

## INDUSTRIAL & INTELLECTUAL PROPERTY

### XIII.

#### XIII.1. Legal Framework

**XIII.1.1. Laws and Regulations** .Copyright and Neighboring Rights Act, published in State Gazette No. 59 of June 29, 1993 as in force from August 1, 1993 .Patents Act, published in State Gazette No. 27 of April 02, 1993 as in force from July 01, 1993, last amendments published in State Gazette No. 17 of February 21, 2003 .Marks and Geographical Indications Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999 .Industrial Design Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999, last amendments published in State Gazette No. 17 of February 21, 2003 Topography of Integrated Circuits Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999 .Protection of New Plant Varieties and Animal Breeds Act, published in State Gazette No. 84 of October 10, 1996 as in force from January 04, 1997, last amendments published in No. 18 of March 05, 2004 .Different Regulations on drafting up, filing and examination of corresponding objects of Industrial Property.

#### XIII.1.2. International Treaties (bilateral and multilateral)

a)General .Paris Convention for the Protection of Industrial Property of March 20, 1883 as in force from September 27, 1965 .Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement) of April 15, 1994  
b)Specific International Agreements .Copyright and Neighboring Rights .Berne Convention for the Protection of Literary and Artistic Works of 1886 .International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations .Convention for the Protection of the Producers of Phonograms against Unauthorized Reproduction of their Phonograms.  
c)Patents .Patent Cooperation Treaty of June 19, 1970 as in force from May 21, 1984.European Patent Convention of October 05, 1973 as in force from July 01, 2002 .Trademarks .Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 in force as of August 01, 1985 .Protocol Related to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989 in force as of October 02, 2001 .Industrial Design .Hague Agreement Concerning the International Deposit of Industrial Designs of June 02, 1934 as in force from December 11, 1996  
d)Others . Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods of April 14, 1891 as in force from August 1, 1975 .Lisbon Agreement for the Protection of

Appellations of Origin and their International Registration of October 31, 1958 as in force from August 12, 1975 .Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures of April 28, 1977 as in force from August 19, 1980 .International Convention for the Protection of New Plant Varieties (UPOV) of December 02, 1961 as in force from April 24, 1998

#### XIII .2. Legal Definitions

The **copyright** over literary, artistic and scientific works arise for the author with the creation of the literary, artistic and scientific work.

According to the Patents Act patents are granted for **inventions** from all areas of the technology which are new, are inventive and industrially applicable. Patents for **utility models** are granted for utility models which are new and industrially applicable. The discoveries, scientific theories and mathematical methods, results from artistic work, schemes, rules and methods of intellectual activity, for playing games or doing business, computer programs as such, or presentation of information are not regarded as inventions.

The following objects are not patentable:

(i) invention the exploitation of which would be contrary

to the public order or morality;

(ii) methods for treatment of human or animal body by therapy or surgery, as well as diagnostic methods practiced on the human or animal body. This provision is not related to products, in particular substances or compounds used in these methods;

(iii) plant varieties or animal breeds or essentially biological processes for obtaining them. This provision does not apply to microbiological methods and the products thereof.

**Mark** - a sign which is capable of distinguishing the goods or services of one person from those of other persons, and which can be presented graphically. Such signs can be words, including names of persons, letters, numerals, drawings, figures, the shape of the products or the packing thereof, combination of colors, sound signs or any combinations of such signs.

**Geographical indications** means appellations of origin and indications of source.

**Industrial Design** is the appearance of the whole or a part of a product resulting from the specific features of the shape, lines, contours, ornamentation, colours or combination thereof. Product means any industrial or handicraft item, including parts intended to be assembled into a complex item, sets or composition of items, packaging, graphic symbols and typographic typefaces.

#### XIII.3. General Review

##### X.3.1. Copyright and Neighbouring Rights

The law provides for protection of copyright during the whole life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.

The author is entitled to the exclusive right to use the

work created by him and to permit its use by other persons. The reproduction of the work, regardless whether it is related to the distribution, presentation, broadcasting, transmission or public exhibition and if it is addressed to unlimited number of people or to a limited number of people (in certain cases), is considered as a use of this work.

The copyrights of performers, producers of phonograms and broadcasting organizations are protected for a period of 50 years.

The performer has the exclusive right to permit against compensation:

- (a) the broadcasting of his/her performance by wireless, cable or other technical means, as well as a sound and video recording of the performance, the reproduction of the recording on video or video carriers and their distribution;
- (b) the public performance, broadcasting by wireless, cable or other technical means of such recordings;
- (c) offering by wireless, cable or other technical means of access to the recording of unlimited number of people and
- (d) import and export of the recording in commercial quantities. The broadcasting organizations, as far as their programs are concerned, have the right to permit their re-broadcasting, re-transmission, recording, reproduction and distribution.

The computer programs are copyright objects and the law provides for their protection for 70 years. The copyright over such a program belongs to the person, whose work has resulted in the creation of computer program. In case the computer program was created under an employment contract and unless otherwise agreed, the copyright over it shall belong to the employer.

### **XIII.3.2. Patents**

The exclusive right on invention or utility model is obtained by issuance of a patent by the Bulgarian Patent Office. The procedure includes (i) a formal examination and (ii) an examination whether the criteria for patentability are fulfilled.

Any patent application may enjoy a priority from earlier application filed in a Member-State of the Paris Convention within 12-months.

The scope of protection is determined by the patent claims. The exclusive right on an invention includes the right of usage of the invention, the right to prevent third parties from usage and the right to dispose of the patent. Where the subject matter of the patent is a method, the patent owner shall have the right to prohibit others from performing the following acts:

- (i) application of the method;
- (ii) offering or putting on the market, using or importing, or stocking for offering or putting on the market or use of a product obtained directly by the patented method. The term of validity of a patent for invention is 20 years, and for patent for utility model – 10 years. In order to maintain the validity of a patent annuity fees are due.

### **XIII.3.3. Marks**

The exclusive right on a mark is obtained by its registration in the Bulgarian Patent Office. The law provides protection for trademarks, service marks, certificate marks and collective marks. The procedure of registration consists of two stages:

- (i) formal examination, and
- (ii) examination about the absolute and relative grounds for refusal.

Any trademark application may enjoy a priority from an identical application filed in member-state of the Paris Convention within a 6-month period.

The exclusive right on a mark includes the right of the owner to use it, to dispose of it and to prevent other parties from unauthorized use in the course of business activity of any sign which:

- (i) is identical with the mark in relation to goods or services which are identical with those for which the mark is registered;
- (ii) due to the identity or similarity to the mark, and the identity and similarity of the goods or services, there is a likelihood of confusion among the consumers and a possibility of association with the mark;
- (iii) is identical or similar to the mark in relation to goods or services which are not identical or similar to those for which the mark is registered, where the mark is known on the territory of the Republic of Bulgaria, and where the use of the sign takes without due cause unfair advantages of the distinctive character or renown of the mark or is detrimental to them.

The term of protection of a registered mark is ten years from the date of filing the application. The registration may be renewed for an unlimited number of ten-year periods.

The registration of a trademark may be revoked if within a period of five years following the date of registration the owner has not put the mark to genuine use on the territory of Bulgaria or if such use has been suspended during an uninterrupted period of five years.

The registration of a mark may be cancelled when

- (i) it has been registered in breach of the absolute or relative grounds for refusal;
- (ii) it is registered in the name of an agent or a representative of the owner without its consent;
- (iii) the applicant has acted in bad faith which has been established with a court decision;
- (iv) the usage of the trademark could be prohibited on the grounds of earlier right such as a right on a name, and a portrait, copyright, a right on a name of new plant variety or animal breed, industrial property right.

### **XIII.3.4. Geographical Indications**

The protection of a geographical indication is obtained by its registration. Entitled to apply for registration is any person who carries out his production activity in the corresponding geographical region and the goods which he produces conform to the established properties and features.

The geographical indication can be used by any recorded user.

### XIII.3.5. Industrial Designs

The exclusive right on industrial design is obtained by its registration at the Patent Office.

The criteria for registration of industrial designs are world novelty and originality.

The procedure of registration consists of two stages:

- (i) formal examination, and
- (ii) examination about the presence of the criteria for registration.

The scope of protection of registered industrial design is determined by its representation(s) and includes every design which does not create different overall impression in the consumers. The exclusive right on registered industrial design includes the right of its owner to use it, to dispose of it and to prevent third parties from copying or using in the course of business activity a design included in the scope of protection.

The term of protection of registered industrial design is 10 years from the date of filing the application. It could be extended three times for further periods of 5 years, i.e. the maximum term of protection is 25 years.

### XIII.3.6. Licenses

The owner of a patent, registered mark or industrial design could assign the right of usage through a license agreement which should be recorded with the Patent Office. The License Agreement or at least an extract thereof has to be submitted to the Patent Office, containing the identification data of the licensor and the licensee, bibliographic data about the patent, trademark or industrial design, the kind of the license (exclusive or non-exclusive), the term of the agreement. The license agreement is in effect with regard to third parties as of the date of its recording in the State Register.

## XIII.4. Protection against infringement of IP rights

### X.4.1. Civil Protection

In any case of unlawful use of a patent, trademark, industrial design or geographical indication the rightful owners are entitled **to lodge a claim** with the competent first-instance court – the Sofia City Court - against the infringer in order to:

- (i) establish the infringement;
- (ii) claim compensation for the damages suffered because of the infringement,
- (iii) require the termination of the infringing actions.

In case the court rules in favor of the claimant the latter may require the decision to be published in two dailies, as well as the infringing objects to be destroyed or reprocessed.

Sofia City Court is the competent first-instance court to rule on disputes on the authorship of inventions, utility models and industrial design.

In any case of infringement of a copyright or a neighboring right the rightful owners or, as the case may be, the persons entitled to exclusive rights of use are entitled to lodge a claim with the competent district court against the infringer in order to: receive a compensation for the damages suffered

because of the infringement. In case the claim's ground is established but the amount of the damages may not be estimated the above persons may, instead of compensation, receive:

- the proceeds obtained as a result of the violation;
- the value of the subject of infringement calculated on the basis of the retail prices of lawfully reproduced copies; or
- sum amounting between BGN 50 and BGN 50,000 determined by the court upon its discretion;
- require the termination of the infringing actions;
- require the seizure and destruction of the infringing copies and the equipment exclusively used for their production.

### XIII.4.2. Criminal Protection

According to the Criminal Code:

- Any person who, without the consent of the owner of the copyright, records, reproduces, circulates, broadcasts or transmit by a technical device or uses in any other way another's work of science, literature or art, or a sound record, video record or radio program, TV program, software or computer program shall be punished by imprisonment of up to three years and a fine of BGN 1,000 to BGN 3,000. If these acts are committed for a second time or substantial harmful consequences have been caused the provided punishment would be imprisonment of one to five years and a fine of BGN 3,000 to BGN 5,000.
- Anybody who issues or uses under his name or under a pseudonym another's work of science, literature or art or a substantial part of such a work shall be punished by imprisonment of up to two years or by a fine of BGN 100 to BGN 300, as well as by public reprobation. The same punishment is provided for any person who, without having participated in the creative work, by abusing his authority joins as a coauthor of a work of science, literature or art.
- Any person who, without the consent of the owner, uses in his trade a trademark, industrial design or the topology of integrated circuits, shall be punished by imprisonment of up to three years or by a fine of up to BGN 5 000.
- Anybody who sends, exports, registers, concedes, sells or realizes recognized or not recognized inventions, rationalizations or technical documentation abroad or concedes them, delivers or sells to foreign citizens or companies in the country by an order not established, unless this represents a more serious crime, shall be punished by imprisonment of up to three years or by a fine of BGN 100 up to 300.

### XIII.4.3. Administrative Protective Measures

The President of the Patent Office is empowered to impose **administrative penalties** - fines or monetary sanctions between BGN 500 and 5 000 - on infringers of rights of the owners of trademarks or geographical indications.

The administrative penalties on infringers of rights of the owners of copyrights or neighboring rights are imposed by the Minister of Culture or a person authorized by him.

In addition in all cases mentioned above the infringing goods shall be seized, regardless of the ownership thereof, and shall be destroyed.

**Border control measures** are also established for goods carried through the borders of the state bearing a registered mark or geographical indication without the consent of the holder or an imitation thereof or such goods for which there are grounds to consider that they infringe a right protected by the Law on Copyright and Neighboring Rights. The customs authorities will detain such good at the written request of the holder or, as the case may be, at the request of the owner of the copyright or persons entitled to exclusive rights of use.

### **XIII.5. Foreign investors related measures**

Foreign authors will enjoy the same rights as Bulgarian authors unless otherwise provided by international treaties and agreements. In case Bulgarian law is applicable to foreign authors or the object of copyright was first created or published in a foreign country, the holder of the right will be determined by the respective foreign law and the term of protection will be the one provided by the foreign law if Bulgarian law provides for a longer period. Foreign physical and juridical persons and all persons with a domicile or seat outside Bulgaria may apply for the registration of a patent, trademark, geographical indication, industrial design only through their local industrial property representatives listed with the Patent Office.

The provisions of Bulgarian law will apply to foreign physical and juridical persons whose respective country of origin is a member to international agreements, to which Bulgaria is a party. To other foreigners Bulgarian laws will apply only in case of reciprocity, which will be established by the Patent Office on a case-by-case basis. Where bilateral international agreements exist their provisions will apply.

The international registrations of patents under the Patent Cooperation Treaty; of trademarks in conformity with the Madrid Agreement; of geographical indications under the Lisbon Agreement; and of industrial designs under the Hague Convention, have the same effect as if the applications were directly lodged and the registrations were made in Bulgaria according to the relevant Bulgarian law.

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### **FOR MORE INFORMATION CONTACT US AT:**

Accountancy department:

[accountancy@properties-guide.com](mailto:accountancy@properties-guide.com)

Legal department:

[legal@properties-guide.com](mailto:legal@properties-guide.com)

Information department:

[reports@properties-guide.com](mailto:reports@properties-guide.com)