

**LAW NO. 08/L - 059****ON PATENTS****Assembly of the Republic of Kosovo;**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts:

**LAW ON PATENTS****CHAPTER I  
GENERAL PROVISIONS****Article 1  
Purpose**

1. This Law shall define conditions, procedures for registration of patent, the rights deriving from the registration and application of these rights.

2. This Law is in line with:

2.1. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;

2.2. Directive 2004/48/EC of the European Parliament and of the Council of April 2004 on the enforcement of intellectual property rights;

2.3. Regulation (EC) No. 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificates for medicinal products;

2.4. Regulation (EC) No.1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products;

2.5. Regulation (EC) No. 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.

**Article 2  
Scope**

This Law shall apply to entities that are subject to the registration procedure for obtaining a patent at the Industrial Property Agency, including patents and international patent registrations applicable in the Republic of Kosovo.

**Article 3  
Definitions**

1. Terms used in this Law shall have the following meaning:

1.1. Ministry – The Ministry of Industry, Entrepreneurship and Trade;

1.2. Minister – Minister of the respective ministry for Industry, Entrepreneurship and Trade;

1.3. Patent – an exclusive right granted for an invention in all fields of technology that is new, involves an inventive step and is susceptible of the industrial application;

1.4. Competent Authority – is the Security Council of Kosovo responsible for secret inventions;

1.5. IPA - is the respective agency for industrial property, established within the respective Ministry for Industry, Entrepreneurship and Trade;

1.6. License contract - means the license contract according to the relevant Law on Obligational Relationships;

1.7. Paris Convention – The Convention for Protection of Industrial Property of March 20, 1883, as amended in Brussels on December 14, 1900, in Washington on June 2, 1911, in The Hague on November 6, 1925, in London on June 2, 1934, in Lisbon on October 31, 1958, and in Stockholm on July 14, 1967, and as amended on September 28, 1979;

1.8. Paris Union – the Union established by the Paris Convention;

1.9. TRIPS – an Agreement on Trade-Related Aspects of Intellectual Property Rights (Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, signed in Morocco on 15 April 1994);

1.10. Patent Cooperation Treaty - Patent Cooperation Treaty done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984 and on October 3, 2001;

1.11. Budapest Treaty - the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedures, done at Budapest on April 28, 1977, and amended on September 26, 1980;

1.12. Bio-technology Invention - inventions dealing with a product, which comprises or contains biological material, or a process by which biological material is produced, processed or used;

1.13. Biological material - is any material that consists of genetic information and has the skills of self-re-production or to get reproduced in a biological system;

1.14. Plant variety - any plant grouped under a single type of botanical classification, of a less known level, a grouping which, whether it fully met the conditions for plant acceptance can be:

1.14.1. determined by expression of characteristics, which result from a genotype set or combination of genotypes;

1.14.2. distinguished from any other plant group, by the appearance, of at least one of the mentioned characteristics;

1.14.3. considered as a unit, in terms of suitability to be multiplied in a constant manner. The process of producing plants or animals - the process is essentially biological, if composed entirely of natural phenomena such as crossing or selection;

1.15. Microbiological process - is any process that involves or is performed by a microbiological material or that results in a microbiological material;

1.16. The process of producing plants or animals - a process which is essentially biological, if composed entirely of a natural phenomenon such as crossing or selection;

1.17. Exclusive License - a license granted only to one licensee and that deprives the owner of the right on an industrial property right to use it, as well as to license it to other persons;

1.18. Non-exclusive license - a license that does not deprive the owner of the right over an industrial property object to use or license it to other persons;

1.19. Certificate - certificate on additional protection of pharmaceutical and plant products;

1.20. Priority CE - a certificate certifying the right of priority to apply for a patent;

1.21. Biological Material - any material that consists of genetic information and has the skills of self-reproduction or to get reproduced in a biological system.

#### **Article 4**

##### **The right to apply**

1. Application for patent can be submitted by one or more natural and legal persons.

2. Natural and legal persons who are not citizens of the Republic of Kosovo or who do not have a business registered in Kosovo, have equal rights in the protection of patent same as natural and legal persons who have permanent residence in Kosovo.

3. Natural and legal persons who are not citizens of the Republic of Kosovo may exercise their rights under this Law, in procedures by the IPA only through authorized representatives specified in Article 126 of this Law.

### **CHAPTER II**

#### **INDUSTRIAL PROPERTY AGENCY**

#### **Article 5**

##### **Organization and Responsibilities of the IPA**

1. IPA is the executive agency within Ministry, which is responsible for the legal protection of inventions, trademarks, industrial design and designations of origin, geographical indications and topographies of integrated circuits, and other matters arising from the international agreements the signatory of which is the Republic of Kosovo.

2. Organization and functioning of the IPA shall be defined by sub-legal act on internal organization of the IPA, approved according to the relevant Law on Organization and Functioning of State Administration and Independent Agencies.

3. IPA shall be responsible for:

3.1. developing procedures for issuing patents, supplementary protection certificates for inventions, registration of trademarks, industrial designs, topographies of integrated circuit, designations of origin and geographical indications;

3.2. compiling and maintaining records defined by this Law;

3.3. proposing, designing and publishing the IPA Official Bulletin, which contains information regarding the application and registered rights of industrial property objects;

3.4. developing and promoting the protection of industrial property;

3.5. providing information services in the field of industrial property;

3.6. organizing the testing of authorized representatives in the field of industrial property rights;

3.7. preparing proposals for the approval of legal and sub-legal acts in the area of industrial property;

3.8. cooperating with other organizations for the implementation of legal provisions governing industrial property;

3.9. representing the Republic of Kosovo in International Organizations for the Industrial Property.

4. The Ministry issues a sub-legal act determining the form, content and use of the logo of the Industrial Property Agency.

#### **Article 6**

##### **Review of decisions made by the IPA**

1. An appeal against the decisions of the IPA is allowed within thirty (30) days from the day when the decision was received.

2. The appeal shall be addressed to the Commission which is obliged to decide and notify the party.

3. The commission for appeals review is established by decision of the Minister.

4. Against decisions of the commission claims may be lodged to the competent court within thirty (30) days.

5. The Committee is responsible for reviewing and deciding on all appeals made by the parties against the decisions of the IPA. The Committee is obliged to perform its work independently with honesty, thoroughness and impartiality

6. Process and the work of the Complaints Commission regulated by a sub-legal act issued by the Minister.

### **CHAPTER III**

#### **SUBJECT MATTER OF PATENT PROTECTION**

#### **Article 7**

##### **Patentable Inventions**

1. A patent shall be granted for any invention, in any field of technology, which constitutes a novelty, inventive step and is applicable in industry.

2. The following inventions referred to in paragraph 1 of this Article shall not be considered:

2.1. discoveries, scientific theories and mathematical methods;

2.2. aesthetic creations;

2.3. schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

2.4. presentation of information.

3. Subject matters or activities referred to in paragraph 2, sub-paragraph 2.3 of this Article shall be excluded from patentability to the extent to which the application for a patent or patent relates to those subject matters or activities as such.

#### **Article 8**

##### **Patentability of biotechnological inventions**

1. The patent referred to in paragraph 1 of Article 7 this Law which is issued for an invention shall meet the following conditions:

- 1.1. a product consisting of or containing biological material;
- 1.2. a process by means of which the biological material is produced, processed or used;
- 1.3. a biological material, which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature;
- 1.4. plants or animals, if the technical feasibility of the invention is not limited to one particular plant or animal variety.

### **Article 9** **Exclusion from Patentability**

1. The patent shall not be issued in respect of:

- 1.1. inventions, the commercial exploitation of which may be contrary to public order or moral, such exploitation shall not be deemed to be contrary to them, merely because it is prohibited by law;
- 1.2. plant or animal varieties, or essential biological processes for the production of plants or animals, without prejudice to the patentability of inventions relating to microbiological or other technical processes, or to a product obtained through such process;
- 1.3. methods of treating the human or animal body by means of surgery or therapy and diagnostic methods, applied to the human or animal body, this provision does not apply to products, in particular to substances or compositions used in these methods;
- 1.4. substances, obtained through internal nuclear transformations for military purposes.

2. Pursuant to paragraph 1 sub-paragraph 1.1 of this Article the patent shall not be issued in respect of biotechnological inventions, which in particular, concern the following:

- 2.1. processes of cloning human beings;
- 2.2. processes for modifying the genetic identity of the germ line of human beings;
- 2.3. use of human embryos for industrial or commercial purposes; and
- 2.4. processes for the genetic modification of animals which are likely to cause them suffering without any substantial medical benefit to mankind or animal, and also animals resulting from such processes.

### **Article 10** **The human body and its constituent parts**

1. The human body, at the various stages of its formation and development and the simple discovery of one of its constituent parts, including the sequence or partial sequence of the gene, shall not constitute patentable invention.
2. An element isolated from the human body, or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even though the structure of that constituent is identical to that of the natural constituent.
3. The industrial application of the sequence or partial sequence of the gene must be disclosed in the case of a patent application.

### **Article 11** **Novelty**

1. An invention shall be considered new if it does not form part of the prior knowledge.
2. Prior knowledge shall comprise of everything made available to the public worldwide, by means of written or oral description, by use, or otherwise, prior to the filing date of the patent application.
3. Prior knowledge also constitutes the content of the national patent application as it has been filed, the filing dates of which are earlier than the date of application, referred to in paragraph 2 of this Article, and which were published on or after this date.
4. Paragraphs 2 and 3 of this Article shall not exclude patentability - patent protection of a substance or composition, which is part of the prior knowledge for use in the methods referred to in Article 9 paragraph 1 sub-paragraph 1.3 of this Law, provided that its use in such methods does not form of prior knowledge.
5. Paragraphs 2 and 3 of this Article shall not exclude the patentability of any substance or composition referred to in paragraph 4 of this Article for any specific use in a method referred to in Article 9 paragraph 1 sub-paragraph 1.3 of this Law, provided that such use does not form part of prior existing knowledge.

### **Article 12** **Non-prejudicial invention disclosures**

1. For the application of Article 11 of this Law, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six (6) months preceding the filing of the patent application and if it was due to, or in consequence of:
  - 1.1. an evident abuse in relation to the applicant or his legal predecessor, or the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognized, international exhibition falling within the terms of the Convention on international exhibitions, provided that the applicant indicates in the patent application, at the time of its filing, that the invention has been so displayed, and not later than four (4) months as from the filing date of the application, submits a corresponding certificate for that purpose.

### **Article 13** **Inventive step**

1. An invention shall be considered as involving an inventive step if, having regard to the prior knowledge, it is not obvious to a person skilled in that field.
2. In deciding whether an invention involves an inventive step, the content of the applications referred to in Article 11 paragraph 3 of this Law, shall not be taken into account

### **Article 14** **Applicability in industry**

An invention shall be applicable in industry if its subject matter can be manufactured or used in any kind of industry, including agriculture.

## **CHAPTER IV SECRET INVENTION**

### **Article 15 Secret inventions and competent authority**

1. An invention application made by a national of the Republic of Kosovo may be considered to be a secret invention, if it concerns state interests such as national defence or national security.
2. The competent authority shall, by special act, determine the criteria and procedures for secret inventions.
3. A secret invention shall constitute a state secret.

### **Article 16 Procedure in respect of secret invention application**

1. The Applications in regard to inventions set as in paragraph 1 of Article 15 of this Law, shall be forwarded to the Competent Authority by IPA.
2. If the IPA establishes, when examining the patent application that it concerns a secret invention, according to the criteria defined by the Competent Authority set in paragraph 2 of Article 15 of this Law, it shall forward the application at the Competent Authority.
3. The application forwarded at the Competent Authority, shall save the submitting date defined by the IPA.
4. If the Competent Authority, when examining the application considers that the invention does not constitute a secret, the application shall be returned to the IPA.
5. If the competent authority considers that a secret invention is concerned, it shall issue a decision to that effect and shall enter it in the register of patents for secret inventions kept by it.
6. If the Competent Authority considers that the invention is not secret, the procedure shall be carried out by the IPA in accordance with this Law.

### **Article 17 Exploitation and Compensation**

1. The competent authority shall have the exclusive right to use the secret invention.
2. The inventor shall be entitled to compensation for the protected secret invention, regardless of whether the invention is used or not.
3. The amount of compensation referred to in paragraph 2 of this Article shall be determined in proportion to the market value of the invention.
4. In case an agreement is not reached, the inventor may request the competent court to determine the amount of the compensation.

### **Article 18 Procedure after granting a patent for a secret invention**

1. If the Competent Authority determines that the invention is no longer a secret, it shall submit the file concerning the invention to the IPA.
2. IPA shall, at the request of the applicant, initiate or complete the procedure for granting a patent for the invention which is no longer secret.

## **Article 19**

### **Protection abroad**

Domestic natural and legal persons may seek protection of secret invention abroad only with the authorization of the competent authority.

## **CHAPTER V**

### **THE RIGHT TO A PATENT**

## **Article 20**

### **The right to a patent**

1. The right to a patent shall belong to the inventor or his legal successor.
2. If two (2) or more inventors have created the invention jointly, the right to a patent shall belong jointly to the inventors or their legal successors.
3. Notwithstanding paragraph 1 of this Article, when an invention is made in the Republic of Kosovo in execution of a commission or an employment contract, the right to the patent shall belong to the person having commissioned the work or to the employer, unless otherwise provided by the contract.
4. When provisions of paragraph 3 of this Article apply to an invention made in execution of an employment contract in Kosovo, the employee being the inventor shall have the right to the remuneration taking into account the economic value of the invention. In the absence of agreement between the parties to fix the remuneration, it shall be fixed by the competent court.
5. The applicant shall be considered to have the right to a patent unless otherwise decided in court proceedings.
6. The right to a patent may be transferred.

## **Article 21**

### **Inventor**

An inventor shall be the person who has created an invention in the course of his/her creative work. Any person who has contributed to the creation of an invention by providing only technical assistance shall not be considered to be the inventor. IPA shall not verify the accuracy of the data on the inventor.

## **Article 22**

### **The moral right of the inventor**

1. The inventor shall have the moral right to be indicated as such in the patent application, in all the documents issued in relation to the grant of a patent, and in the Register of applications in the IPA and Register of patents.
2. The inventor's moral right shall not be transferable.

## **CHAPTER VI**

### **EFFECTS OF A PATENT**

## **Article 23**

### **Exclusive rights conferred by a Patent**

1. A patent shall confer on its owner the following exclusive rights:
  - 1.1. where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, offering for sale, selling, using, exporting or importing and stocking

for such purposes product carried out according to the invention;

1.2. where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of making, offering for sale, selling, using, exporting or importing or stocking for such purposes the product obtained directly by that process.

2. The patent owner shall have the right to prevent third parties not having his consent from offering and supplying the product constituting an essential element of the protected invention, if the offerer or the supplier knows or should have known from the circumstances of the case that such product is intended for putting into function the invention of another person.

3. The provisions referred to in paragraph 2 of this Article shall not apply if such product is a staple commercial product, except where the supplier or offerer induces other persons to commit acts referred to in paragraph 1 of this Article.

#### **Article 24**

##### **Exclusive rights acquired by a Patent in the field of Biotechnology**

1. If a biological material possessing specific characteristics as a result of the invention is protected by a patent, the exclusive rights referred to in paragraphs 1 and 2 of Article 23 of this Law shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

2. If a process that enables a biological material to be produced possessing specific characteristics as a result of the invention is protected by a patent, the exclusive rights referred to in paragraphs 1 and 2 of Article 23 of this Law shall extend to biological material directly obtained through that process and to any other biological material derived from biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

3. If a product containing or consisting of genetic information is protected by a patent, the exclusive rights referred to in paragraphs 1 and 2 of Article 23 of this Law shall extend to all material, save as the human body and the various stages of its formation and development or the simple discovery of one of its elements, including the sequence or partial sequence of a gene, in which the product is incorporated and in which the genetic information is contained and performs its function.

#### **Article 25**

##### **Scope of Protection**

1. The scope of the patent protection shall be determined by the patent claims, which are finally accepted in the patent granting procedure, whereas the description and drawings shall serve to interpret patent claims.

2. The content of the patent claims shall not be confined to their strict literal wording. The description and drawings shall be taken into account only for the purpose of clarifying vagueness in the patent claims.

3. The patent claims shall not be taken as guideline indicating that the scope of the exclusive rights may extend to the matter which a person skilled in the relevant field might take as the intended scope of protection.

### **CHAPTER VII**

#### **LIMITATIONS OF THE EFFECT OF THE PATENT**

#### **Article 26**

##### **Exceptions from the exclusive right**

1. The rights conferred by the patent shall not apply to:

1.1. acts in which the invention is exploited for private and non-commercial purposes;

1.2. acts done for the purposes of research and development and for experiments relating to the subject-matter of the protected invention, including where such acts are necessary for obtaining registration or authorization for putting on the market a product being a human or a veterinary drug or a medical product;

1.3. direct and individual preparation of a medicine in a pharmacy on the basis of an individual medical prescription and acts relating to the medicine so prepared;

1.4. the use of the patented invention in the construction or operation of aircraft or land vehicles of other countries member States of the Paris Union or the WTO members, or of accessories to such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the territory of the Republic of Kosovo.

#### **Article 27** **Right of the Prior User**

1. Patent shall have no effect against the person who before the filing date of application or before the date of recognition of the right of application priority, within her/his economic activities, had exploited or produced the product which is subject-matter of the invention, or had made real and serious preparations for exploitation of the invention in Kosovo.

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

3. The right referred to in paragraph 2 of this Article may be transferred or inherited only with the working process and where the exploitation of the invention has been prepared or has started.

#### **Article 28** **Limitations of the effects of the Patents in the field of Biotechnology**

1. The exclusive rights deriving from the provision set out in Article 24 of the Law shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the territory of the Republic of Kosovo by the owner of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

2. Notwithstanding the Article 24 of this Law the sale or other form of commercialization of plant propagating material to a farmer by the owner of the patent or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm.

3. Notwithstanding the Article 24 of this Law, the sale or any other form of commercialization of breeding stock or other animal reproductive material to a farmer by the owner of the patent or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose, including making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity.

#### **Article 29** **Exhaustion of exclusive Rights**

1. The exclusive rights conferred by a patent shall not extend to acts concerning a product made according to the invention or a product directly obtained by a process which is the subject matter of a patent after that product has been put on the market in the Republic of Kosovo by the owner of the patent or with his express consent, unless there are legitimate grounds for the owner to oppose further commercialization of the product and process.

2. The provisions of paragraph 1 of this Article shall also apply with the necessary changes to the exclusive rights conferred by the Certificate.

## **CHAPTER VIII PATENTS AS AN OBJECT OF PROPERTY**

### **Article 30 Transfer of the right**

1. The patent can be transferred to other persons.
2. The transfer of the patent shall be made in writing and at the request of one of the parties, shall be entered in the corresponding Register of the IPA and published.
3. The transfer of the patent rights shall only have effect against third parties after the entry in the register. Nevertheless, before it is so entered, the transfer shall have effect against third parties if the third parties have had knowledge for it.
4. The provisions of this Article shall also apply with the necessary changes to the contract on the transfer of the patent, as well as the rights conferred by the Certificate.

### **Article 31 Contract for License**

1. A patent may be licensed for the whole or part of the territory of the Republic of Kosovo.
2. A license may be exclusive and non-exclusive.
3. Without prejudice to the legislation in force or the provisions of the contract, the owner of the patent may invoke the rights conferred by the patent license, if the licensee contravenes any provision of the licensing contract with regards to its duration, the form in which the patent may be used, the range and quality of the products produced for which the license is granted.
4. The licence shall, at the request of one of the parties, be entered in the corresponding Register and published in the official bulletin of the IPA.
5. The patent license shall only have effect against third parties after the entry in the relevant register. Nevertheless, before it is so entered, the licence shall have effect against third parties that have had knowledge for it.
6. The provisions of this Article shall also apply with the necessary changes to the termination of the license contracts of patent application, as well as the rights conferred by the Certificate.

### **Article 32 Lien rights**

1. A patent may be given as security or be the subject of a lien.
2. At the request of one of the parties, the rights referred to in paragraph 1 of this Article shall be entered in the register and published.
3. The rights referred to in paragraph 1 of this Article shall only have effect against third parties after the entry in the register. Nevertheless, before they are so entered, they shall have effect against third parties that have had knowledge for them.
4. The provisions of this Article shall also apply with changes relating to the grant of the lien upon the patent

application as well as upon the right conferred by the Certificate.

### **Article 33**

#### **Enforcement procedures**

1. A patent may be subject to enforcement.
2. The body levying enforcement of the patent shall ex officio inform the IPA for the confiscation of the patent for the purpose of its entry in the register and publication.
3. The provisions of this Article shall apply with the necessary changes related to the enforcement upon the patent application as well as upon the rights conferred by the Certificate.

### **Article 34**

#### **Bankruptcy**

1. Where a patent holder is involved in bankruptcy or similar proceedings, at the request of the competent authority, it shall be entered in the Register and published in the official bulletin of the IPA.
2. The application for registration of bankruptcy or similar procedures in which it is included in the patent in the register must be submitted according to the conditions and manner determined by the sub-legal act issued by the Minister.

## **CHAPTER IX**

### **COMPULSORY LICENSES**

### **Article 35**

#### **Procedure for granting of a compulsory license**

1. The compulsory license is obtained by a decision of the competent Court.
2. The procedure for granting of a compulsory licence shall be instituted by a lawsuit against the owner of a patent or a holder of a Certificate, containing an application for the grant of a compulsory licence. During trial, the claimant shall indicate all the facts and introduce all necessary evidence, on which the application for compulsory license is based. The court shall decide on the grant of a compulsory licence by a judgment.
3. In absence of proof, the application for the compulsory license will be denied and all the patent rights will belong to the person in name of whom is registered the patent at the Patent Register.

### **Article 36**

#### **Grant of Compulsory license**

1. The Court may grant a compulsory license for lack or insufficiency of exploitation of a patent to any person proving that is able to exploit the invention and files an application for the grant of a compulsory license, if the patent owner has not exploited the invention protected by a patent in the territory of Kosovo on reasonable terms or has not made effective and serious preparations for its exploitation.
2. An application for the grant of a compulsory license referred to in paragraph 1 of this Article can be filed after the expiration of a period of four (4) years as of the filing date of a patent application, or after the expiration of three (3) years as of the date on which the patent was granted.
3. A compulsory license may not be granted if the patent owner provides reasonable grounds to justify non-use or insufficiency of exploitation of the protected invention.
4. On a reasoned request, the court may grant a compulsory license in respect of a first patent to the owner of a

patent or to the owner or grower, who cannot use patented invention or plant variety right without infringing the first patent, or earlier plant variety right provided that the plant variety involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent or the protected plant variety and after payment of an appropriate tax.

5. The court may take any measure it regards appropriate to verify the existence of such a situation.

6. In the case of a compulsory license as provided in paragraph 4 of this Article, the owner of the first patent or the holder of the plant variety rights shall have the right to obtain a cross license on reasonable terms to use the protected plant variety or protected invention.

7. The court may grant a compulsory license if the exploitation of a patented-protected invention is necessary in an emergency - national security, protection of the public interest in the field of health, food supply, environmental protection and improvement, specific commercial interests or when it is necessary to remedy a practice determined after judicial or administrative proceedings as anti-competitive.

8. A compulsory license may be granted only if the person who has applied to the court proves that before the application he made efforts to obtain the authorization, license from the patent owner or holder of the plant variety rights within reasonable time and market conditions and whether such efforts have not been successful within a reasonable period of time. The court may revoke the rights under these conditions or in the situations provided in paragraph 7 of this Article. The patent owner will be informed of the granting of the compulsory license as soon as possible.

### **Article 37**

#### **Conditions Applicable to the grant of a compulsory License**

1. A compulsory license shall be non-exclusive, and its scope and duration of use shall exclusively be limited to the purpose for which it was granted.

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

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

4. The court, on a request of an interested person, revokes the compulsory license, subject to adequate protection of the legitimate interests of the licensed persons, if and when the circumstances, which led to its granting, cease to exist and are unlikely to recur.

5. The patent owner is entitled to remuneration, taking into account the economic value of the license.

6. A compulsory license, according to paragraph 4 of Article 36 of this Law, shall be non-transferable except with a transfer of the second patent or protected plant variety.

### **Article 38**

#### **Compulsory licences for Patents of pharmaceutical products intended for export to countries having public health Problems**

1. The court may grant to any person filing an application pursuant to the Article 38 and 43 of this Law, a Certificate required for the manufacture and sale of pharmaceutical products, when such products are intended for export to importing countries having public health problems. When deciding on the grant of a compulsory licence the court shall take into consideration in particular, the need to implement the Decision adopted by the WTO General Council on 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health - hereinafter: WTO Decision, 30 August 2003.

2. The pharmaceutical product referred to in paragraph 1 of this Article shall be any product of the pharmaceutical industry, including medicinal products for human use, comprising any substance or combination of substances

intended for treating or preventing disease in human beings, and any substance or combination of substances, which may be administered to human beings with a view to restoring, correcting or modifying physiological functions in humans, or to making a medicinal diagnosis, including active ingredients and diagnostic kits ex vivo.

3. The importing country referred to in paragraph 1 of this Article shall be any country to which the pharmaceutical product is to be exported. The importing country may be:

3.1. any underdeveloped country, listed as such in the United Nations countries list;

3.2. any member of the WTO, other than the underdeveloped country members referred to in sub-paragraph 3.1 of this paragraph that has made a notification to the Council for TRIPS of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way;

3.3. any country that is not a member of the WTO, but is listed in the OECD Development Assistance Committee's list of low-income countries with a lowest income, and has made a notification to the Agency of its intention to use the system as an importer, including whether it will use the system in whole or in a limited way;

3.4. any WTO member country that has made a declaration that it will not use the system as an importer, shall not be an eligible importing country.

4. Importing countries, which are not WTO members, and are underdeveloped or developing countries, eligible under paragraph 3 of this Article shall comply with additional requirements.

5. The importing country shall notify the IPA directly, according to WTO decision, based on paragraph 3, sub-paragraph 3.1 of Article 39 of this Law.

6. The importing country states in the notification that it will use the system to address public health problems, and not for industrial or commercial objectives, and that it will adopt the measures referred to in paragraph 4 of this Article and the WTO decision of 30 August 2003 to prevent the re-export of the imported products.

7. The court, upon the request of a right holder or by the IPA, may revoke compulsory License under paragraphs 4 to 6 of this Article, if the importing country has failed to comply with its obligations referred to in paragraph 6 of this Article. Before terminating the compulsory license, the Court must take into account the claims expressed by any body designated under Article 39 paragraph 2. Sub-paragraph 2.6 of this Law which may be summoned to the proceedings.

8. The holder of the rights defined in Articles 38 to 46 of this Law, is the holder of any patent or Certificate in relation to which the application for a compulsory license has been made. The rights holder shall be notified by the Court of the application for a compulsory license and shall be summoned to comment on the application and provide relevant information prior to the decision.

### **Article 39**

#### **Procedure for granting of compulsory licence for the pharmaceutical product patents intended for export to the countries having problems with public health**

1. The claim for granting of a compulsory license shall be instituted by any person before the court pursuant to the provisions of Article 35 of this Law, if in the territory of the Republic of Kosovo there is a patent or Certificate the effects of which cover the intended manufacturing and sale activity for export purposes.

2. The claim filed with the Court shall contain:

2.1 information concerning the application for compulsory licences filed in other countries for the same product with details of the quantities and importing countries concerned, information regarding the applicant for compulsory licence and his representative if there is any;

2.2. chemical name of the pharmaceutical product that the applicant intends to manufacture and sell for export under a compulsory license;

2.3. the quantity of the pharmaceutical product that the applicant intends to manufacture under a compulsory license;

2.4. importing country(s);

2.5. evidence of prior negotiations with the patent holder in accordance with the provisions of paragraph 5 of this Article;

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

2.7. Patent or Certificate's number.

3. When reviewing the claim for the grant of a compulsory license, the court shall verify in particular the following:

3.1. whether each importing country cited in the application, which is a WTO member, has made a notification to the WTO pursuant to the WTO Decision, on 30 August 2003 or whether each importing country cited in the application, which is not a WTO member, has made a notification to the IPA pursuant to the provisions of paragraph 3, sub-paragraph 3.3 of Article 37 of this Law in respect of each of the products covered by the application:

3.1.1. the notification from a non-WTO importing country shall specify the names and expected quantities of the product required;

3.1.2. confirmation from a non-WTO importing country, which has insufficient capacity or no production capacity in the pharmaceutical sector in relation to a particular product or products, must be included in the notice, unless the importing country is an underdeveloped country. For the assessment of production capacity, the Annex to the WTO Decision of 30 August 2003 should be considered.

3.1.3. confirmation by a non-WTO importing country which in the case of a patented pharmaceutical product in its territory has granted or intends to grant a compulsory license for the import of the products in question in accordance with Article 31 of the TRIPS Agreement and the provisions of the WTO decision of 30 August 2003.

3.1.4. paragraph 3.1 of this Article is without prejudice to the flexibility of underdeveloped countries under the TRIPS Council Decision of 27 June 2002;

3.2. if the quantity of the product cited in the application does not exceed that notified to the WTO and the Office, respectively, by an importing country;

3.3. if, taking into account other compulsory licenses granted in another country, the total quantity of the product authorized to be produced for any importing country does not significantly exceed the quantity notified to the WTO, the Agency respectively.

4. The information set forth in paragraph 3 of this Article shall be provided and presented in the claim by the entity requesting the compulsory license.

5. A compulsory license may be granted only if the applicant provides evidence to the Court that he made efforts to obtain authorization from the patent rights holder for the exploitation of the protected invention on reasonable commercial terms and conditions and if such efforts have not been successful within thirty (30)

days before the submission of the claim. This provision shall not apply in national emergency situations, other circumstances of extreme emergency, or in cases of use for public and non-commercial purposes in accordance with Article 31 (b) of the TRIPS Agreement.

#### **Article 40**

##### **Conditions for granting a compulsory license for pharmaceutical product patents intended for the export to countries having problems with public health**

1. A compulsory license for the pharmaceutical products patents intended for the export to the countries having problems with public health, shall be granted as a non-exclusive license, and its scope and duration, which shall be cited in a decision on its grant, shall be exclusively limited to the purpose for which it has been granted. The quantity of products to be manufactured under such licence shall not exceed the quantity necessary to satisfy the needs of the importing country, or importing countries specified in the application, taking into account the quantity of the products manufactured under compulsory licenses granted elsewhere.

2. A compulsory license shall be transferred only with the production plant, in which the invention, it is granted for, has been exploited.

3. Court with a decision shall specify the acts, which the applicant is entitled to perform, and which are necessary for the purpose of manufacturing the products intended for export and distribution in the country or countries cited in the application. No manufactured product or imported under a compulsory license shall be offered for sale or put on the market in any country other than that cited in the application, except where an importing country avails itself of the possibilities under the decision to export to fellow members of a regional trade agreement that share the same public health problems.

4. The court with a decision shall order that the products made under such license shall be clearly identified, through specific labelling or marking, as being produced under a compulsory licence. Such products shall be distinguished from those made by the right holder through special packaging, special colouring or shaping, provided that such distinction is feasible, and does not have a significant impact on price. The packaging and documents shall bear an indication that the product is subject to a compulsory license, giving the name of the competent court which granted it, the file number and specifying clearly that the product is intended exclusively for export to and distribution in the importing country(s). Details of the product characteristics shall be made available to the customs authorities.

5. The court with a decision shall order that before shipment to the importing country, the licensee shall post on a web site with the following information:

5.1. the quantities of products being supplied under the licence to the importing countries where the supply will take place;

5.2. the distinguishing features of the product concerned.

6. If a product covered by a compulsory licence granted in Kosovo, is patented in the importing country cited in the application, the product shall only be exported if this country has issued a compulsory licence for the import, sale or distribution of the product concerned.

7. The court with a decision shall order the applicant to pay remuneration to the right holder:

7.1. in the cases of extraordinary national circumstances or other circumstances of extreme urgency or in cases of public non-commercial use under the TRIPS Agreement, the remuneration shall be a maximum of four percent (4%) of the total price to be paid by the importing country or on its behalf;

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

8. When the court decision on the grant of a compulsory license has become final, the court upon a claim for the preservation of evidence filed by the right holder, inspects documentation of the licensee, for the sole purpose of checking whether all the obligations contained in the court decision on the grant of a compulsory license, and in particular those relating to the final destination of the products, have been fulfilled. The documents shall contain a proof of export of the product, in the form of a declaration of exportation certified by the customs authority, and a proof of importation by one of the bodies listed in sub-paragraph 2.6 of paragraph 2 of Article 39 of this Law and the WTO document, dated 30 August 2003.

9. The terms of the license do not specify the method of distribution in the importing country. Distribution may be effected by any of the bodies listed in sub-paragraph 2.6 of paragraph 2 of Article 39 of this Law and the WTO document, dated 30 August 2003 and on commercial or non-commercial terms, including free of charge.

#### **Article 41**

##### **Refusal of the application for granting of a compulsory license**

The court by decision shall refuse an application for granting of a compulsory license if the conditions set out in Articles 39 and 40 of this Law are not met. Before rejecting the claim, the court must enable the applicant to rectify the deficiencies of the claim and to present his claims.

#### **Article 42**

##### **Termination or modification of the compulsory license**

1. The right holder or the licensee may initiate a court procedure, claiming from the court to terminate the validity of the compulsory license, if it has established that the counter party has failed to respect a decision on the grant of a compulsory license. In its decision to terminate the compulsory license, the court shall specify the time period within which the licensee shall arrange for any product in his possession, custody, power or control to be redirected at his expense to the countries in need referred to in Article 38 of this Law, or otherwise disposed of, in consultation with the right holder.

2. When notified by the importing country that the amount of pharmaceutical product has become insufficient to meet its needs, the licensee may institute a court procedure for another claim, claiming the modification of the licence conditions, for the purpose of permitting the manufacture and export of additional quantities of the product to the extent necessary to meet the needs of the importing country concerned. In such cases the court shall apply expeditious proceedings, and information about the applicant and his representative, if any, as well as the chemical name of the pharmaceutical product shall not be required provided that the compulsory license is identified by the licensee. No evidence of negotiations with the rights holder is required, if the additional quantity of the product requested does not exceed twenty percent (25%), of the amount of the original license or in a national emergency situations or other extreme urgent circumstances, or in case of non-commercial exploitation.

#### **Article 43**

##### **Notifications**

1. The court shall notify the Council for TRIPS through the intermediary of the IPA on the decision for the grant of compulsory license, and of the license conditions, as well as of its termination or modification.

2. The information provided shall include in particular:

2.1. the name and address of the licensee;

2.2. the product concerned;

2.3. the quantity to be supplied;

2.4. the importing country;

2.5. the duration of licence;

2.6. the address of the website referred to in paragraph 5 of Article 40 of this Law.

3. The competent authority for issuing a compulsory license under paragraph 1 of Article 38 of this Law must be notified to the European Commission.

#### **Article 44**

##### **Prohibition of importation**

1. The import into the Republic of Kosovo of products manufactured under a compulsory license granted pursuant to this Law for the purposes of release for free circulation, re-importation, placing under suspensive procedures or placing in a free zone or free warehouse shall be prohibited.

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

#### **Article 45**

##### **Actions of the customs authorities**

1. If there are sufficient grounds for suspecting that products manufactured under a compulsory license granted pursuant to the provisions of this Law are being imported in Kosovo contrary to the provisions of paragraph 1 of Article 44 of this Law, the competent customs authorities shall detain the products concerned for checking, but not more than ten (10) working days. If special circumstances apply, the customs authorities may decide on the extension of the detention period by a maximum of ten (10) additional working days. Upon expiration of the period, the products must be released, provided that all customs formalities have been completed.

2. The customs authority shall inform without delay the right holder and the manufacturer or exporter of the products in question of the detention referred to in paragraph 1 of this Article and shall invite him to furnish information and evidence of the products concerned. Particular attention should be paid to local provisions on the protection of personal data and trade secrets and professional and administrative confidentiality.

3. If in the detention period, the customs authorities establish violation of the compulsory license, contrary to the prohibition referred to in paragraph 1 of Article 44 of this Law, it shall seize the products and put them out of circulation in accordance with the customs regulations.

4. The procedure of detention and confiscation of the goods shall be carried out at the expense of the importer in accordance with the customs regulations. Together with the importer regarding the costs are responsible any other person who tries to make the illegal import.

5. If established that the importation of the products detained in accordance with the provisions of this article would not violate the prohibition referred to in paragraph 1 of Article 44 of this Law, the customs authorities shall release the products in the territory of the Republic of Kosovo, provided that the customs regulations have been complied with.

6. The customs authorities shall notify the IPA, in accordance with the provisions of this Article, of any seizures and destruction of the products.

#### **Article 46**

##### **Import of small quantity**

The provisions of Articles 44 and 45 of this Law shall not apply to import of small quantities of products within the limits laid down in respect of relief from customs duty, contained in personal luggage of travellers, intended for personal and non-commercial use.

## **CHAPTER X PATENT GRANTING PROCEDURE**

### **Article 47 Registers**

1. The IPA shall keep the Register of Patent Applications, the Register of Patents, the Register of Certificates and the Register of Authorized Representatives.
2. The content of the registers referred to in paragraph 1 of this Article, as well as the manner of keeping those registers shall be defined by sub-legal act issued by the Minister.
3. The registers referred to in paragraph 1 of this Article shall be public.

### **Article 48 Fees**

1. For the acquisition and maintenance of a patent and a supplementary Certificate fees shall be paid within time limits laid down by this Law. Fees and amount shall be defined by a sub-legal act issued by the Ministry.
2. If the relevant fees are not paid in the course of the patent granting procedure, the patent application shall be deemed to be withdrawn, while in the case of non-payment of fees for the maintenance of a patent, the latter shall lapse.
3. The fee shall be determined at the level necessary to cover the costs for reviewing the application and administering the procedure

### **Article 49 Patent application**

1. The procedures on patent recognition starts with application for the patent submitted to the IPA.
2. Application shall be filed in the official languages of the Republic of Kosovo, unless otherwise provided by this Law or an international agreement.
3. The manner of submitting the patent application is determined by a sub-legal act issued by the Ministry.

### **Article 50 Content of the application**

1. A patent application must contain:
  - 1.1. a request for patent recognition;
  - 1.2. a description of the invention;
  - 1.3. one or more patent applications;
  - 1.4. any drawings referred to in the description of patent and patent claims;
  - 1.5. an abstract of the invention.
2. The application shall also contain:
  - 2.1. a power of attorney for representation by the applicant, if the application was submitted by a representative;

2.2. translation of the application into the official languages of the Republic of Kosovo. If the application is submitted in a foreign language, no later than six (6) months from the submission date specified by the IPA;

2.3. proof of payment of the application fee.

#### **Article 51**

##### **Date of submission of the application**

1. The date of submission of the patent application is the date on which the applicant has submitted the following documents:

1.1. an express indication that the patent right is sought;

1.2. information that identifies the applicant or allowing the applicant to be contacted;

1.3. a description of the invention, even though such description does not comply with all the requirements set out in this Law and the relevant sub-legal act.

2. A patent application for which the filing date has been accorded shall be entered into the Register of Patent Applications kept by the IPA.

#### **Article 52**

##### **Priority Certificate**

1. At the request of the applicant, IPA shall issue a certificate of the right of priority, acquired on the date of submission of the patent application determined in accordance with the provisions of Article 51 of this Law.

2. The requirements, procedure of issuing as well as the content of the certificate according to paragraph 1 of this Article are determined by a sub-legal act, issued by the Minister.

#### **Article 53**

##### **Unity of the inventions**

1. A separate patent application is submitted for each invention.

2. With a patent application, the recognition of a patent may be requested for more inventions only in cases when those inventions are connected with each other so that they form a unique concept of invention and with them the unity of invention is realized.

3. Where a group of inventions is claimed in a patent application, the requirement of unity of shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features, which define a contribution which each of the claimed inventions considered as a whole makes over the prior knowledge.

4. The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

#### **Article 54**

##### **Request for recognition of patent**

1. The request for recognition of patent is submitted in a form compiled by the IPA and must contain:

1.1.the request for recognition of patent;

1.2. the title of the invention, which clearly presents the technical designation of the invention as well as the details of the applicant and the inventor.

2. In case the inventor does not want to be mentioned in the application, he / she declares in writing that he / she does not want to be mentioned in the application as the inventor, which statement must be submitted to the IPA, no later than two (2) months from date of submission of the application.

3. The content and manner of drafting special elements of the patent application and other additional documents are determined by sub-legal act, issued by the Minister.

#### **Article 55**

##### **Disclosure of the invention**

1. The patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the field.

2. If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in that field, the description of the invention must be considered inadequate for the purposes of this law unless accompanied by the proof to the effect that the sample of such material has been deposited with the competent institution not later than on the filing date of the patent application.

3. The competent institution referred to in paragraph 2 of this Article shall be deemed to be an institution which complies with the requirements laid down by the Budapest Treaty.

#### **Article 56**

##### **Patent claims**

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

2. Patent claims may be independent and dependent. Independent patent claims shall contain new and essential characteristics of an invention. Dependent patent claims shall contain specific characteristics of the invention as defined in other independent or dependent applications.

#### **Article 57**

##### **Abstract**

The abstract shall serve the purposes of technical information only and it may not take into account for any other purpose, in particular to prove the scope of protection sought or applying Article 11 paragraph 3 of this Law.

#### **Article 58**

##### **Division of the patent application**

1. The applicant may at his request, or upon a request by the IPA, divide the subject matter of the patent application having the accorded filing date into two or more applications (a divisional application) and on the basis of each of them a separate procedure shall carry out.

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

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

4. A divisional application shall maintain the filing date of the original application and, provided that it is in accordance with Article 63 of this Law.

### **Article 59**

#### **Amendments to the patent application**

A patent application to which the filing date has been accorded shall not be subsequently amended by extending the subject-matter protection of which is applied for.

### **Article 60**

#### **Entry of changes in the registers**

1. Upon the request by a party for the entry of changes in the register, the IPA shall issue a decision on the entry in the Register referred to in Article 47 of this Law of the changes in respect of a right or the owner of a right, which have occurred after the filing of the application, or following the entry of the decision on the grant of a patent.

2. The changes referred to in paragraph 1 of this Article, as entered, shall be published in the Official Bulletin of the IPA.

3. The procedure concerning the entry of changes and publication of changes in the Official Bulletin as well as the amount of fees shall be laid down by a sub-legal act issued by the Minister.

### **Article 61**

#### **Correction of errors in documents**

1. Formal errors in the documents filed with the IPA, shall be corrected by a written request filed by the patent applicant, i.e. the patent owner and by notification by the IPA, after paying a fee under Article 48 of this Law.

2. Only linguistic and technical errors in the decisions of the IPA may be corrected.

### **Article 62**

#### **Priority of the earlier application**

1. If two or more persons have made an invention independently of each other, the priority in respect of right to the patent grant shall belong to the applicant whose patent application has the earliest date of filing.

2. The priority shall be in effect as from the date of filing the application with the IPA, except where the requirements for the grant of priority right referred to in Article 63 of this Law have been complied with.

### **Article 63**

#### **The Right of Priority**

1. Any natural or legal person or her/his successor in title who has duly filed an application for a patent, in any Member State party to the Paris Convention or WTO, shall enjoy, for the purpose of filing the application in Kosovo, in respect of the same invention, a right of priority during a period of twelve (12) months from the date of filing of the first application, provided that the right of priority is claimed.

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

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

application may not thereafter serve as a basis for claiming a right of priority.

4. The patent applicant desiring to take advantage of the right of priority referred to in paragraph 1 of this Article shall file with the IPA:

4.1. an application for the recognition of priority right containing essential data concerning the first application the priority of which is claimed: application number and filing date, a member State of the Paris Union or a member of the WTO in or for which the application was filed, not later than up to the expiration of a period of two (2) months as from the date of filing the application; and

4.2. A copy of the first application certified by the competent authority of the member State of the Paris Union or a member of the WTO in or for which it was filed, not later than up to the expiration of a period of ninety (90) days as from the filing date of the priority claim or four (4) months as from the date of filing the application in Kosovo, or sixteen (16) months from the earliest priority date claimed, whichever period expires first.

#### **Article 64**

##### **Multiple priority right claim**

1. The patent applicant may, subject to the requirements referred to in Article 63 of this Law, claim multiple priorities on the basis of several earlier applications filed in one or more of the Member States of the Paris Union or Members of the WTO.

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

#### **Article 65**

##### **Elements of the invention regarding the patent claim on priority right**

1. If the recognition of one or more priority rights is claimed, the right shall cover only those elements of the invention which are included in the first application or applications whose priority is claimed.

2. If certain elements of the invention for which priority is claimed do not appear among the patent claims formulated in the previous application, the right of priority may nonetheless be granted, provided that the elements of the previous application can be verified by all constituent parts of application.

#### **Article 66**

##### **Effect of priority right**

The date of recognition of the priority right shall be considered the date of filing the patent application with the IPA for the purposes of Article 11 paragraphs 2 and 3 and Article 62 paragraph 1 of this Law.

#### **Article 67**

##### **Restoration of the right of priority**

1. Where a patent application which could have claimed the priority rights of an earlier application has a filing date which is later than the date on which the priority period expired based on Article 63 paragraph 1 of this Law, the patent applicant may request the restoration of the priority right.

2. The request referred to in paragraph 1 of this Article may be filed within two (2) months from the date of expiration of the priority right period.

3. IPA shall approve the application for restoration of the right of priority, provided that the applicant:

3.1. states the reasons for the failure to comply with the priority period in spite of due care required by the circumstances having been taken; and

3.2. pays the fees referred to in Article 48 of this Law.

4. In case the application does not meet the provisions to in paragraph 3 of this Article, the IPA shall, by a decision, refuse an application for the restoration of the right of priority.

5. The request referred to in paragraph 1 of this Article shall not be filed after the applicant has filed a request for publication in accordance with Article 75 paragraph 2 of this Law, unless such a request for publication is withdrawn before the technical preparations for publication of request have been completed.

### **Article 68**

#### **Correction or addition of the priority right request**

1. A patent applicant may file a request for the correction or addition to a right of priority within a time limit of sixteen (16) months from the priority date or, if the correction or addition would cause a change in the priority date, sixteen (16) months from the priority date claimed to for correction or addition, from the previous period of sixteen (16) months, provided that such a claim is filed within four (4) months from the filing date of the patent application.

2. On correction or addition of a request referred to in paragraph 1 of this Article, the applicant shall pay the relevant fees. If the applicant fails to pay the fees, the request shall be considered as not filed.

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

4. The request referred to in paragraph 1 of this Article shall not be filed after the applicant has filed a request for publication in accordance with Article 75 paragraph 2 of this Law, unless such a request for publication is withdrawn before the technical preparations for publication of the application have been completed.

### **Article 69**

#### **Determination of the application filing date**

1. The IPA shall, when determining the application filing date, examine whether the requirements of Article 51 of this Law are met.

2. If the application does not contain all items referred to in Article 51 of this Law and the date of filing cannot be determined, the IPA shall invite the applicant to fill in the deficiencies indicated in the invitation, within a time limit of two (2) months as from the day of receipt of the notice.

3. If the applicant does not comply with the IPA invitation within the time limit referred to in paragraph 2 of this Article, the patent application shall be rejected with decision.

4. If the applicant corrects the deficiencies within the time limit referred to in paragraph 2 of this Article, the IPA shall issue a notification whereby the date of receipt of the required corrections shall be determined as the filing date of the patent application, and it shall enter the application into the Register of Patent Applications kept by the IPA.

### **Article 70**

#### **Formal Examination of Application**

1. Once the application has been accorded a date of filing, the IPA shall examine whether:

1.1. the administrative fee for filing is paid in compliance with Article 48 of this Law;

1.2. the translation of the application in the official languages of the Republic of Kosovo is filed, if the application has been filed in a foreign language;

1.3. the applicant who is a foreign natural or a legal person is represented by authorized representative entered in the Register;

1.4. does it contain all the elements referred to in Article 50 of this Law;

1.5. the inventor is mentioned;

1.6. a proper priority claim has been filed within the meaning of Article 63 paragraph 4 of this Law, if a priority right is claimed.

2. If the examination establishes that the requirements referred to in paragraph 1 of this Article are not complied with, the IPA shall invite the applicant to correct the deficiencies expressly indicated in the notice within the time limit of two (2) months as from the day of receipt of the notice.

3. On request of the applicant the IPA may extend the time limit indicated in paragraph 2 of this Article for a period, which it considers to be justified, but not exceeding three (3) months.

4. If the applicant does not correct the deficiencies indicated in paragraph 1, sub-paragraphs 1.1, 1.2, 1.3, 1.4 and 1.5 of this Article, within the prescribed time limit, the IPA shall issue a decision on the rejection of the patent application.

5. If the applicant does not respond the notice referred to in paragraph 1 sub-paragraph 1.6 of this Article, the IPA shall not recognize the priority right.

6. IPA has the right to require applicants filing of additional documents necessary for examining the application, by notification in writing and set a deadline for filing them when it deems necessary.

7. In accordance with paragraph 6 of this Article, the IPA makes a decision to grant or not to patent.

#### **Article 71**

##### **Examination of drawings or missing parts of the description**

1. Where during the examining the IPA verifies that a part of the description or drawing is missing from the application, the IPA shall notify the applicant to supplement the application with the parts of the description or drawings that are missing within two (2) months from the receipt of the notice.

2. Where a missing part of the description or a missing drawing is filed with the IPA within the time limit prescribed in paragraph 1 of this Article, that part of the description or that drawing shall be included in the application, and the date of filing shall be the date on which the IPA has received that part of the description or that drawing. Contrary to it, it will be considered that the applicant is not referring to drawings or to the part of its description.

#### **Article 72**

##### **Request examination for the patent registration**

1. The examination of requirements for the registration of a patent shall establish whether the application complies with the following requirements:

1.1. whether the subject-matter of the application is the invention which may be, at first sight, protected by a patent within the meaning of Article 7 paragraphs 1 and 3 and Articles 8, 9, 10 and 14 of this Law;

1.2. does the application, at first sight, comply with the rule on the unity of invention referred to in Article 53 of this Law.

### **Article 73**

#### **Refusal of the Application**

1. If it has been established that the patent application does not comply with all the requirements for the registration of a patent referred to in Article 72 paragraph 1 of this Law, the IPA shall, in a written notification, inform the patent applicant of the reasons due to which the patent shall not be granted, and shall invite him to respond, in a written form, on the refusal reasons within the time limit of two (2) months as from the day of receipt of the notice.
2. On request of the applicant the IPA may extend the time limit for two (2) months as referred to in paragraph 1 of this Article.
3. If the patent applicant does not comply with the notice referred to in paragraph 1 of this Article, the IPA shall issue a decision on refusal of a patent.
4. If the requirements referred to in Article 72 paragraph 1 of this Law are not complied with in part, the IPA by a decision shall refuse the application only in that part.

### **Article 74**

#### **Grant of the Patent rights**

1. If it has been established that the patent application complies with all the requirements referred to in Articles 70 and 72 paragraph 1 of this Law, the IPA shall issue a decision on the grant of a patent and enter the patent in the Register of patents.
2. IPA shall issue a decision referred to in paragraph 1 of this Article after the expiry of eighteen (18) months from the date of filing, or if priority is claimed, the earlier date of priority provided that the fees for the maintenance of a patent, for printing of the publication thereof, and for the issuance of the patent certificate and patent specification have been paid in compliance with Article 48 of this Law from the applicant or in time period of two (2) months after notification issued by the IPA.
3. Granted patent takes effect against third parties from the date of its publication in the Official Bulletin of the IPA.
4. Until the issuance of a decision under Article 79 paragraphs 2 of this Law, the scope of protection shall be determined by the contents of patent claims as applied.

### **Article 75**

#### **Publication of a Registered Patent**

1. IPA shall publish the granted patent after the decision for grant under Article 74 paragraph 1 of this Law.
2. The applicant may request that the decision for grant be issued and the patent be published even before the expiration of the time limit under Article 74 paragraph 2 of this Law, but not before three (3) month as from the date of filing the application, or if priority is claimed, the earlier date of priority, provided that the additional fee is paid in compliance with the Article 48 of this Law.
3. The content of the publication of a registered patent shall be defined by sub-legal act.

### **Article 76**

#### **Patent Certificate**

1. The patent owner shall be issued a patent certificate after issuance of the decision.
2. The content and form of the certificate referred to in paragraph 1 of this Article shall be defined by the sub-legal act issued by the Minister.

## **Article 77**

### **Patent Specification**

1. The patent owner shall be issued a Patent Specification after the issuance of the decision.
2. The content and form of the Patent Specification referred to in paragraph 1 of this Article shall be defined by the sub-legal act. issued by the Ministry.

## **Article 78**

### **Submission of the evidence on the registered patent at the relevant offices**

1. The patent owner shall submit to the IPA the written evidence that the patented invention complies with all the requirements set out in Articles 7, 8, 9, 10, 11, 12, 13 and 14 of this Law, no later than the expiry of the ninth year of the patent term.
2. When submitting the evidence under paragraph 1 of this Article, or within two (2) months from the receipt of the notice from the IPA, the patent owner shall pay a fee for issuing decision referred to in Article 48 of this Law.
3. The written evidence referred to in paragraph 1 of this Article, of a patent granted for the same invention by the European Patent Office, or one of the national and international offices which, by virtue of the Patent Cooperation Treaty, have the status of International Preliminary Examining Authority for international patent applications, and other offices, with which, at the time of submitting the evidence referred to in paragraph 1 of this Article, the IPA has signed a cooperation agreement. The evidence shall be translated into the official languages.
4. If the granting proceedings in a relevant office have not yet been terminated, the applicant shall inform the IPA accordingly in the time limit envisaged in paragraph 1 of this Article, and the IPA may extend that time limit for not more than three (3) months after the termination of the procedure for the material examination. If the evidence is not submitted in due time, the provisions of paragraph 1 of Article 80 of this Law shall apply.

## **Article 79**

### **Decisions upon submission of the evidence**

1. If the patent owner fails to submit the evidence as referred to in Article 78 paragraph 1 of this Law, the patent shall lapse on the date of the expiry of the tenth year of the patent term.
2. If on the basis of the submitted evidence the IPA finds that the invention:
  - 2.1. meets the requirements on patentability as referred to in Article 78 paragraph 1 of this Law entirely, it shall issue the decision declaring that the patented invention meets requirements on patentability;
  - 2.2. meets the requirements conditions partly on patentability as referred to in paragraph 1 of Article 78 of this Law, the IPA shall issue the decision with declaration where shall be stated that patented innovation meets the requirements conditions only partly, and amend the form request for patent recognition, respectively re-issue the patent specification upon request by the owner.
3. If the IPA finds that the invention does not meet the requirements on patentability as referred to in paragraph 1 of Article 78 of this Law, it shall issue the decision declaring the patent invalid.
4. The IPA shall communicate to the patent owner the decisions under paragraphs 2 and 3 of this Article and shall invite him to submit a written comment within two (2) months as from the day of receipt of the invitation.
5. If the patent owner does not comply with the invitation within the time limit referred to in paragraph 4 of this Article, the IPA shall issue a decision, where it declares that the patent and application did not show any effects.

6. Where, on the basis of the submitted written evidence, the IPA establishes that the granted patent does not comply with the requirements referred to in Article 53 of this Law, it shall divide the patent into one or more patents preserving the date of filing of the initial application or the date of priority if such priority is claimed, provided that prescribed fees are paid.

7. The relevant indications from the decisions referred to in this Article shall be published in the Official Bulletin, as specified by the sub-legal act issued by the Minister.

### **Article 80**

#### **Reinstatement of rights**

1. If the applicant or the owner of a patent has, despite the due diligence required by the circumstances, failed to perform, within a time limit prescribed by this Law or sub-legal act for meeting the requirements in time at the IPA, a direct result of which is a loss of rights with respect to an application on patent, the applicant may file a request on the reinstatement of the right for patent recognition.

2. The IPA with decision shall reinstate his rights, provided that the applicant or the owner of the right:

2.1. files a request for it and pays the administrative fee in compliance with Article 48 of this Law;

2.2. presents the legal grounds and the facts on which the request is based;

2.3. fulfils the actions that have not been undertaken within the prescribed time limit.

3. The request for reinstatement of rights shall be filed within three (3) months, counting from the day on which the reason of failure ceased to exist, and if the applicant has later learned of failure, counting from the day he became aware of it.

4. The request referred to in paragraph 1 of this Article shall not be filed after the expiration of one (1) year from the date of failing to comply with the time limit.

5. Before the decision for partial refusal or refuse it entirely, the IPA shall notify the person filing a request for reinstatement of rights about the reasons for which it intends to refuse the request, entirely or partially, and shall invite him to comment on those reasons within two (2) months from the day on which he receives the invitation.

6. Reinstatement of rights shall not be requested in connection with the failure to comply with the timelines for the following actions:

6.1. filing of the request referred to in paragraph 1 of this Article;

6.2. filing of request for the extension of a time limit;

6.3. filing of the request referred to in Articles 63, 67, and 68 of this Law;

6.4. filing of the request referred to in Article 81 of this Law;

6.5. all the decisions in the procedures before the IPA, involving several persons.

7. The contents of the request, the requirements and procedure related to the request referred to in paragraph 1 of this Article, and the publication of the data concerning the reinstatement of right shall be specified by the sub-legal act issued by the Minister.

8. Any person who has in good faith used or made effective and serious preparations for using an invention which is the subject of a granted patent in the period between the loss of rights referred to in paragraph 1 of this Article and publication in the Official Bulletin of the reinstatement of those prescribed rights, may without

payment continue such use in the course of his business or for the needs thereof.

### **Article 81**

#### **Continuation of the Procedure**

1. If the applicant for or the owner of a patent has failed to comply with a time limit for an act in a procedure to the IPA and that failure has the direct consequence of causing a loss of rights conferred by a patent application or a patent, he may file a request for the continued processing with respect to the patent application or the patent.

2. The IPA shall authorize the continued processing, provided that the applicant:

2.1. files a request for the continued processing, and performs all the omitted acts within the prescribed time limit, and

2.2. pays the fee in accordance with Article 48 of this Law.

3. A request for the continued processing may be filed within two (2) months from the day on which the applicant learned about the legal consequences referred to in paragraph 1 of this Article.

4. If the omitted acts have not been performed within the time limit referred to in paragraph 3 of this Article, or if the fees referred to in Article 48 of this Law have not been paid, a request for the continued processing shall be deemed not to be filed, and the decision to that effect shall be issued by the IPA.

5. A request for the continued processing shall not be filed, if the applicant has failed to fulfil the following conditions:

5.1. a request submission referred to in paragraph 1 of this Article;

5.2. a request submission on time limit continuation;

5.3. a payment on administrative fee and payment fee on patent maintenance;

5.4. filing the request referred to in Articles 63, 67 and 68 of this Law;

5.5. for all the decisions in the procedures before the IPA involving several parties.

6. If the IPA approves the request referred to in paragraph 1 of this Article, the provisions set out in paragraph 7 of Article 80 of this Law shall apply.

## **CHAPTER XI**

### **DURATION, MAINTENANCE AND TERMINATION OF PATENT RIGHT**

#### **Article 82**

##### **Term of Protection**

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

#### **Article 83**

##### **Maintenance and termination of a Patent**

1. The annual fees referred shall be payable for the third and every subsequent year, calculated from the date of filing of the application.

2. If the patent owner fails to pay the fees stated in paragraph 1 of this Article, he may pay them in the grace

period of six (6) months, subject to an additional fee prescribed by a sub-legal act.

3. If the patent owner will not pay the fee foreseen for the maintenance of a patent, the validity of patent shall end on the first day after the date foreseen for payment has expired.

4. The maintenance of rights conferred by a granted patent shall be subject to payment of annual fees prescribed by a sub-legal act issued by the Minister.

5. The fees for maintenance of the patent can be paid by any person.

## **CHAPTER XII CERTIFICATE FOR PROTECTION OF PHARMACEUTICAL PRODUCTS AND PLANT PRODUCTS**

### **Article 84 Meaning of Terms**

1. The following terms that are used in regard to Supplementary Protection Certificates have these meanings:

1.1. medicinal product - any substance or combination of substances intended for treating or preventing disease in human beings or animals, and any substance or combination of substances, which may be administered to human beings or animals with a view to restoring, correcting or modifying physiological functions in humans or in animals, or to making a medicinal diagnosis;

1.2. product - the active ingredient or combination of active ingredients of a medicinal product;

1.3. basic patent - is a patent which is designated by its holder for the development of the procedure for granting of a Supplementary Protection Certificate to protect the product as such, as defined in sub-paragraph 1.2 of Article 84 of this Law, or the process for obtaining a product or an application of a product;

1.4. first authorization to place on the market - the first authorization to place a product as a medicinal product intended for humans or animals on the market in the Republic of Kosovo or in the European Union;

1.5. application for an extension of the duration - an application for an extension of the duration of the certificate pursuant to Article 85 of this Law;

1.6. manufacturer - the person for whom the product or medical product that contains the product for the purpose of export to third countries or for the purpose of storage is manufactured.

2. The following terms used in relation to the Supplementary Protection Certificate for plant protection products (hereinafter "Certificates"), shall have the following meanings:

2.1. plant protection product - is an active substance or a preparation containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

2.1.1. protect plants or plant products against harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not defined otherwise;

2.1.2. influence the life processes of plants, other than as a nutrient (as, plant growth regulator);

2.1.3. preserve plant products, in so far as such substances or products are not subject to special provisions on preservatives;

- 2.1.4. destroy undesirable plants; or destroy parts of plants, check or prevent undesirable growth of plants.
- 2.2. substance - a chemical element or its compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;
- 2.3. active substance - a substance or a microorganism, including viruses, having general or specific action against harmful organisms, or on plants, parts of plants or plant products;
- 2.4. preparation - a mixture or a solution composed of two or more substances, of which at least one is an active substance, intended for use as a plant protection product;
- 2.5. plant - a live plant and live part of plants, including fresh fruit and seeds;
- 2.6. plant product - a product in the unprocessed state or having undergone only simple preparation such as milling, drying or pressing, derived from plants, but excluding plants themselves as defined in sub-paragraph 2.5 of this paragraph;
- 2.7. harmful organisms - pests of plants or plant products belonging to the animal or plant kingdom, such as viruses, bacteria and micro-plasmas and other pathogens;
- 2.8. product - the active substance as defined in sub-paragraph 2.3 of this paragraph, or combination of active substances of a plant protection product;
- 2.9. a basic patent is a patent granted by its holder for the purpose of conducting the procedure for the issuance of the Supplementary Protection Certificate, to protect the product as such, as set out in Article 84, paragraph 2 sub-paragraph 2.8 of this Law, or the preparation defined in Article 84, paragraph 2, sub-paragraph 2.4 of this Law or the process to obtain a product or to apply a product;
- 2.10. first authorization for placing the product on the market - the first authorization to place the products as plant protection products on the market in the Republic of Kosovo or in the European Union.

## **Article 85**

### **Duration of the certificate**

1. The Certificate may be granted in accordance with the provisions of this Law in the cases where a basic patent has been granted for a product which is a component part of a medicinal product intended for humans or animals, or for a plant protection product, the placing on the market of which requires prior authorization by the competent State authority.
2. The Certificate shall take effect promptly after the expiration of the lawful term of the basic patent.
3. The rights conferred by the Certificate shall run for a period equal to the period which elapsed between the date of filing of the application for a basic patent and the date of the first authorization to place the product protected by such a patent on the market, reduced by a period of five (5) years.
4. The duration of the Certificate may not exceed five (5) years from the date on which it takes effect.
5. The periods laid down in paragraphs 3 and 4 of this Article shall be extended by six (6) months in the case where Article 85 of this Law applies. In that case, the duration of the period laid down in paragraph 3 of this Article may be extended only once.
6. The duration of the Certificate shall be specified by a decision issued by the IPA.
7. An initial temporary authorization should be considered with regard to the assessment of the duration of the

certificate only if it is followed by a final authorization for the same product.

#### **Article 86**

##### **Conditions for obtaining the Certificate**

1. The Certificate shall be issued upon a request of the owner of the basic patent, if the following conditions are met on the date of filing of the application for the Certificate:

- 1.1. that the product is protected by a basic patent in force;
- 1.2. that an authorization to place the product on the market as a medicinal product intended for humans or animals, or a plant protection product respectively, which is in force, has been granted in accordance with special regulations;
- 1.3. that the product has not already been the subject of the Certificate;
- 1.4. that the authorization referred to in sub-paragraph 1.2 of this paragraph, is the first authorization to place the product on the market as a medicinal product intended for humans or animals, or a plant protection product, respectively.

#### **Article 87**

##### **Application for the Certificate**

1. The application for the Certificate shall be filed with the IPA within six (6) months from the date of the grant of the authorization, referred to in Article 86 paragraph 1 sub-paragraph 1.2 of this Law, and if the authorization has been granted before the grant of the basic patent, within six (6) months from the date the patent is given.

2. The application for an extension of the duration referred to in paragraph 5 of Article 85 of this Law may be made with the IPA when the application for a certificate is submitted or when the application for the certificate is pending and the appropriate requirements of paragraph 4 and 5 of Article 88 of this Law respectively are fulfilled. The application for an extension of a duration of a certificate already granted shall be made not later than two (2) years before the expiry of the term of the certificate.

#### **Article 88**

##### **Content of application for Certificate**

1. The procedure for granting a Certificate shall start with the submission of an application containing the following:

- 1.1. The request for issuance of the Certificate, which in particular contains:
  - 1.1.1. name and address of the applicant;
  - 1.1.2. name and address of the authorized representative, if any;
  - 1.1.3. basic patent number and title of the invention;
  - 1.1.4. the number and date of first authorization for placing the product on the market, and if authorization as submitted is not the first authorization to place the product on the European Union, the number and date of such an authorisation;
- 1.2. a copy of the authorization to place the product on the market, which defines the product and which contains in particular the number, date of authorization and the summary of product characteristics issued by the competent authority in the procedures established by the sub-legal acts issued by the Ministry;

1.3. evidence that indicates the identity of the product, the legal provision according to which the authorization procedure is carried out and a copy of the notice in the Bulletin whereby the information regarding the authorization has been published, if the authorization referred to in sub-paragraph 1.2 of this Article is not the first authorization to place the product on European Union market.

1.4. evidence on payment of the fee for the application for issuing the Certificate as well as application for the extension of the term of Certificate.

2. If the applicant for certificate is owner of more than one patent for the same product, he receives only one certificate for that product:

2.1. if there are two or more applications related to the same product and come from two or more different patent owners, each owner can be given a certificate for this product.

3. When the application for the certificate includes a request for extension of the deadline:

3.1. a copy of a statement is requested which shows the compliance with the complete plan of paediatric researches as stated in Article 85 of this Law;

3.2. when necessary, besides a copy of authorization to place the product on the market referred to in sub-paragraph 1.2 of this Article, another requirement might be the proof of possession of authorization for placement of the product on the markets of all member states of the European Union.

4. When application for a certificate is in the phase of examination, the request for extension of deadline under Article 87 paragraph 2 of this Law shall contain the data mentioned in paragraph 3 of this Article and a reference for the application for certificate already submitted.

5. The request for extending the duration of the said certificate must contain the data mentioned in paragraph 3 of this Article and a copy of the certificate already issued.

6. The request mentioned in sub-paragraph 1.1 of paragraph 1 of this Article, shall be submitted in the form and with the content that is to be determined by way of a sub-legal act issued by the Minister.

### **Article 89 Formal Examination**

1. The IPA conducts formal examination at the time of submission of application for Certificate.

2. With the formal examination we notice that:

2.1. application is submitted in proper form and if it contains all the data set out in Article 88 paragraph 1 of this Law;

2.2. the payment of the fee set out in Article 88 paragraph 1 sub-paragraph 1.7 of this Law has been made;

2.3. the application is submitted within the period given in Article 87 of this Law;

2.4. the Application accompanied by the evidence set out in Article 88 paragraph 1 sub-paragraphs 1.4, 1.5, 1.6 and paragraph 4 of this Law;

2.5. basic patent was in force at the time of submission of application for certificate.

3. If the application for Certificate does not contain the elements described in paragraph 2 of this Article, the IPA informs the applicant to correct the incomplete within one (1) month from the day of receiving it.

4. If the applicant does not correct the deficiencies mentioned on the notice, within the specified time, the IPA shall issue a decision for rejecting the application for Certificate.
5. If the applicant meets the deficiencies within the time stipulated in paragraph 3 of this Article, the IPA continues the procedure.
6. Provisions of this Article shall apply also to requests for the extension of the duration.

#### **Article 90** **Substantive examination Procedure**

1. The IPA with substantive examination makes review whether:
  - 1.1. the conditions for obtaining the certificate required by Article 86 of this Law are fulfilled at the date of submission of application;
  - 1.2. the product for which is applying for Certificate is protected by basic patent;
  - 1.3. authorization for placing the product on the market is given in the manner as determined by special regulation;
  - 1.4. the product is already not subject to the certificate.
2. If the IPA finds that the conditions specified are fulfilled then the IPA issues a decision on granting of the certificate.
3. If the IPA finds that not all conditions specified are fulfilled, it may refuse the application for Certificate with a decision.
4. Paragraphs 1 to 3 of this Article are applied also for applications for the length of time.

#### **Article 91** **Content of Certificate**

1. The Certificate contains:
  - 1.1. name and address of the holder of Certificate;
  - 1.2. the number of basic patents;
  - 1.3. title of the invention;
  - 1.4. number and date of authorization to place the product on the market, the product name identified in the authorization;
  - 1.5. number and date of first authorization to place the product on the market, according to needs, based on the provisions of Article 88 paragraph 1 sub-paragraph 1.3 of this Law;
  - 1.6. duration of the Certificate.

#### **Article 92** **Entry in Register**

Data from Certificate are registered in register of IPA established by sub-legal act issued by the Minister.

### **Article 93**

#### **Subject matter and effect of protection**

1. Within the limits of the protection provided by the basic patent, the protection provided by the Certificate shall be limited to the product covered by the authorization for placement on the market of a medicinal product intended for humans or animals, namely plant protection, and for any use of the product as a medicinal product intended for humans or animals, respectively for plant protection, which is authorized before the expiration of the Certificate.

2. Referring to paragraph 1 of this Article, the Certificate shall provide the holder of the basic patent or his legal successor with the same rights as provided by the basic patent and the same Certificate shall be subject to the same restrictions and obligations.

3. Notwithstanding paragraph 1 of this Article, the Certificate shall not provide protection against certain actions which would otherwise require the consent of the Certificate holder in case the following conditions are met:

3.1. actions contain the following:

3.1.1. the production of a product or medicinal product containing that product, for purposes of export to third countries; or

3.1.2. any similar action that is strictly necessary for manufacture, in the European Union, referred to in sub-paragraph 3.1.1 of this Article or for actual export; or

3.1.3. production, not earlier than six months before the expiry of the Certificate, of a product, or medical product containing that product, for the purpose of storage in the Member State of the European Union where it was made, in order to place that product, or medical product containing that product, on the market of the Member State of the European Union after the expiry of the corresponding certificate, or

3.1.4. any similar action that is necessarily needed for the production, in the European Union, referred to in sub-paragraph 3.1.3 of this paragraph or for actual storage, provided that such similar action has been taken not earlier than six (6) months before the expiration of the certificate;

3.2. the production, through appropriate means, must notify the IPA of its intentions to initiate production in Kosovo, and must inform the certificate holder, regarding information provided in paragraph 6 of this Article at a date no later than three (3) months before the start of production in Kosovo, or not later than three (3) months before the first action, before such production, which would otherwise be prohibited by the protection provided by the certificate, whichever occurs earlier;

3.3. if the information provided for in paragraph 6 of this Article changes, the producer shall notify the IPA by submitting a standard notification form, and shall notify the Certificate holder, before such changes take effect;

3.4. in case of products, or medical products containing products, made for purposes of export to third countries, the producer shall ensure that a logo, in the form specified in Annex 1 to Regulation 2019/933, is affixed to the outer packaging of the product, or medicinal product containing the product referred to in sub-paragraph 3.1.1. of this paragraph, and, where appropriate, in immediate packaging;

3.5. the manufacturer is in compliance with paragraph 10 of this Article and has paid the fees.

4. The exemption from paragraph 2 of this Article does not apply with regard to any action or activity undertaken for the import of products, or medicinal products containing these products, into the European Union only for the purposes of repackaging, re-export or storage.

5. The information provided to the certificate holder for the purposes of sub-paragraphs 3.2 and 3.3 of paragraph 3 of this Article shall be used exclusively to verify that the conditions of this Article are met, and, where applicable, to initiate non-compliance procedures.

6. The manufacturer must provide the following information in a standard notification form which must be submitted to the IPA:

6.1. name and address of the manufacturer;

6.2. data whether the production is for export purposes, for storage purposes or for export and storage purposes;

6.3. the Member State of the European Union where it will be produced, and if applied, where it will be stored, and the Member State will not take the first action, if any, before production;

6.4. the number of the certificate issued in the Member State of the European Union of production, and the number of the certificate issued in the Member State of the first similar operation, if any, before production; and

6.5. for medical products to be exported to third countries outside the European Union, the marketing authorization reference number, or an equivalent of such authorization, to any third exporting country, as soon as it is publicly available.

7. The producer must use the standard forms in Annex Ia to EU Regulation 2019/933 to notify the IPA according to sub-paragraphs 3.2 and 3.3 of paragraph 3 of this Article. The information provided will be recorded in the Register of Certificates.

8. Failure to comply with the requirements of sub-paragraph 6.5 of paragraph 6 of this Article in relation to third countries will only affect exports to such country, and said exports do not benefit from these exemptions.

9. The producer must ensure that medicinal products produced for purposes of export to third countries, do not contain any unique identifiers which are active within the meaning of Commission Delegated Regulation (EU) 2016/61.

10. The producer must, by appropriate and documented means, ensure that any person in a contractual relationship with the producer who performs operations under sub-paragraph 3.1 of paragraph 3 of this Article shall be notified and be made fully aware with regard to the following:

10.1. that these actions are subject to paragraph 3 of this Article;

10.2. that placing on the market, import or re-importation of products or medical products containing the product, referred to in sub-paragraph 3.1.1 of paragraph 3 of this Article placing on the market of the product or medical product containing the product, referred to in sub-paragraph 3.1.3 of paragraph 3 of this Article may violate the certificate referred to in paragraph 3 of this Article, where, and to the extent that the certificate applies.

#### **Article 94** **Publication**

1. The IPA shall publish details regarding the application for Certificate, the decision to grant or data regarding the refusal of the application for Certificate.

2. The data related to the application for the extension of the Certificate and for its termination shall be determined by a sub-legal act issued by the Minister.

### **Article 95**

#### **Validity of Certificate**

1. The Certificate is valid for the given period.
2. Certificates will be completed before the expiration of period for which is given if:
  - 2.1. certificate holder shall submit written statement to the IPA that gives up from the Certificate;
  - 2.2. annual maintenance fee of which is not paid within the deadline time set;
  - 2.3. the product to which the certificate was given is no longer on the market as a result of withdrawal of authorization for placing it on the market.
3. The IPA shall decide for the Certificate expiration on an official duty basis, or at the request of the person interested.

### **Article 96**

#### **Declaration of Invalidity of Certificate**

1. Certificate shall be declared invalid or void if:
  - 1.1. it is given against the provisions of this Law;
  - 1.2. basic patent has ceased to exist under the provisions of Articles 98, 99, 100 and 106 of this Law;
  - 1.3. basic patent is declared invalid or is cancelled in whole or partially, where the product to which the certificate was given will not be further protected by a request of the basic patent or, there are grounds for revocation, if the term of validity of the patent has ended, which would provide reasoning for such revocation of limitation.
2. Provisions of this Law related to proceedings on the request for declaring non-validity of the patent, will be also applied in the procedure for announcing the cancellation of the Certificate.

## **CHAPTER XIII**

### **PATENT EFFECT CESSATION**

### **Article 97**

#### **Effect Cessation**

1. Patent granted ceases being effective:
  - 1.1. with the expiration of protection under Article 82 of this Law;
  - 1.2. due to non-payment of annual maintenance fee;
  - 1.3. based on delivery or renunciation;
  - 1.4. according to the declaration of no validity.
2. Completion of the effects of the patent will be registered in the register and published.

**Article 98**  
**Non-payment of annual fees for Maintenance**

1. If the patent applicant or patent owner does not pay annual fees for maintenance of patent rights set out in Article 83 of this Law, the patent expires on the expiry day of payment.
2. IPA shall not be obliged to notify the right holder with regard to the deadline specified in paragraph 1 of this Article.

**Article 99**  
**Submission of Patent**

1. The patent owner may submit patent in whole or partially, by written statement. Submission declaration enters into force the day after the same is communicated to the IPA.
2. The patent owner cannot submit the patent without written consent of third persons if they have any rights registered in the register over the patent.
3. Submission of the patent is registered in the register and published in the Official Bulletin.

**Article 100**  
**Death or legal inability of the right holder**

1. The patent expires on the date of death of the owner, respectively, on the day of losing legal subjectivity of the legal person unless it is transferred to the heir or legal successor.
2. Paragraph 1 of this Article shall also apply to patent applications.

**CHAPTER XIV**  
**DECLARATION OF INVALIDITY OF THE PATENT**

**Article 101**  
**Application for invalidity Declaration**

1. The procedure regarding to the announcement of no validity of a patent, is initiated from a written request by the IPA.
2. The request from paragraph 1 of this Article shall contain:
  - 2.1. the information related to the application submitter;
  - 2.2. number of patents against the application is submitted, the patent owner's name and title of the invention;
  - 2.3. statement of level in which the patent is proposed to be invalid and the basis upon which the request is based, also the facts and evidences stated which are presented in support of these bases;
  - 2.4. the information regarding the authorized representative of patents if the application is submitted by the representative.
  - 2.5. proof of payment of fees for application for declaration of no validity, as referred to in Article 48 of this Law.

## **Article 102**

### **Reasons for disclosure of Invalidity**

1. A patent shall be declared invalid if it is granted:

1.1. for a subject that is not patentable under Articles 7 to 14 of this Law;

1.2. for an invention which is not presented in a very clear and complete way that can be performed by a person with knowledge in that area;

1.3. for the subject that draws out of content of the application submitted as such, or if the patent is granted for an application with partition or a new application submitted under Article 111 paragraph 4 of this Law.

## **Article 103**

### **Submission period and the persons who are entitled to declare invalidity**

1. Declaration of invalidity of the patent can be submitted at any time during the time of patent protection from any natural or legal person, or ex-officio from the IPA.

2. The procedure for declaring the patent invalid is conducted by the IPA through the offices which the IPA has signed a cooperation agreement in this direction.

## **Article 104**

### **Examination of conditions for declaration of invalidity**

1. When the request for declaration of invalidity of a patent is not in accordance with Article 101 of this Law, the IPA invites the applicant to correct deficiencies within two (2) months from the date of receiving the invitation.

2. If the applicant does not correct the deficiencies mentioned in invitation within the time limit, under paragraph 1 of this Article, the IPA shall refuse the request for declaration of invalidity.

3. The IPA will deliver a copy of the request for abolishing the patent, together with given evidence to the patent owner, requesting him to respond and make changes where necessary in the description, patent request and drawings within two (2) months from the date of accepting the invitation.

4. The IPA invites both parties, whenever necessary, to submit their objections in submissions of opposing party within the time limit specified in the paragraph 3 of this Article.

5. All written communications of competent authorities and their responses will be submitted to all parties to the proceedings.

6. Upon reasonable request, the IPA may extend the time limits mentioned in this Article for a period that considers reasonable, but which will not exceed two (2) months.

## **Article 105**

### **Decision regarding the claim for declaration of invalidity of the patent**

1. The IPA issues:

1.1. decision to declare the invalidity of a patent, entirely or partially, if determined that their requirements for the award are not met;

1.2. decision to refuse the application if it determines that the requirements for the award are met.

2. If the patent declared invalid all legal effects from the patent are invalid.

3. Before the decision is taken to declare the patent in part, the IPA informs the parties that the text of the patent will remain in the patent and invites parties to submit their objections within two (2) months if they do not agree for that text. If the parties do not agree with that text, the procedure for invalidity statement can be extended.

4. If parties agree with the text which the IPA will keep it on the patent or if the parties do not respond to the invitation referred in paragraph 3 of this Article, the IPA invites patent owner to pay an administrative fee within two (2) months from the date of receiving the invitation for re-issuing of detailed description of the patent. If the fee is not paid on time, patent will be declared void and annulled by application of declaration of invalidity.

5. The IPA will publish the information for invalid patent in the Official Bulletin.

## **CHAPTER XV REVOCATION OF DECISION FOR GRANTING THE PATENT**

### **Article 106 Basis for revocation**

1. Decision on the patent may be revoked for the future before the expiration of the patent, if it is decided:

1.1. that practical biological material that is deposited in an authorized institution in accordance with the dispositions referred to in Article 55 paragraph 2 of this Law no longer exists or the mentioned material is not available to public;

1.2. that its availability to the public through the authorized institution in which it was deposited was discontinued in the period longer than foreseen.

### **Article 107 Request for revocation**

1. Proceedings for revocation of the decision granting the patent begin with the submission of the request for revocation at the IPA.

2. Provisions of this Law concerning the content of the application and the procedure for the declaration of the patent invalid are implemented with the necessary changes, even in the content of the application and in procedure regarding with the revocation of the decision granting the patent.

## **CHAPTER XVI INFORMATION SERVICES OF THE INDUSTRIAL PROPERTY AGENCY**

### **Article 108 Confidentiality of material and information services**

1. The material of patent applications and patents which have not yet been published in the Official Bulletin are not available to the public without the consent of the applicant.

2. The IPA on request sets available to any individual or legal person, copies of the application for patent, published in the Official Bulletin.

3. Before the publication of the application for patent in the Official Bulletin, the IPA may make known to any natural or legal person the information as the application number, date of registration or in the case of priority, the request for it, number date and place or organization where the application is first submitted, the applicant information and title of the invention.

**Article 109**  
**The extract from the Register**

1. The IPA issues extract from the register of patents at the request of any natural or legal person who has paid the appropriate fee.
2. Extraction method, content, and fees for the extract are determined by sub-legal act issued by the Minister.

**CHAPTER XVII**  
**IMPLEMENTATION**

**Article 110**  
**Subjects who have the right to seek the protection for patents**

The protection of rights under this law may be requested by the patent holder, or by a person authorized by the patent holder in accordance with the general provisions of representation, and by the holder of the exclusive license, provided that this person has acquired the right to use the invention under a license contract or under the law.

**Article 111**  
**Claim to establish the right to the grant of a Patent**

1. If the application for patent is presented by a person who is not eligible to submit an application for the grant of a patent for an invention, the inventor or his legal heir can undertake legal action seeking a determination of his rights to grant the patent.
2. If the application for patent is presented by a person who is not eligible for the grant of a patent and is one of the persons who together created the invention, other inventors or their legal heirs may request the appointment of their rights in giving a joint patent.
3. Inventor who's right to award a patent is assigned to the final decision may at any time, require the IPA to register his name in applying for patent and all of the issued documents for the patent, and other relevant records of the IPA. Registration of name of inventor, may also be required by its legal successor.
4. The inventor or his successor to whom, by court decision has placed the right to grant patent for invention, is entitled to resume the procedure for granting the patent within three (3) months from the date on which the final decision of court was given or to submit a new application for the same invention, demanding the handover date and the date of priority if the application submitted by the applicant who is not entitled to receive a patent.

**Article 112**  
**Claim due to infringement of inventor's right to be mentioned as such in the application**

1. The inventor should have the right to submit a request to have his name mentioned in the patent application, as well as in the documents relating to the patent and in the IPA registers, if the person mentioned as such is not the inventor or if the inventor is not mentioned.
2. If the person who is not the inventor is mentioned as such in the patent application and in the documents related to the patent or IPA registers, a lawsuit will be initiated against such person.
3. The right to sue defined in paragraph 1 of this Article must also belong to the inventor of a joint invention.
4. The lawsuit defined in paragraph 1 of this Article can be filed at any time during the validity of the patent.

**Article 113****Claim for declaration and termination of the infringement**

1. Entities according to Article 110 of this Law may lodge a claim against any person who has infringed a patent by performing without authorization any of the actions referred to in Article 23 or Article 24 of this Law, claiming establishment of the infringement.
2. Entities according to Article 110 of this Law may lodge a claim against any person who has infringed a patent by performing without authorization of any of the actions referred to in Article 23 or Article 24 of this Law, requesting termination of the violation and to stop such violations and similar to them in the future.
3. Entities according to Article 110 of this Law may lodge a claim against any person that committing any of the actions without authorization has caused serious threat that its patents may be infringed, seeking termination of the act in question and prohibition of patent infringement.
4. The claim defined in Article 113 of this Law, can be filed against intermediaries, whose services have been used by a third party to infringe, or threatened to infringe the patent.
5. In certain cases and at the request of the responsible person who will be subject to the measures set out in Articles 113 and 114 of this Law, the court, instead of applying the measures, may order monetary compensation for the injured party, if he has acted unintentionally and without negligence, if the execution of the measures in question would have caused him/her disproportionate harm and if the monetary compensation to the injured party should be reasonably satisfactory.

**Article 114****Claim for seizure and destruction of objects**

1. Entities according to Article 110 of this Law may lodge a claim against any person who has infringed a patent by performing without authorization any of the actions referred to in Article 23 or Article 24 of this Law, claiming that the products resulting from or acquired by the infringement of a patent, and the materials, implements and tools predominantly used in the manufacture of the products infringing the patent to be called back or be removed entirely from the market, or be seized or destroyed.
2. The court imposes the measures defined in paragraph 1 of this Article, to be covered with expenses of the violator, unless there are special reasons for not doing so.
3. The court, when imposing measures according to paragraph 1 of this Article, will take into account the need for proportionality between the seriousness of the violation and the legal remedies imposed, as well as the interests of third parties.

**Article 115****Claim for damages, usual compensation and unjust enrichment**

1. The entities according to Article 110 of this Law shall have the right to file a claim against any person who has known or could have known, who has been involved in committing the violation actions mentioned in Article 23 or Article 24 of this Law, claiming damages in proportion to actual damage by him or her as a result of a violation under the general rules on legal redress set out in the relevant law. When determining the amount of damages, the court shall take into account all relevant aspects, such as adverse economic consequences, including lost profits incurred by the injured party, any unjust gain of the offender and, where appropriate, other elements such as economic factors, and the moral prejudice caused to the right holder by the offender.
2. As an alternative to paragraph 1 of this Article, in appropriate cases, compensation may also be calculated as a lump sum on the basis of elements such as the amount of compensation or fees that would have been attainable if the infringer had sought a license to use the patent by the patent owner.
3. When the offender did not know or had no reasonable basis to know that he was involved in infringing

activities, the court may order the return of the offender's profits from the unauthorized use of the patent, according to the general rules on unjust enrichment, defined in the relevant law.

4. Claims under Articles 113, 114 and 115 of this Law may be filed within three (3) years from the date when the offence or damage as well as the offender became known to the claimant, and no later than five (5) years from the date of the offence or the date of the last offence in case of persistent offences, unless otherwise provided by the relevant laws.

#### **Article 116**

##### **Request for publication of the judgment**

1. The entities according to Article 110 of this Law may request that the verdict of the court which confirmed complete or partial violation of patent rights, to be published in public media or internet, at the expense of the offender.

2. Court decides within the application for full or partial publication of the verdict and where the information will be published.

3. If the Court decides to publish only a part of a verdict, it shall order, within the limits of the request, to be published at least part of the verdict where its offence and its offender is pronounced.

#### **Article 117**

##### **Burden of Proof**

1. For the purposes of civil proceedings concerning the infringement of a process for obtaining a patent protected product; the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process.

2. Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

2.1. if the product obtained by the patented process is new;

2.2. if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

3. The burden of proof referred to in paragraph 1 of this Article shall lay with the alleged offender if only one of the conditions referred to in paragraph 2 of this Article is fulfilled, taking into account the legitimate interests of defendants in protecting their manufacturing and business secrets.

#### **Article 118**

##### **Relation to a patent granted without the evidence on patentability**

When the legal action is instituted concerning the infringement of a patent, the court may interrupt the proceedings until the IPA issues a decision in accordance with Article 79 paragraph 2 of this Law.

#### **Article 119**

##### **Request for information**

1. Entities according to Article 110 of this Law, which have initiated the procedure for patent protection in cases of violations, may require information on the origin and distribution network of products that infringe the patent.

2. The reasoned and proportionate request according to paragraph 1 of this Article may be submitted in the form of a claim or interim measures against the alleged offender and any other person:

- 2.1. who has been found to be in possession of infringing goods on a commercial scale;
- 2.2. who was found utilizing services, which are suspected of infringing the patent on a commercial scale;
- 2.3. which has been found to provide at the commercial level services used in patent infringement activities; or
- 2.4. is presented by any person defined in sub-paragraphs 2.1, 2.2 or 2.3 of paragraph 2 of this Article as involved in the production, preparation or distribution of goods or provision of services.

3. Request for information on the origin and distribution network of products and services under paragraph 1 of this Article may include in particular:

- 3.1. information on the names and addresses of manufacturers, distributors, suppliers and other previous owners of products or services, wholesale and retail sellers;
- 3.2. information on the quantities produced, delivered, distributed, received or ordered, and price of said products and services.

4. If such person refuses to provide information without compelling reason, he/she is responsible for damage caused in accordance with applicable legal provisions.

5. The provisions of this Article shall apply without prejudice to other legal provisions which:

- 5.1. give right holders the right to receive more complete information;
- 5.2. regulate the use in civil or criminal proceedings of the information communicated according to paragraphs 2 and 3 of this Article;
- 5.3. regulate liability for misuse of the right to information; or
- 5.4. allow an opportunity to refuse the provision of information which would compel the person referred to in paragraph 2 of this Article to admit his/her or his/her relatives' involvement in a patent infringement; or
- 5.5. regulate the protection of the confidentiality of sources of information or processing of personal data.

6. The provisions of this Article shall not apply to the provisions of Articles 121 and 122 of this Law which regulate taking of evidence.

### **Article 120** **Interim measures in case of patent infringement**

1. At the request of the patent owner, who proves that his patent has been infringed or threatened with infringement, the court may impose an interim measure in order to put an end to or prevent the infringement and in particular:

- 1.1. order the opposing party to discontinue, or withdraw from, the actions constituting a patent infringement, or to prohibit, on a temporary basis, the continuation of the patent infringement or to make such resumption conditional on the provision of targeted guarantees to secure compensation of the right holder. Such an order may also be imposed, under the same conditions, against an intermediary whose services are being used by a third party for the infringement of a patent;
- 1.2. order the prohibition or delivery of goods suspected of being in patent infringement, to prevent their entry or movement within trade channels.

2. In the event of an infringement on a commercial-scale, at the request of the patent owner, proving the circumstances which are likely to jeopardize the compensation of damages, the court may, in addition to the interim measures set forth in paragraph 1 of this Article, also order preliminary confiscation of the movable and immovable property of the alleged offender, including the freezing of bank accounts and other assets.

3. In order to determine and execute the interim measure according to paragraph 2 of this Article, the court may request from the opposing party or other relevant persons, to communicate banking, financial or commercial documents, or provide access to relevant information. The court ensures the protection of the confidentiality of such information and prohibits its misuse.

4. The interim measures provided for in paragraphs 1, 2 and 3 of this Article may be ordered without hearing the opposing party, in cases where the claimant proves that the other measures would not be effective, or that any delay would cause him irreparable damages. In such cases, the parties must be informed promptly, and at the latest after the execution of the measures. The review, including the right to be heard, shall be conducted at the request of the respondent in order to decide, within a reasonable time after notification of the imposition of the measures, whether those measures will be amended, revoked or confirmed.

5. In the decision imposing the interim measure, the court shall determine the duration of such measure and if that measure was imposed before the commencement of the procedure on the merits of the case, the deadline within which the claimant for the measure must submit a request to provide reasoning for the measure, with the condition that this deadline does not exceed the period of twenty (20) working days or thirty-one (31) calendar days, from the date of announcement of the decision, whichever one is longer. In the absence of a request to initiate proceedings on merits of the case within the above period, the respondent may request the revocation of the interim measures or the cessation of their effect.

6. The court may, in connection with the measures set forth in Article 120 paragraphs 1, 2 and 3 of this Law, request the patent owner to provide the available and reasonable evidence to establish a sufficient degree of certainty that he/she is the owner of the right and that his/her right is being infringed, or that such infringement is unavoidable.

7. The court may take interim measures after the submission by the claimant of an adequate insurance or an equivalent insurance in order to secure compensation of any costs or expenses borne by the respondent as defined in paragraph 8 of this Article.

8. In case of revocation of interim measures or when the same cease to act due to any omission by the claimant or when it is found that there is no violation or danger of patent infringement, the court may order the claimant, at the request of the opposing party, to provide the respondent with appropriate compensation for any damage caused by these measures.

#### **Article 121**

##### **Interim measures for the preservation of evidence**

1. The court, in the claim of the patent owner, who proves that his patent has been infringed or is threatened to be infringed, and that there is a possibility that the evidence of the infringement or threat in question, could not be obtained or could become more difficult its receipt may, even before the commencement of the merits decision procedure, order an interim measure for the preservation of evidence in order to protect confidential information.

2. The court may, through interim measures from paragraph 1 of this Article, order:

2.1. a detailed description of the goods and services suspected of infringing the patent, with or without sampling;

2.2. confiscation of goods suspected of infringing the patent;

2.3. confiscation of materials and tools used for the production and distribution of goods that infringe a patent, and related documents.

3. The interim measures set out in paragraphs 1 and 2 of this Article may be imposed without hearing the opposing party, if the claimant requesting interim measures proves that there is a risk that any delay is likely to cause irreparable damage to the right holder or when it is proven that there is a risk of destruction of evidence.

4. If an interim measure has been imposed without hearing the opposing party, the parties shall be informed promptly, at the latest after the execution of the measures. The review, including the right to be heard, shall be conducted at the request of the respondent in order to decide, within a reasonable time after notification of the imposition of the measures, whether those measures will be amended, revoked or confirmed.

5. In the decision imposing an interim measure, the court decides on the duration of such measure, and if the measure was imposed before the procedure, the deadline within which the claimant seeking interim measures submits a request to provide reasoning for the measure, with the conditions that this deadline does not exceed the period of twenty (20) working days and not more than thirty-one (31) calendar days, from the date of communication of the decision to the submitter of measures, whichever is longer. If a request is not submitted within the deadline, the interim measure is revoked.

6. The court may take interim measures after the submission by the claimant of an adequate insurance or equivalent insurance in order to secure compensation of any costs or expenses borne by the respondent as provided in paragraph 7 of this Article.

7. When the interim measures for preservation of evidence are been revoked or when they are terminated due to claimant's failure to act, or when, as a result it has been found that there has been no violation or threat of infringement of a patent, the court may order the claimant, at the request of the respondent, to provide the respondent with adequate compensation for any damage caused by those measures.

### **Article 122**

#### **Providing evidence during the proceedings**

1. When a party to the proceedings has presented reasonable and sufficient evidence to substantiate its claims belonging to or in the possession of the respondent and specifies those evidence, the court shall order the respondent to present such evidence within a certain time limit, in order to protect confidential information.

2. At the request of the interested party in the capacity of the claimant, who has provided sufficient and reasonable evidence to support his claim that a patent has been infringed on a commercial scale, in order to obtain economic or commercial benefits and has specified in the proceedings that bank, financial or similar financial documents, letters or similar evidence, claiming that they are in the control of the respondent, the court will invite the opposing party to present such evidence within a certain time limit, with the condition of keeping information.

3. If the invited party refuses to present evidence after being notified by the court, the court shall take measures to obtain evidence and establish the facts.

4. The provisions of the respective procedural law relating to the refusal to present evidence as a witness shall apply mutatis mutandis to the right of the party to refuse to present evidence.

5. The court shall, taking into consideration all the circumstances of the case, decide at its own discretion, on the importance of the fact that the party having the evidence refuses to comply with the court's decision ordering it to present evidence, or denies, contrary to the court's opinion, that the evidence lies with it.

6. Against the decision of the court referred to in paragraphs 1 and 2 of this Article a separate appeal shall not be allowed.

### **Article 123**

#### **Expedited procedures and implementation of the provisions of other laws**

1. The procedure regarding the patent infringement should be expedited.

2. The measures set forth in Articles 113 to 124 of this Law shall apply to any infringement of the patent unless other Laws provide for more favourable measures for the holding of the patent.
3. During the proceedings regarding the violation of the patent rights, the provisions of other applicable Law are applied.
4. At the request of the court or the party that have initiated proceedings for infringement of the patent rights, the IPA accepts the request for annulment or declaration of decision as invalid for the registered patent, presented before or during the procedure and will proceed in the expedited procedure. The Court considering the circumstances shall determine the procedure until the final decision.
5. The measures, procedures and remedies set forth in Articles 113 to 124 of this Law shall be fair, equitable, proportionate and affordable. They should not provide for unreasonable deadlines or unreasonable delays and should be applied in such a way as to avoid the creation of barriers to trade and provide protection against their abuse.
6. In the application of Articles 113 to 124 of this Law, the provisions of the Law on Contested Procedure on procedural costs are applied in the case of recognition of legal costs and costs borne by the successful party. Any known procedural costs must be borne by the losing party. In particular, legal costs and fees should include any related costs such as the costs of witnesses, lawyers, experts and technical advisers to the parties and the costs of detecting violators.

#### **Article 124**

##### **Competent courts**

For all of the cases of violations of the patent's rights, the competent Court will rule in accordance with legal provisions in force.

### **CHAPTER XVIII**

### **REPRESENTATION**

#### **Article 125**

##### **General issues of representation**

1. Only the person registered in the register of representatives kept and maintained by the IPA has the right to act before the IPA.
2. For entry in the register of representatives, a fee shall be paid as defined by the sub-legal act by the Minister.
3. The representative shall be authorized in writing as an authorized representative.
4. Representation issues are determined by sub-legal act issued by the Minister.

#### **Article 126**

##### **Representation**

1. A natural or legal person who does not have its main registered office of business, residence or permanent residence in the territory of the Republic of Kosovo shall be represented by the IPA by a representative registered in the Register of Representatives maintained by the IPA, if the issue of representation is not otherwise provided for by the law.
2. As an exception to the provisions set forth in paragraph 1 of this Article, foreign natural or legal persons may individually, without a representative, perform the following actions:

- 2.1. submit a patent application;
- 2.2. perform other acts related to the determination of the date of submission of the patent application;
- 2.3. submit the original copy of the application for the first patent, when the right to priority mentioned in Article 64 of this Law is required;
- 2.4. receive notices from the IPA regarding the procedures referred to in sub-paragraphs 2.1., 2.2. and 2.3 of paragraph 2 of this Article;
- 2.5. pay the administrative fees mentioned in this Law.

3. In the case of performing individual acts, defined in paragraph 2 of this Article, a foreign natural or legal person must notify the IPA of the address, correspondence, which will be in the territory of the Republic of Kosovo.

4. If a foreign legal or natural person fails to appoint a representative or to communicate the address to the IPA, in accordance with the provisions referred to in paragraph 3 of this Article, the IPA shall invite him in writing to appoint a representative or to communicate the address for correspondence within a period of three (3) months.

5. If a foreign natural or legal person fails to answer to the invitation of the IPA specified in paragraph 4 of this Article, the IPA shall reject its communication by a decision and it shall be deemed that the representative has not been appointed.

6. A legal or a natural person having a principal place of business, a domicile or a habitual residence in the territory of the Republic of Kosovo, may be represented in proceedings before the IPA by an employee, which does not need be the patent representative registered in the Register of the representatives.

#### **Article 127**

##### **Persons entitled to become authorized representatives**

1. The authorized representative shall have the right to represent the parties in the procedure regarding the development of procedures for the registration of industrial property subjects.
2. The authorized representative may be:

- 2.1. a natural person; citizen of the Republic of Kosovo with permanent residence in the Republic of Kosovo, with completed university studies and who has passed the qualifying exam to become a representative at the IPA;
- 2.2. a legal person that has its registered office and business in the Republic of Kosovo and that employs at least one person who meets the conditions set out in paragraph 2 of this Article;
- 2.3. any former IPA employee with completed university studies, who has not less than five (5) years of work experience in industrial property matters, without undergoing the qualifying exam.

#### **CHAPTER XIX**

##### **PUNITIVE PROVISIONS**

#### **Article 128**

##### **Punitive provisions**

1. A fine in the amount of two thousand (2.000) to six thousand (6.000) Euros shall be imposed on a legal entity which, in the course of its commercial activity, in any form uses products or services in which a patent is

included or applied in violation of Article 23 or 24 of this Law.

2. A fine in the amount of five hundred (500) to one thousand and five hundred (1,500) euros shall be imposed on the responsible person of the legal person according to paragraph 1 of this Article.

3. A fine in the amount of one thousand (1,000) to three thousand (3,000) euros shall be imposed on a natural person who, in the course of his commercial activity, in any form uses products or services in which a patent is included or applied in violation of Article 23 or 24 of this Law.

4. A fine in the amount of one thousand and five hundred (1,500) to four thousand and five hundred (4,500) Euros shall be imposed on a legal person that uses the license in violation of the provisions of Article 31 of this Law.

5. A fine in the amount of five hundred (500) to one thousand and five hundred (1,500) Euros shall be imposed on the responsible person in the legal entity, who uses the license in contradiction with the provisions of article 31 of this Law.

6. A fine in the amount of one thousand (1,000) to three thousand (3,000) euros shall be imposed on a natural person exercising commercial activity who uses the license in violation of the provisions of Article 31 of this Law.

#### **Article 129**

##### **Sub-legal acts applicable until the issuance of new sub-legal acts**

1. Provided that they are not inconsistent with this Law and until the issuance of new sub-legal act for the right and entire implementation of this Law, the current applicable sub-legal acts shall remain into force:

1.1. Administrative Instruction (MTI) No. 10/2020 on authorized representatives in the field of industrial property;

1.2. Administrative Instruction (MTI) No. 13/2016 for on the procedure for registration of patents;

1.3. Administrative Instruction (MTI) no. 10/2016 on administrative fees for industrial property facilities;

1.4. Administrative Instruction (MTI) no. 02/2017 on the responsibilities, mandate and work of the appealing committee under the industrial property agency.

#### **Article 130**

##### **Issuance of sub-legal acts**

The Ministry shall issue sub-legal acts according to Article 5 paragraph 4; Article 6 paragraph 6; Article 47 paragraph 2; Article 48 paragraph 1; Article 49 paragraph 3; Article 52 paragraph 2; Article 54 paragraph 3; Article 60 paragraph 3; Article 76 paragraph 2; Article 77 paragraph 2; Article 79 paragraph 7; Article 80 paragraph 7; Article 83 paragraph 4; Article 88 paragraph 6; Article 92; Article 94 paragraph 2; Article 109 paragraph 2 and Article 125 paragraph 4, within twelve (12) months from the entry into force of this Law.

#### **Article 131**

##### **Repealing provisions**

With the entry into force of this Law, there shall be repealed the Law No. 04/L-029 on Patents and the Law No. 05/L-039 on Amending and Supplementing the Law No. 04/L-029 on Patents.

**Article 132**  
**Entry into force**

This Law shall enter into force fifteen (15) days after the publication in the Official Gazette of the Republic of Kosovo.

**Law No. 08/L-059**  
**24 December 2021**

**Promulgated by Decree No. DL-49/2022 dated 13.01.2022 President of the Republic of Kosovo Vjosa**  
**Osmani-Sadriu**