedure for Entry of the European Patent into the Register of Patents*

### Article 149

Subject to paragraphs 2 to 6 of this Article, a European patent designated for the Republic of Serbia shall, from the date of publication of mention of the grant European patent by the European Patent Office, confer the same rights as would be conferred by a national patent under this Law.

Within 3 months from the date on which mention of the grant of the European patent has been published, the owner of the patent shall submit the competent authority:

- 1) a request for entry of the European patent into the Register of Patents;
- 2) a specification of the European patent as published in the Official Journal of European Patent Office translated into the Serbian language;
- 3) the proof of payment of procedural costs for publication.

If, as a result of an opposition filed with the European Patent Office, the European patent is maintained with the amended claims, or as a result of a request for limitation referred to in Article 105a European Patent Convention the European patent is limited by the amendment of the claims, the owner of the patent shall furnish the competent authority with a translation of the amended claims in the Serbian language, and shall pay the prescribed costs for publication, within three months from the date of publication of the European Patent Office decision concerned.

Where the text of claims contains reference signs used in drawings, such drawings shall be attached to the translation referred to in paragraphs 2 and 3 of this Article.

The competent authority shall publish the mention of any translation duly filed under paragraph 2 or 3 of this Article.

If the translation referred to in paragraph 2 or 3 of this Article is not filed in the prescribed time-limit or the prescribed costs are not paid within the period referred to in paragraph 2 or 3 of this Article, the European patent shall be deemed to be void *ab initio* for the Republic of Serbia.

The European patent and the European patent application on which it is based shall be deemed not to have had *ab initio* the effects specified in paragraph 1 of this Article and Article 148, paragraph 2 of this Law, to the extent that the patent has been revoked in the opposition proceeding, or revoked or limited in the procedure concerning the request referred to in Article 105a of the European Patent Convention and in scope that was revoked by the decision under Article 131 this Law.

The competent authority shall take a decision on entry of the European patent into the Register of Patents provided that the costs for printing the patent specification in the Serbian language are submitted.

If an applicant of the request for entry of the European patent into the Register of Patents do not submit the proof of paying the prescribed cost under paragraph 8 of this Article within set time limit from the date of receipt of the notification for costs payment, the competent authority shall render conclusion rejecting the request for entry of the European patent into the Register of Patents.

The competent authority prescribes the particulars of publication of the European patent.

#### *Authentic Text of European Patent Applications or European Patents*

#### Article 150

The text of a European patent application or a European patent in the language of the proceedings before the European Patent Office shall be the authentic text in any proceedings conducted in Republic of Serbia.

Notwithstanding paragraph 1 of this Article, a translation furnished in accordance with Article 148, paragraph 2 or Article 149, paragraph 2 and 3 of this Law, shall be regarded as authentic, except in revocation proceedings, where the application or patent in the language of the translation confers narrower protection than that conferred by it in the language of the proceedings.

An applicant or the owner of a European patent may file a corrected translation of the claims of the European patent application or European patent at any time.

The corrected translation of the claims of the published European patent application referred to in paragraph 3 of this Article shall not have any legal effects in the Republic of Serbia until it has been communicated to the person using the invention in the Republic of Serbia.

The corrected translation of the specification of the European patent referred to in paragraph 3 of this Article designating the Republic of Serbia shall not have any legal effect, until the competent authority has published the mention of the correction. Publication of the mention of corrected translation shall be done as soon as possible after payment of costs prescribed for the publication.

Any person who, in good faith, uses or has made effective and serious preparations for the use of an invention, so that such use does not constitute an infringement of the rights arising from the application or patent in the original translation, may, after the corrected translation takes effect, continue such use for the needs thereof, without payment of remuneration.

#### *Rights of Earlier Date*

##### Article 151

European patent application and a European patent designating the Republic of Serbia shall have, with regard to a national patent application or petty patent application and a national patent or petty patent, the same prior art effect as a national patent application or petty patent application and a national patent or petty patent.

In the Republic of Serbia, a national patent application or petty patent application and a national patent or petty patent shall have, with regard to a European patent designating the Republic of Serbia, the same prior art effect as they have with regard to a national patent or petty patent.

#### *Simultaneous Protection*

##### Article 152

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

#### *Conversion of a European patent application into a National Patent Application*

##### Article 153

The competent authority shall carry out a procedure for the grant of a national patent upon the request of an applicant of a European patent application in the following cases:

- 1) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3 European Patent Convention,
- 2) where the translation of a European patent application has not been filed in due time in accordance with the provision of Article 14, paragraph 2 and Article 90, paragraph 3 of the European Patent Convention.

In the case referred to in paragraph 1 item 1) of this Article, a request for conversion European patent application into the national application shall be filed with the competent authority. The competent authority shall, subject to the provisions on national security, transmit the request for conversion European patent application into the national application directly to the central industrial property offices of the Contracting States specified therein. The time limit

for the transmission and the legal sanction for belated transmission are provided for in the European Patent Convention.

In the cases referred to in paragraph 1 item 2) of this Article, a request for conversion European patent application into the national application shall be filed with the European Patent Office, which shall transmit it to the competent authority, if the Republic of Serbia specified therein.

The request for conversion of the European patent application into the national application shall be deemed as filed after the conversion fee and costs have been paid and the proof of payments have been submitted to the competent authority . The time limit for filing the request for conversion is provided for in the European Patent Convention. The effects of the European patent application referred to in Article 66 of the European Patent Convention shall lapse if the request for conversion is not filed in due time.

Within two months from the filing date of the request for conversion of a European patent application into a national patent application, the applicant shall pay the costs for publication of mention of the conversion and submit the proof of payment and shall file with the competent authority the translation of the original text of the European patent application into the Serbian language. Mention of the conversion shall be published in the Official Gazette.

If the costs referred to in paragraph 5 of this Article have not been paid and the proof of payment have not been submitted to the competent authority in due time, or if the translation of the original text of the European patent application into the Serbian language is not filed in due time, the request for conversion shall be deemed not to be filed, and the competent authority shall render a conclusion.

#### *Renewal Fees for European Patents*

##### Article 154.

Renewal fees for European patents shall be paid to the competent authority for the years following the year in which the mention of the grant of the European patent was published in accordance with special regulation.

#### *Dispositions of European Patent Applications and European Patents*

##### Article 155

The provisions of this Law on the assignment, license, right of pledge, and compulsory licenses shall apply to European patent applications and European patents with effect in the territory of the Republic of Serbia.

#### *Protection against Infringement*

##### Article 156

The provisions of this Law on the protection of rights under Civil Law in the case of infringement shall apply to European patent applications and European patents designating the Republic of Serbia.

## *Revocation of the European patent*

### Article 157

Subject to the provision of Article 138 of the European Patent Convention, a European patent may be revoked in the procedure before the competent authority in accordance with the provisions of this Law, with the effect for the Republic of Serbia.

In a proceeding before the competent authority relating to the validity of the European patent, the right holder of the European patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

If a request for revocation of a European patent is filed with the competent authority after the initiation of the opposition procedure before the European Patent Office, referred to in Article 99 of the European Patent Convention or the procedure concerning a request for limitation or revocation referred to in Article 105a of the European Patent Convention, the competent authority shall stay the procedure concerning a request for the revocation up to the termination of the mentioned procedures before the European Patent Office.

## *Application of European Patent Convention*

### Article 158

Provisions of this Law shall apply to the European patent applications and European patents designating the Republic of Serbia unless otherwise expressly stipulated by the European Patent Convention.

European Patent Convention shall apply in the case of conflict between European Patent Convention and this Law.

## XV INTERNATIONAL PATENT APPLICATION PURSUANT TO THE PATENT COOPERATION TREATY

### *International Application*

### Article 159

An “international patent application” shall mean a patent application filed under the Patent Cooperation Treaty. Any reference to the Patent Cooperation Treaty in this Law shall also be construed as reference to the Regulations under the Patent Cooperation Treaty.

The provisions of the Patent Cooperation Treaty, of this Law and of regulations under this Law shall apply to international patent applications filed with the competent authority acting as the receiving office, or in which the competent authority has been indicated as the designated or elected office.

### *International Application Filed with the Competent Authority as a Receiving Office*

### Article 160

An international patent application may be filed with the competent authority acting as a receiving office, if the applicant is a natural person who is a national and a resident of the Republic of Serbia or a legal person whose seat is in Republic of Serbia.

*International Application Indicating the Competent authority as a Designated or Elected Office*

Article 161

An international application in which Republic of Serbia has, pursuant to the provisions of the Patent Cooperation Treaty, been designated or elected for the granting of a national patent, shall be filed with the competent authority, in the Serbian language, within a period at the latest of thirty months from the international filing date or from the date of priority, if priority has been claimed in the international application.

The time limit referred to in paragraph 1 of this Article shall be extended by 30 days, if the applicant of the international patent application pays a prescribed extension fee and submits the proof of payment to the competent authority.

An international application filed with the competent authority acting as the designated or elected office shall be published in the Official Gazette in accordance with Article 102 of this Law, not later than six months from the date of receipt of the application by the competent authority.

The applicant shall be granted the provisional rights laid down in Article 18, paragraph 1 of this Law as of the date of publication of application in the Official Gazette as specified in Article 102 of this Law.

The substantive examination of an international application shall be conducted at the request of the applicant, if such request has been filed within the time limit stipulated in Article 103 of this Law.

An international application published in accordance with Article 21 of the Patent Cooperation Treaty shall not be deemed to be part of the state of the art under the provisions of Article 10, paragraph 2, item 2) of this Law until conditions stipulated in paragraph 1 of this Article have been fulfilled.

*European Patent Office as an International Search and International Preliminary Examination Authority*

Article 162

The European Patent Office shall act as an authority for the international search and international preliminary examination of international applications filed with the competent authority acting as the receiving authority.

XVI PETTY PATENT

*Subject Matter and Conditions of Protection*

Article 163

A petty patent is a right granted for an invention that is new, involves an inventive step and is susceptible of industrial application.

Only a solution relating to the structure of a product or the layout of its components may be the subject matter of an invention protected by petty patent.

Petty patent application can contain only one independent claim and at the most four dependent claims.

Petty patent application cannot be obtained the protection of the unity of invention.

A petty patent application can be divided into two or more independent petty patent applications (divisional application).

Petty patent application cannot be filed as the application for patent of addition in the terms of Article 88 of this Law.

### *Petty Patent Grant Procedure*

#### Article 164

If the competent authority finds in the examination of an petty patent application, in accordance with Article 163 paragraphs 2, 3, 4, 5 and 6, Articles 99 and 104 paragraph 1 items 1), 2) and 4) of this Law, that the application fulfils all requirements prescribed therein, it shall take a decision to grant the petty patent. The subject matter of the invention of the application shall not be examined on novelty, inventive step and industrial applicability in the course of grant procedure for petty patent.

If the competent authority finds that the subject matter of the application does not comply with the requirements referred to in paragraph 1 of this Article the applicant shall be informed thereof in examination report, which especially contain a reasoned statement covering all the grounds against the grant of the petty patent and shall be invited to correct deficiencies in the prescribed time limit, which shall be no less than two months nor longer than three months.

After the receiving of examination report referred to in paragraph 2 of this Article, the applicant may amend only once the description, patent claims and the drawing, if the amendment submitted concurrently with applicant's response to the examination report in this paragraph and other changes may be made only with the consent of the competent authority.

Upon a reasoned request of the applicant competent authority shall extend the time limit referred to in paragraph 2 of this Article, by the period of time the competent authority deems justified, but not exceeding three months.

If the applicant fails to correct the deficiencies referred to in paragraph 2 of this Article, the competent authority shall render a conclusion rejecting the petty patent application, against which appeal may be filed with the Government within 15 days from the receipt of the conclusion.

Government decision on the appeal is final and administrative dispute proceedings may be instituted against such decision within 30 days from the date of receipt of the Government's decision.

The petty patent application shall not be published.

### *Examination of a Granted Petty Patent*

#### Article 165

At the request of the petty patent holder the competent authority shall examine the granted petty patent in accordance with Article 104, paragraph 1 items 5) and 6) of this Law.

It shall be deemed that the request for the examination of the granted petty patent is filed only when the fees for the substantive examination and search report are paid and the proofs of payments are submitted.

The request referred to in paragraph 1 of this Article may not be withdrawn.

If the requirements referred to in paragraph 1 of this Article are fulfilled, the competent authority shall issue to the petty patent holder the certificate of examination.

If the requirements referred to in paragraph 1 of this Article are not fulfilled the competent authority shall ex officio revoke the petty patent.

Notification of the issued certificate of examination and decision on revocation of petty patent shall be published in the Official Gazette and entered into the Register of petty patents.

The provisions of Article 132 to 144 and the provisions of Article 26 to 38 of this Law in part related to the initiation of proceedings does not apply if the granted petty patent does not have certificate of examination.

The competent authority shall prescribe the particulars of the certificate of examination.

### *Conversion of the Application*

#### Article 166

Until the decision to grant a petty patent referred to in Article 164 paragraph 1 of this Law, the applicant may file a request for the conversion of the petty patent application into patent application or industrial design and vice versa.

A converted application shall retain the filing date of the application for a petty patent or of the originally filed application.

### *Application of the Provisions of the Grant Procedure and Cessation of Right Procedure*

#### Article 167

Provisions of this Law shall duly apply to petty patents, unless otherwise expressly stipulated.

## XVII CONDITIONS FOR THE ENTRY INTO THE REGISTER OF REPRESENTATIVES

#### Article 168

Natural person who are nationals and residents of Republic of Serbia, who have command of one language of international communication and who represent clients on professional basis, may be entered into the Register of representatives referred to in Article 5 of this Law under one of the following conditions:

1) they are Faculty of Law graduates and having passed a special expert examination with the competent authority;

2) they are graduates from one of the following faculties: Faculties of Technology and Engineering Sciences or Faculties of Sciences and Mathematics or Faculty of Pharmacy and having passed a special expert examination with the competent authority;

3) they are graduates from one of the following faculties: Faculties of Technology and Engineering Sciences or Faculties of Sciences and Mathematics or Faculty of Pharmacy or Faculty of Law and having at least five years of working experience in the field of industrial property with the competent authority.

Legal persons having seat in Republic of Serbia and employing at least one Law faculty graduate and one graduate from one of following faculties: Faculties of Technology and Engineering Sciences or Faculties of Sciences and Mathematics or Faculty of Pharmacy that

fulfils conditions referred to in paragraph 1 of this Article, may also be entered into the Register of Representatives referred to in Article 5 of this Law.

## XVIII APPLICATION OF THE PROVISIONS OF THE LAW OF THE GENERAL ADMINISTRATIVE PROCEDURE

### Article 169

Appropriate provisions of the Law of General administrative procedure shall apply to those issues concerning procedures for patent or petty patent application or granted rights that are not prescribed by this Law.

## XIX PENAL PROVISIONS

### *Misdemeanour*

### Article 170

Legal person who unauthorized manufactures, imports and/or exports, offers for sale, places on the market, stores or uses for commercial purposes the product or process protected by patent or petty patent contrary to the provisions of this Law (Article 14. and 15) shall be imposed a fine of RSD 100,000 to 2,000,000

For the acts referred to in paragraph 1 this Article shall be imposed a fine of RSD 50,000 to 500,000, and entrepreneur.

For the acts referred to in paragraph 1 this Article shall be imposed a fine on a natural person or a responsible person in legal person of RSD 50,000 to 150,000.

The infringing objects in the misdemeanour and the objects used for the perpetration of the misdemeanour under paragraph 1-3 of this Article shall be seized, provided that the infringing objects in the misdemeanour shall also be destroyed.

The judgment by which an offender is imposed fine for a misdemeanor referred to in paragraphs 1-3. of this Article shall be published.

### Article 171

A legal person who acts as representative in the exercising of the rights under Article 5 of this Law without having a power of attorney shall be sanctioned on grounds of the misdemeanour with a fine of between RSD 100,000 and 1,000,000.

The natural person or responsible person in a legal person shall be sanctioned on grounds of the misdemeanour for the acts under paragraph 1 of this Article with a fine of between RSD 10,000 and 50,000.

## XX TRANSITIONAL AND FINAL PROVISIONS

### *Continuity in the Maintenance of Registers*

#### Article 172

The Register of Patent Applications, the Register of Patents, the Register of Petty Patent Applications and the Register of Petty Patents, specified by the Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and „Official Gazette of RS”, No. 115/2006), shall continue to be maintained pursuant to this Law.

Pledges entered, by the date of this Law entering into force, into the Register of Possessory Lien on Movable Property and Rights (hereinafter: the Pledge Register) at the Agency for Business Registers shall remain in effect and shall be entered into the relevant register with the competent authority.

The Agency for Business Registers shall, within 30 days from the date of this Law entering into force, forward to the competent authority data and documentation on the basis of which an pledge on patent, petty patent or rights arising from the application has been entered into the Pledge Register.

*Effects of this Law on Valid Patents and Petty Patents and on applications for patents and petty patents that are filed by the date entering into force of this Law*

#### Article 173

The registered patents and petty patents valid on the date of this Law entering into force shall remain in effect and they shall be subject to the provisions of this Law.

The provisions of this Law shall also apply to patent applications and petty patent applications submitted by the date of this Law, taking effect in respect of which administrative proceedings have not been finalized, as well as to other proceedings instituted in respect of patent and petty patent that remain pending on the date of this Law taking effect.

*Extended European patents and extended European patent applications*

#### Article 174

The provisions of the Chapter XV of the Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and „Official Gazette of RS”, No. 115/2006) shall apply on the European patent applications extended for the Republic of Serbia and on the European patents which have been granted on such applications.

*Deadline for Adoption of Bylaws*

#### Article 175

Bylaws for the enforcement of this Law shall be adopted within six months from the date of entering into force of this Law.

Until the adoption of the bylaws referred to in paragraph 1 of this Article, bylaws adopted on the basis of the Patent Law („Official Gazette of the S&M”, No. 32/04 and 35/04 and

”Official Gazette of RS“, No. 115/2006) shall apply except for the provisions contrary to this Law.

*Cessation of Validity of the Law*

Article 176

On the date of this Law entering into force shall cease the validity of:

- 1) The Patent Law („Official Gazette of the S&M”, No. 32/04, 35/04 and ”Official Gazette of RS“, No. 115/2006);
- 2) Provision of Articles 3 to 13 of the Law on Ratification of the Convention on the grant of European Patents ("Official Gazette RS-International Treaties, No. 5/2010);

*Cessation of Validity of the Provisions of this Law*

Article 177

The validity of the provisions of this Law that regulates compulsory licenses of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems shall cease on the day of accession of the Republic of Serbia to the European Union.

*Entry into Force*

Article 178

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Serbia”, provided that the provisions of this Law referred to in Supplementary protection certificate shall apply from 1 July 2013.