

Law on Industrial Property No. 7819 of April 27, 1994*

GENERAL PROVISIONS

Object

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

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

Forms of Protection

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

Industrial designs, trademarks and service marks, and appellations of origin shall be protected by registration with the Patent Office.

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

(2) The provisions of this Law shall equally apply to foreign, legal and natural persons that are nationals of:

- (a) contracting States of international treaties and conventions to which the Republic of Albania has acceded;
- (b) States to which the principle of reciprocity is applicable.

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

PART I PATENTS FOR INVENTIONS AND UTILITY MODELS

Chapter I Patentability of Inventions

Conditions of Patentability

3.—(1) In order to be patentable, an invention shall be novel, shall involve an inventive step and shall be industrially applicable.

(2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph (1):

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

(3) The provisions of paragraph (2) shall exclude patentability of the subject matter or activities referred to in that provision only to the extent to which a patent application or patent relates to such subject matter or activities as such.

(4) A patent shall not be granted in respect of an invention the publication or exploitation of which would be contrary to public policy or morality.

(5) No patents shall be granted for substances obtained through internal nuclear transformations for military purposes.

(6) No patents shall be granted for inventions of surgical, diagnostic or therapeutical methods practiced on the human or animal body, which shall be regarded as inventions not susceptible of industrial application within the meaning of paragraph (1). This provision shall not apply to inventions relating to substances and devices for use in any of these methods.

(7) No patents shall be granted in respect of plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof.

Novelty

4.—(1) An invention shall be considered novel if it does not form part of the prior art. For the determination of novelty, items of prior art may only be taken into account individually.

(2) The prior art shall consist of everything which, before the filing date or, where priority is claimed, the priority date of the application claiming the invention (hereinafter priority date), has been made available to the public by means of publication, use, demonstration or in any other way.

(3) The prior art shall also include the content of any patent application as filed in, or with effect for, the Republic of Albania, to the extent that such application or the patent granted thereon is subsequently published, provided that the filing date or, where priority is claimed, the priority date of such application is earlier than the date referred to in paragraph (2).

Inventive Step

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

Industrial Applicability

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

Grace Period

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

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

(b) by a Patent Office and the information was contained:

(i) in another application filed by the inventor and should not have been disclosed by the Office or

(ii) in an application filed without the knowledge or consent of the inventor by a third party who had obtained the information directly or indirectly from the inventor;

(c) by a third party who had obtained the information directly or indirectly from the inventor.

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

(3) Where the applicability of paragraph (1) is contested, the party invoking the effects of that paragraph shall have the burden of proving, or of credibly showing that the conditions of that paragraph have been fulfilled.

Chapter II Right to Patent, Mention of Inventor

Right to Patent

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

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

Employee Inventions

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

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

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

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

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

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

Mention of Inventor

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

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

Chapter III The Application and Procedure up to Grant

Requirements of Application

11.—(1) An application for a patent shall contain:

(a) a request for the grant of a patent;

(b) a description of the invention for which a patent is sought;

(c) one or more claims;

(d) any drawings, if necessary, referred to in the description or the claims, in order to elucidate the essence of the invention and its claims;

(e) an abstract of the invention;

(f) where the application is filed with the Patent Office through a patent attorney, it shall be accompanied by the respective authorization.

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

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

Filing Date

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

(a) a statement that a patent is sought;

(b) information identifying the applicant;

(c) a description and one or more claims, even though the description and the claims do not comply with the other requirements of this Law and of the Regulations.

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

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

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

(4) Where the application is afforded a filing date, the Patent Office shall notify the applicant accordingly.

Disclosure and Description

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

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

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

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

Claims

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

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

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

Abstract

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

Unity of Invention

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

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

Division of Initial Application

17.—(1) The applicant may divide the application into two or more applications (“divisional applications”), provided that each divisional application shall not go beyond the disclosure in the initial application.

(2) Any divisional application shall be entitled to the filing date or, where priority is claimed, the priority date of the initial application.

(3) Priority documents and any required translations thereof that are submitted to the Patent Office in respect of the initial application shall be considered as having been submitted in respect of all divisional applications.

Right of Priority

18.—(1) The application may contain a declaration claiming the priority, pursuant to the Paris Convention for the Protection of Industrial Property, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to that Convention.

(2) Where the application contains a declaration under paragraph (1), the Patent Office may require that the applicant furnish, within a three-month period, a certified copy of the earlier application.

(3) The effect of the declaration referred to in paragraph (1) shall be as provided in the Paris Convention.

(4) If the Patent Office finds that the relevant requirements of this Article have not been fulfilled, it shall invite the applicant to file the required correction, within a period of time as prescribed in the Regulations. If the applicant does not comply with the invitation, the declaration referred to in paragraph (1) shall be considered not to have been made.

Amendment or Correction. Withdrawal of Application

19.—(1) The applicant shall have the right, on his own initiative, to amend or correct the application up to the time the application is suitable for grant, on payment of the prescribed fee.

(2) No amendment or correction of the application may go beyond what has been disclosed in the application as filed.

(3) Amendments or corrections may be also made upon the request of the Patent Office.

(4) The applicant may withdraw the application at any time during its prosecution.

Publication of Application

20.—(1)(a) The Patent Office shall publish all applications filed with it.

(b) No application shall be published if it is withdrawn or rejected before the expiration of 17 months from the filing date or, where priority is claimed, the priority date of the application.

(c) If, by the time an application is due to be published, a patent has been granted on that application, the Patent Office shall publish only the patent specification in the prescribed manner, and shall allow any interested person to inspect the file of the application.

(2) The Patent Office shall publish each application filed with it promptly after the expiration of 18 months from the filing date or, where priority is claimed, from the priority date of the application. However, where the applicant presents a

written request to the Patent Office before the expiration of the period of 18 months, that his application be published, the Patent Office, shall publish the application promptly after the receipt of the request.

(3) The patent application shall provisionally confer upon the applicant as from the date of its publication the same rights as would be conferred by a patent.

(4) The publication of the application shall be done in the manner prescribed in the Regulations.

(5) The Court may decide to stay any proceedings brought before it in respect of unauthorized acts performed in relation to an invention that is the subject of a published application until a final decision has been taken by the Patent Office to grant or refuse a patent on the application.

(6) The patent application shall be deemed never to have had the effects set out in paragraph (3) if it is withdrawn or finally rejected.

Examination of Application and Grant of Patent

21.—(1) The Patent Office shall examine whether the application complies with the requirements of Articles 3(2), (3), (4), (5), (6) and (7), 11, 13, 14, 15 and 16. The Patent Office shall not examine the application as to the patentability of the invention under Articles 3(1), 4, 5 and 6. A patent shall be granted without a guarantee of its validity.

(2) Where the application complies with the requirements referred to in paragraph (1), the Patent Office shall decide to grant a patent subject to the payment of the prescribed fee for grant. The decision of the Patent Office on the grant of a patent shall be taken within four months from the date of the publication of the application.

(3) If the application does not conform or only partially conforms with the requirements of paragraph (1), the Patent Office shall notify the applicant, specifying the discrepancies and setting a three-month period for providing a reply. The application shall be rejected if the applicant fails to correct the deficiencies indicated by the Patent Office.

(4) A decision under paragraph (3) may be appealed from, on payment of a fee, to the Board of Appeal of the Patent Office within a three month period. If the applicant is not satisfied with the decision of the Board of Appeal, he may appeal against such decision within six months.

(5) As soon as the Patent Office has adopted a decision on the grant of the patent, it shall publish a notification that the patent has been granted and publish the patent specification in the prescribed manner.

Patent Register

22.—(1) The Patent Office shall maintain a Patent Register in which patents granted shall be recorded and numbered in the order of their grant.

(2) The Patent Register shall include such matters constituting or relating to the patent as are prescribed and entries of all corrections, amendments, changes in ownership or other matters that the Patent Office is empowered or required by this Law to record.

(3) The Patent Register shall constitute *prima facie* evidence of all matters directed or authorized by or under this Law to be entered therein.

(4) The Patent Register shall be open to public inspection, subject to such rules as may be prescribed.

(5) Certified copies of any entry in the Patent Register shall be supplied by the Patent Office to any person requiring the same, on payment of the prescribed fee, and a copy so certified shall be admissible in evidence in all courts and proceedings without further proof or production of the original.

Secret Patents

23.—(1) Patent applications which relate to the defense and security of the Republic of Albania shall be deemed secret and shall be filed with the Ministry of Defense.

(2) If the Patent Office receives an application for an invention it deems to be a secret invention, it shall notify the applicant thereof and invite him to express his views on the findings within the time limit:

(a) if the applicant agrees with the findings of the Patent Office, the application shall be forwarded for further consideration to the Ministry of Defense;

(b) if the applicant does not agree with the findings of the Patent Office and substantiates his opinion with evidence that is accepted by the Patent Office, the Patent Office shall resume the procedure for the grant of the patent in accordance with the provisions of this Law;

(c) if the applicant does not agree with the findings of the Patent Office and fails to substantiate his opinion or fails to substantiate it with sufficient evidence, the Patent Office shall issue a decision on its incompetence and forward the application to the Ministry of Defense.

(3) If the Ministry of Defense finds that the invention should not be deemed secret, the application shall be forwarded to the Patent Office, which shall deal with it in accordance with the provisions of this Law.

(4) All secret patent applications and secret patents shall be processed under special Regulations.

(5) If, after a patent for a secret invention has been granted, the Ministry of Defense finds that the invention should no longer be deemed secret, the complete file relating to the patent shall be forwarded to the Patent Office. Upon receipt of such file, the Patent Office shall enter the patent in the Patent Register, issue a patent certificate to the patentee and publish the specifications of the patent in accordance with Article 21(5).

(6) Domestic legal and natural persons may seek protection for a secret invention abroad only with the approval of the Ministry of Defense.

Exploitation of Secret Inventions

24.—(1) The Ministry of Defense and the Ministry of Public Order shall have the exclusive right to work and dispose of secret inventions.

(2) The rightful claimant to a secret invention protected by a patent shall be entitled to a lump sum as compensation regardless of the extent of use of the invention for the needs of national defense.

(3) The amount of compensation referred to in the second paragraph of this Article shall be agreed upon by the applicant and by the responsible Ministry (according to paragraph (1)). If agreement cannot be reached, the applicant shall be entitled to request a competent court to determine the amount of compensation.

Inspection of Files

25.—(1) The file relating to a patent application may be inspected before the grant of the patent only with the written permission of the applicant.

(2) Where an application is withdrawn in accordance with Article 19(4), the file relating to it may be inspected only with the written permission of the person who withdrew the application.

Opposition to Grant of Patent

26.—(1) Within nine months from the date on which the announcement of the grant of a patent is published, any person, on payment of the prescribed fee, shall have the right to file with the Board of Appeal of the Patent Office a substantiated notice of opposition to the patent granted. The opposition shall be filed in written form in two copies.

(2) An opposition against the grant of a patent may only be filed with the Board of Appeal if the requirements of Article 3(2), (3), (4), (5), (6), (7) and Articles 8, 13(1) and 19(2) of this Law have not been complied with.

(3) Pursuant to paragraph (1) of this Article, a copy of the opposition shall be forwarded to the applicant who shall prepare observations within three months. At the request of the applicant, this term may be extended for one more month. The Board of Appeal shall examine the opposition within three months of the date of receipt of the applicant's observations. The applicant and the opponent shall be notified of the examination of the opposition 30 days before the date fixed for the proceedings. Both parties shall have the right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations.

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

(5) A decision of the Board of Appeal referred to in paragraph (4) may be appealed from within six months by any interested party.

Chapter IV Effects of Patent

Rights Conferred by Patent

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

(a) the making of a product incorporating the protected invention;

(b) the offering or the putting on the market of a product incorporating the protected invention, the using of such a product, or the importing or stocking of such a product for such offering or putting on the market;

(c) the inducing of other parties to perform any of the above acts.

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

(a) the using of a process which is the subject matter of the patent;

(b) in respect of any product directly obtained by such process, any of the acts referred to in paragraph (1)(b), even where a patent cannot be obtained for such product;

(c) the inducing of other parties to perform any of the above acts.

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

(a) where the act concerns a product covered by the patent after it has been put on the market by the owner of the patent, or with his express consent, in the Republic of Albania or in any territory specified in the bilateral or multilateral agreements to which Republic of Albania has acceded;

(b) where the act is done privately and for non-commercial purposes, provided that it does not significantly prejudice the economic interests of the owner of the patent;

(c) where the act is done for purely experimental purposes or for scientific research;

(d) where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

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

Term of Patent and Maintenance Fees

28.—(1) The term of a patent shall be 20 years as from the filing date of the application.

(2) The maintenance of a patent shall be subject to the payment of the prescribed fees. Those fees shall be due each year on the date corresponding to the filing date.

(3) Any maintenance fee may be paid within a period of six months beginning on the date when it became due, subject in such case to the payment of a supplementary fee for the delay.

(4) If a maintenance fee is not paid in accordance with paragraphs (2) and (3), the patent shall lapse on the date on which the fee became due.

(5) The term of a patent for inventions related to pharmaceutical products can be extended beyond 20 years, but for no more than five years.

Extent of Protection

29.—(1) The extent of the protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings so as to combine fair protection for the owner of the patent with a reasonable degree of certainty for third parties.

(2) For the period up to the grant of the patent, the extent of the protection conferred by a patent application shall be determined by the latest filed claims contained in the publication under Article 20. However, the patent as granted or as amended in invalidation proceedings shall determine retroactively the protection conferred by the patent application, insofar as such protection is not thereby extended.

(3) In determining the extent of protection, due account shall be taken of any statement limiting the scope of the claims made by the applicant or the owner of the patent during procedures concerning the grant or the validity of the patent.

Prior User

30.—(1) A patent shall have no effect against any person who, in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and was using the invention or was making effective and serious preparations for such use within Albania. Any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

Limitation of Rights with Respect to Means of Transport and Goods in Transit

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

Chapter V Change in Ownership and Joint Ownership of Patent Application or Patent

Change in Ownership of Patent Application or Patent

32.—(1) Any contract assigning a patent application or a patent shall be made in writing and shall be signed by the parties to the contract on pain of invalidity.

(2) Any change in the ownership of a patent application or a patent shall be recorded in the Patent Register on payment of the prescribed fee. The new owner of the application or patent shall be entitled to institute any legal proceedings concerning the patent only if the change in ownership has been recorded in the Patent Register. The Patent Office shall publish the change of ownership of the patent.

Judicial Assignment of Patent Application or Patent

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

Joint Ownership of Patent Application or Patent

34.—(1) In the event of applicants for a patent, each such applicant may, without the agreement of the others, separately assign or transfer by succession his share of the application but the joint applicants may only withdraw the application or conclude license contracts with third parties under the application jointly.

(2) Where there are joint owners of a patent, each of them may without the agreement of the others, separately assign or transfer by succession his share of the patent or institute court proceedings for an infringement of the patent against any person exploiting the patented invention in the Republic of Albania. The exploitation of the patented invention in the Republic of Albania by one of the joint owners shall not require the agreement of the other joint owners, but the joint owners may only surrender the patent or conclude license contracts with third parties under the patent jointly.

(3) The provisions of this Article shall be applicable only in the absence of agreement to the contrary between the joint applicants or owners.

Chapter VI Contractual Licenses and Licenses of Right

License Contract

35.—(1) For the purposes of this Law, “license contract” means any contract by which one party (“the licensor”) gives to another party (“the licensee”) his agreement for that other party to perform in the Republic of Albania any of the acts referred to in Article 27 in respect of an invention claimed in a patent or a patent application.

(2) A license contract shall be made in writing and shall be signed by the parties to the contract on pain of invalidity.

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

(4) Secret patents may be licensed or assigned with the written consent of the Ministry of Defense or the Ministry of Public Order.

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

Rights of Licensee

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

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

Rights of Licensor

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

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

Licenses of Right

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

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

(3) The statement may not be filed as long as an exclusive license is recorded in the Patent Register.

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

(5) No request for recording an exclusive license in the Patent Register shall be admissible after the statement has been filed, unless the statement is withdrawn.

Chapter VII Non-Voluntary Licenses

Non-Voluntary Licenses

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

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

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

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

Exploitation by Government or by Third Parties Authorized by Government

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

Chapter VIII Infringement

Acts of Infringement

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

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

Infringement Proceedings

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

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

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

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

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

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

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

(a) the product is new; or

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

Declaration of Non-Infringement

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

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

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

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

Chapter IX Amendment, Surrender and Invalidation of Patent

Amendments

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

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

(3) No such amendment of a patent may go beyond what has been disclosed in the application as filed.

(4) If, and to the extent, the Patent Office amends a patent under paragraphs (1) or (2), it shall publish the amendments.

Surrender

45.—(1) The owner of a patent may surrender his patent by a written declaration submitted to the Patent Office. Surrender may be limited to one or more claims of the patent.

(2) The Patent Office shall record the surrender and publish notification thereof as soon as possible. Surrender shall take effect as from the date of receipt of the declaration by the Patent Office.

Invalidation

46.—(1) The Court may, at the request of any person, invalidate a patent, in whole or in part, on any of the following grounds:

(a) the subject matter of the patent is not patentable under Articles 3(1), 4, 5 and 6;

(b) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 13(l));

(c) the subject matter of the patent goes beyond what has been disclosed in the patent application as filed (Article 44).

(2) The Court may require the owner of the patent to submit for examination publications and other documents showing the prior art which have been referred to either in connection with an application for a patent or other title of protection sought, for the same or essentially the same invention, by the owner of the patent, with any other national or regional patent office, or in connection with any proceedings relating to the patent or other title of protection granted as a result of such application.

Effect of Invalidation

47.—(1) Any invalidated patent or claim or part of a claim shall be considered null and void as from the date of the grant of the patent.

(2) When a decision of the Court to invalidate a patent, in whole or in part, becomes final, the Court shall notify the Patent Office which shall record the decision in the Patent Register and shall publish it without delay.

Chapter X International Applications under the Patent Cooperation Treaty

Application of the Patent Cooperation Treaty

48.—(1) For the purposes of this Chapter, “international application” means an application filed under the Patent Cooperation Treaty (hereinafter referred to as the “PCT”).

(2) Where reference is made in this Law to the PCT, such reference shall include the Regulations under the PCT.

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

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

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

Designated Office and Elected Office

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

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

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

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

*International Applications Filed with the Patent Office
as Receiving Office*

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

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

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

**Chapter XI
Registration of European Patents**

Extension of European Patents

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

**Chapter XII
Patentability of Utility Models**

Conditions of Patentability

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

(2) Utility model protection shall be available to models capable of contributing effectiveness or ease of application or of use to machines or parts of machines, to instruments, to utensils and everyday objects, where they consist of special forms, arrangements, configurations or combinations of elements, satisfying the requirements of the preceding paragraph.

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

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

(3) Patents for utility models shall not be granted for the methods and subject matter referred to in Article 3(2), (3), and (4) of this Law.

Novelty and Industrial Applicability

53. The novelty and the industrial applicability of utility models shall be as defined in the provisions of Articles 4 and 6 of this Law.

Legal Protection

54. Legal protection for utility models shall be provided by utility model patents with a duration of 10 years, starting from the filing date.

Transformation

55. At the written request of the applicant, a patent application for an invention may be transformed into a patent application for a utility model up to such time as a decision is taken on the application.

Provisions Applicable to Utility Models

56. The provisions applicable to inventions shall equally apply to utility models, except as otherwise provided in this Chapter.

**Chapter XIII
Hearing of Disputes in Court**

Hearing of Disputes in Court

57.—(1) The Regional Court of Tirana shall have exclusive jurisdiction to hear any dispute concerning a patent application or a patent, in particular:

(a) any action for infringement or declaration of non-infringement of a patent or patent application;

(b) any action or counterclaim for invalidation of a patent;

(c) any action concerning the right to a patent, ownership or assignment of a patent application or patent;

(d) any action concerning a license contract;

(e) the grant of non-voluntary licenses;

(f) the review decisions of the Board of Appeal of the Patent Office.

(2) Decisions of the Regional Court of Tirana in any type of dispute referred to in this Article, may be appealed from to the Court of Appeal.

Time Limits for Instituting Actions in Court

58.—(1) During the term of a patent, an action may be instituted in Court without time limit, if the dispute has arisen in connection with:

(a) the invalidation of patents (Article 46);

(b) the grant of licenses.

(2) In other disputes, not referred to in paragraph (1), the time limit for instituting an action in Court shall be three years unless this Law or the legislative acts in force provide otherwise.

**PART II
INDUSTRIAL DESIGNS**

**Chapter XIV
Definition, Conditions and Right to Protection**

Definition and Conditions of Protection

59.—(1) For the purposes of this Law, “industrial design” (hereinafter referred to as “design”) means the external features of a product which are not dictated solely by the technical function of the product and which confer on it a specific appearance. Designs may be two- or three-dimensional or a combination of both.

(2)(a) To be eligible for protection, an industrial design must be new and applicable to industrial or handicraft products.

(b) An industrial design shall be considered new if it is not identical or closely similar to an industrial design which by publication or by public use has been made available to the public, anywhere in the world, before the filing date or, where priority is claimed, before the priority date of the application for registration of the earlier design.

(c) Subparagraph 2(b) of this Article shall not apply in respect of any publication or public use which was made by the creator of the industrial design or his successor in title within a period of 12 months prior to the filing date of the application or, where priority is claimed, the priority date.

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

Right to Protection

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

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

Industrial Designs Created on Commission or by an Employee

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

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

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

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

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

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

Mention of Creator

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

Chapter XV Application for Registration

Filing Date

63.—(1) The filing date of the application for registration of a design shall be the date on which the Patent Office receives documents that include:

(a) a request to register a design;

(b) the name and address of the applicant;

(c) a description of the design;

(d) to clarify the essence of the design, drawings of the general view of the article, a schematic drawing or a sample of the article;

(e) a statement of the product or products in which the design is intended to be incorporated;

(f) where priority is claimed in the application, words to that effect, together with the identification of the Patent Office with which the application whose priority is claimed ("the priority application") was filed, the filing date of the priority application and, if available, the number of the priority application;

(g) the signature of the applicant;

(h) where an application is filed with the Patent Office through a representative (in accordance with Chapter XXVIII), it shall be accompanied by the respective authorization.

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

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

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

(5) The application and all further procedures relating to it (correspondence) shall be presented in the manner prescribed in the Regulations.

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

*Temporary Protection of Industrial Designs Exhibited at
International Exhibitions*

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

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

Examination as to Formalities

65.—(1) Within three months of receipt of an application, the Patent Office shall conduct a preliminary examination of the conformity of the application with the requirements of Article 63 of this Law, in accordance with the established procedure, allocate a filing date to the application and, if the applicant has a right of priority, a priority filing date.

(2) If the application does not comply with the requirements of Article 63 of this Law, the Patent Office shall invite the applicant to correct the defects within three months of the date of the communication and, if the essential defects are not corrected, the Patent Office shall reject the application and shall notify the applicant thereof in writing.

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

(4) The decision of the Board of Appeal in matters referred to in the above-mentioned paragraph shall be final.

Registration of Industrial Design. Postponement of Publication

66.—(1) Within the period of time prescribed in the Regulations, the Patent Office shall examine the conformity of the application with the requirements of Article 59(3) of this Law and shall take a decision in accordance with the results of the examination. The applicant shall be notified thereof in writing and if the decision is positive he shall be invited to pay the registration fee.

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

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

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

Chapter XVI Effect of Registration

Rights Conferred by Registration

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

(2) Paragraph (1) of this Article shall not have effect in respect of the products mentioned in that paragraph if they have been put on the market in the territory of the Republic of Albania or in any territory specified in bilateral or multilateral agreements to which the Republic of Albania is party.

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

Term of Registration and Renewal

68.—(1) Registration is valid for five years as from the filing date.

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

Chapter XVII License Contracts

License Contracts

69.—(1) For the purposes of this Law, “license contract” means any contract by which the owner of an registered design (“the licensor”) gives to another party (“the licensee”) his agreement for that other party to do any of the acts referred to in Article 68(1) of this Law.

(2) A license contract shall be made in writing and shall be signed by the parties to the contract on pain of invalidity.

(3) The fact that the contract has been concluded shall be recorded in the Register of Industrial Designs on payment of the prescribed fee. The licensee shall be entitled to institute any legal proceedings concerning the license contract only if it has been recorded in the Register of Industrial Designs.

Chapter XVIII Infringement

Infringement Proceedings

70.—(1) The owner of a registered design shall have the right to institute court proceedings against any person who has infringed or is infringing his rights under Article 67 of this Law. The owner shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur (“imminent infringement”).

(2)(a) If the owner of a registered design proves that an infringement has been committed or is being committed, the Court shall award compensation. Such compensation shall include the profits of the person who has committed the infringement, the damages suffered by the owner of the design except where included in the profits of the infringer and the expenses, including the law costs. The Court shall grant an injunction to prevent further infringement and any other remedy provided under the general rules of law.

(b) If the owner of a registered design proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided under the general rules of law.

Chapter XIX Renunciation and Invalidation

Renunciation

71.—(1) The owner of a registered design may renounce it by written declaration filed with the Patent Office. Renunciation shall take effect as from the date of receipt of the declaration by the Patent Office. In the case of a registration covering several designs, renunciation may be in respect of all or some only of the registered designs.

(2) The Patent Office shall record the renunciation in the Register of Industrial Designs and publish it.

Invalidation

72.—(1) The Court may, at the request of any person, invalidate a registration on the ground that the registered design is not eligible for protection under Article 59 of this Law.

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

(3) When the decision of the Court to invalidate a registration becomes final the Court shall notify the Patent Office which shall record the decision in the Register of industrial designs and publish it.

PART III TRADEMARKS AND SERVICE MARKS

Chapter XX Conditions of Protection and Right to Protection

Constituent Elements of a Mark

73.—(1) Any sign or any combination of signs capable of distinguishing the goods or services of one natural or legal person from those of another natural or legal person and of being represented graphically may serve as a mark for goods or a mark for services (hereinafter referred to as “mark”).

(2) A collective mark is a mark registered by an industrial or commercial cooperative or an association or like organization of several enterprises and which is used to designate the goods and services of such association. Each enterprise within an association may also simultaneously have its own marks. Special provisions on collective marks are prescribed in specific articles of this Law, but in all other cases, the provisions on marks shall also apply to collective marks.

(3) The following signs may constitute a mark:

(a) words, including personal names, letters, numerals, abbreviations;

(b) figurative signs, including devices, shapes of goods or of their packaging;

(c) combinations of colors and shades of colors;

(d) any combination of the signs referred to in items (a) to (c) of this Article.

(4) Specific types of marks, such as, sound and light signals or other signs may be registered, if they can be graphically represented.

Non-Registrable Marks

74.—(1) A mark shall not be registered as a trademark if:

(a) it is devoid of distinctive character;

(b) it consists exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering the services, or other characteristics of the goods or services;

(c) it consists exclusively of signs or indications which have become customary in the current language or in bona fide and established practices of the trade;

(d) it consists of shapes or forms imposed by the inherent nature of the goods or services or necessary to obtain a technical result;

(e) signs protected by copyright if not authorized by the owner thereof.

(2)(a) The distinctive character of a sign shall be assessed in relation to the goods and services which the sign is intended to distinguish.

(b) Distinctive character may be acquired by use.

Conflict with Public Interests

75.—(1) A sign shall not be protected as a mark or element of a mark if such protection would conflict with a public interest.

(2) The following, in particular, shall not be protected as a mark or element of a mark:

(a)— State names (complete or abbreviated);

— State emblems;

— official hallmarks adopted by States;

— abbreviations and emblems of intergovernmental organizations;

— religious symbols;

(b) surnames, portraits, pseudonyms of persons well known to the general public if not authorized by the owners thereof or their successors in title, except in cases where the above-mentioned persons have been dead for more than 50 years;

(c) signs that are contrary to public policy or morality;

(d) signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services they are intended to distinguish.

(3) The signs referred to in subparagraph (2)(a) of this Article may only be included in a mark, as unprotected elements of the mark, with the permission of the competent authorities.

Conflict with Earlier Rights

76.—(1) A sign shall not be protected as a mark, if its use as a mark would conflict with earlier rights.

(2) The following, in particular, shall be considered earlier rights:

(a) an identical or similar mark belonging to a third party, in respect of identical or similar goods or services or, in accordance with Article 83(1)(b), in respect of goods or services which are neither identical nor similar, which has an earlier filing date or priority date and which has been or will be registered;

(b) a well-known mark within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property belonging to a third party.

Right to Protection

77.—(1) The exclusive right to a mark under this Law shall be acquired by registration effected by the Patent Office.

(2) The exclusive right to a mark may be acquired under joint ownership.

Chapter XXI
Procedure for Registration

Filing Date

78.—(1) The date of filing of the application shall be the date on which the Patent Office receives documents which include:

(a) a request to register a mark;

(b) the name and address of the applicant;

(c) a representation of the mark;

(d) the names of the goods and services for which the registration is sought grouped according to the classes of the International Classification of Goods and Services and using, wherever possible, the terms of the Alphabetical List of Goods and Services established in respect of the above-mentioned Classification;

(e) a declaration claiming priority, the identification of the Patent Office with which the application whose priority is claimed ("the priority application") was filed, the filing date of the priority application and, if available, the number of the priority application;

(f) the signature of the applicant;

(g) where an application is filed with the Patent Office through a representative (in accordance with Chapter XXVIII), it shall be accompanied by the respective authorization.

(2) The application for the registration of a mark and all further procedures relating to it (correspondence) shall be presented in the manner prescribed in the Regulations of the Patent Office.

(3) When applying for a collective mark, the regulations for the use of the collective mark, confirmed by the executive authority, shall be submitted. The regulations shall list the users, the provisions for use of the mark and information on control of the use of the mark. The owner of the collective mark shall notify the Patent Office of any subsequent amendments made to the Regulations.

(4) No filing date shall be allocated to an application for registration of a mark until the required fee is paid.

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

Temporary Protection of Marks Exhibited at International Exhibitions

79.—(1) An applicant for registration of a mark who has exhibited goods bearing the mark or services to be rendered under the mark at an official or officially recognized international exhibition may apply for registration of that mark within six months of the day on which the goods or services offered under the mark were first exhibited at such exhibition. That date shall be deemed the filing date of the application for registration of the trademark or the service mark.

(2) Evidence of the exhibition of goods bearing the mark or services to be rendered under the mark shall be given by a certificate issued by the competent authorities of the exhibition, stating the date on which the mark was first shown in connection with goods or services included in the exhibition.

Division of Initial Application

80. An application referring to two or more goods or services may be divided into two or more applications (divisional applications) by dividing up amongst the latter the goods or services referred to in the initial application, which are in the same class according to the International Classification of Goods and Services. Divisional applications shall maintain the filing date of the initial application and the benefit of any right of priority.

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

Examination as to Formalities

81.—(1) Within three months of receipt of an application, the Patent Office shall conduct a preliminary examination of conformity of the application with the requirements of Article 78 of this Law, in accordance with the established procedure, allocate a filing date to the application and, if the applicant has a right of priority, a priority filing date.

(2) If the application does not comply with the requirements of the Article 78 of this Law, the Patent Office shall invite the applicant to correct the defects within three months and, if the essential defects are not corrected, the Patent Office shall reject the application and shall notify the applicant thereof in writing.

(3) Within a period of three months of the date of receipt of the rejection, the applicant shall have the right, upon payment of a fee, to submit a substantiated appeal to the Board of Appeal of the Patent Office.

The decision of the Board of Appeal in matters referred to in this paragraph shall be final.

(4) If the application complies with the requirements of Article 78 of this Law, the Patent Office shall send a written notice to the applicant on the acceptance of the application for examination and shall publish the mark.

Registration of Mark

82.—(1) The Patent Office shall examine the compliance of the accepted application with the requirements of Article 73(3) and (4) and Article 75(2)(a), (b) and (c) of this Law.

(2) In the course of examination, the Patent Office shall be entitled to request from the applicant additional materials and documents necessary for examination, thereby setting a time limit for their submission.

(3) Within a period of five months of the filing date, the Patent Office, in accordance with the results of the examination, shall take a decision to register the mark or to reject the registration thereof and shall publish the mark. The applicant shall be notified of the decision in writing and if the decision is positive he shall be invited to pay the fee for registration and publication of the mark.

(4) Within a period of two months of the date of receipt of rejection of the registration, the applicant shall have the right, upon payment of the prescribed fee, to file a substantiated appeal with the Board of Appeal.

(5) The decision of the Board of Appeal in matters referred to in the above paragraph may be appealed from to the Court within six months.

Chapter XXII Effect of Registration of Mark

Rights Conferred by Registration

83.—(1)(a) The owner of a registered mark shall have the right to prevent a third party from using, without his authorization, in the course of trade as a mark or as a trade name, an identical or similar sign for goods or services which

are identical or similar to those in respect of which the mark is registered where such use would result in a likelihood of confusion. Where the use relates to an identical sign for identical goods or services, a likelihood of confusion shall be assumed.

(b) The owner of a registered mark shall have the right to prevent a third party from using, without authorization, in the course of trade as a mark or as a trade name, an identical or similar sign for goods or services which are neither identical nor similar to those in respect of which the mark is registered, where the mark has become famous and use detrimental to the distinctive character or repute of the mark.

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

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

(4) A natural or legal person may own more than one mark.

(5) Exclusive rights in a mark shall be attested to by a registration certificate issued by the Patent Office.

Change in Name or Address

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

Change in Ownership

85. Where there is a change in the identity of the owner, a request for the recordal of the change by the Patent Office in its register of marks shall be made in a communication signed by the owner or his representative or by the person who has acquired ownership (the new owner) or his representative and stating the number of the registration concerned and the change to be recorded.

Term of Registration and Renewal

86.—(1) The registration of a trademark or a service mark shall be for a term of 10 years as from the filing date.

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

(a) a request for renewal of the registration;

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

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

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

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

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

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

License Contract

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

(2) A license contract shall be made in writing and shall be signed by the parties to the contract, on pain of invalidity.

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

Nullity of License Contracts

88. A license contract shall be null and void if it does not stipulate an obligation by the licensor to ensure effective control of the quality of the goods or services of the licensee in connection with which the registered mark is used.

Chapter XXIV Infringement

Infringement Proceedings

89.—(1) The owner of a registered mark shall have the right to institute court proceedings against any person who has infringed or is infringing his rights under Article 83 of this Law. The owner shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur (“imminent infringement”).

(2)(a) If the owner of a registered mark proves that an infringement has been committed or is being committed, the Court shall award compensation. Such compensation shall include the profits of the person who has committed the infringement, the damages suffered by the owner of the mark except where included in the profits of the infringer and the expenses, including the law costs. The Court shall grant an injunction to prevent further infringement and any other remedy provided under the general rules of law.

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

Chapter XXV Renunciation, Invalidation, Revocation

Renunciation

90.—(1) The owner of a registered mark may renounce his registration by written declaration filed with the Patent Office. Renunciation shall take effect as from the date of receipt of the declaration by the Patent Office. Renunciation may be in respect of all or only some of the goods or services for which the mark is registered.

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

Invalidation

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

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

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

Revocation

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

(2) A request to revoke the registration of a mark on the grounds of paragraph (1) may be submitted to the Court by any interested party. The Court shall inform the Patent Office of its decision within one month of the date the decision is taken.

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

(a) use made under a license contract recorded in the Register of Marks;

(b) use of the mark in a modified form which does not alter its distinctive character;

(c) use of the mark in advertising and business correspondence.

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

(5) The Patent Office shall record revocation in the Register of Marks and publish the revocation of a mark and any other alteration made on the grounds of this Article.

Chapter XXVI **Appellations of Origin**

Appellations of Origin

93.—(1) An appellation of origin is used to designate natural agricultural products and industrial and handicraft products.

(2) Appellations of origin protect:

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

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

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

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

(a) products which may be designated by the appellation of origin;

(b) locations or regions in which originate the products designated by the appellation of origin;

(c) the production requirements which a product must fulfill in order to be designated by the appellation of origin;

(d) the required marking of products and further detailed requirements for the grant of the right to use the appellation of origin.

(5) An appellation of origin shall be established:

(a) by entering the geographical name and type of product to which the name relates in the Register of Appellations of Origin;

(b) on behalf of a foreign person, on the basis of an international agreement on the reciprocal protection of appellations of origin to which the Republic of Albania is a party.

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

PART IV
MISCELLANEOUS

Chapter XXVII
Patent Office

Patent Office

94. The Patent Office of the Republic of Albania shall have legal personality and shall report to the Committee for Science and Technology of the Republic of Albania. The tasks of the Patent Office shall be determined and regulated by this Law and the Regulations thereunder. The Chairman of the Committee for Science and Technology shall appoint the Director of the Patent Office, establish the structure of the Patent Office and adopt its Regulations. The Patent Office shall have its own seal, which shall be affixed to patents and certificates for the registration of trademarks and industrial designs, and to as other Patent Office documents.

Restrictions on Patent Office Employees

95.—(1) Whilst assuming their duties in the Patent Office, and for one year after termination of their employment relationship with the Patent Office, officials and employees of the Patent Office may not file applications for patents, trademarks or industrial designs. They may not, directly or indirectly (except through inheritance), acquire patents, trademarks or industrial designs, granted or registered by the Patent Office, or acquire any rights arising from a patent, trademark on industrial design.

(2) Employees of the Patent Office may not enjoy a right of priority relating to patents, trademarks or industrial designs or to applications dated earlier than one year after they have terminated their employment with the Patent Office with respect to patents, trademarks and industrial designs, granted or registered, or to applications for patents, trademarks and industrial designs.

Patent Office Director

96.—(1) The Director of Patent Office shall supervise all activities and fulfill the obligations laid down in this Law and in the Regulations of the Patent Office.

(2) Within the framework of this Law, the Director shall, without specific authorization, represent the Patent Office in court, arbitration, State institutions, as also in relations with natural and legal persons.

Board of Appeal

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

Chapter XXVIII
Representation

Representation before the Patent Office

98.—(1)(a) If an applicant appoints a representative in relation with an application, the appointment shall be set down either in the application itself or in a written declaration signed by the applicant, which is to be filed with the Patent Office, stating the number of the application.

(b) If the owner of a patent, trademark or industrial design appoints a representative in relation with a patent or registration, the appointment shall be set down in a written declaration signed by the owner of the patent, trademark or industrial design, stating the number of the application.

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

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

(3) Natural or legal persons having neither a residence nor their principal place of business within the Republic of Albania shall be represented by a patent attorney and shall act through him in all proceedings before the Patent Office.

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

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

Patent Attorneys

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

(2) Natural or legal persons who fulfill all the conditions laid down in the Regulations shall be eligible for entry on the Register of Patent Attorneys.

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

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

Chapter XXIX International Agreements

Application of International Agreements

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

Chapter XXX Offenses

Offenses

101.—(1) Any natural or legal person who knowingly performs an act which constitutes an infringement of a patent, mark or design shall have committed an offense and shall be liable to a fine of between 20,000 and 100,000 lek imposed by the Court.

(2) Proceedings may not be instituted after five years have elapsed since the committal of the offense.

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

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

Chapter XXXI Final Provisions

Regulations

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

Transitional Provisions

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

Annulments

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

— The “Decree on Marks in Production and Trademarks” No. 2490, of 22.07.1957, amended by the decrees No. 3530, of 02.07.1962 and No. 4253, of 11.04.1967 (“The right to inventions and rationalizations”);

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

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

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

Entry into Force

105. This Law shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Albania, except for the provisions of Chapter X, which shall enter into force on the day on which the Patent Cooperation Treaty (PCT) enters into force with respect to the Republic of Albania.

* *Entry into force:* July 8, 1994 except for Chapter 10, which entered into force on October 4, 1995.

Source: Communication from the Albanian authorities.

Note: Translation by the International Bureau of WIPO on the basis of an unofficial English translation supplied by the Albanian authorities.

** Added by the International Bureau of WIPO.