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## **PATENT LAW**

### **Official Gazette of FBiH, no. 53/10**

#### **PART ONE – GENERAL PROVISIONS**

##### **Article 1**

###### **(Subject Matter of the Law)**

(1) This Law governs the legal protection of an invention by a patent and a consensual patent, and the procedure for the grant of a patent and a consensual patent.

(2) The provisions relating to a patent shall apply mutatis mutandis to a consensual patent, unless otherwise provided by this Law.

##### **Article 2**

###### **(Principle of Territoriality)**

A patent granted by virtue of the provisions of this Law shall be a territorially limited right as is in force within the territory of Bosnia and Herzegovina.

##### **Article 3**

###### **(Economic Rights)**

Economic rights of a patent holder shall include the exclusive right of economic exploitation of an invention and the right of disposal of it in accordance with the provisions of this Law.

##### **Article 4**

###### **(National Treatment)**

(1) A foreign natural person and legal entity shall enjoy the same rights with regard to the protection of an invention by patent or consensual patent in Bosnia and Herzegovina as are enjoyed by a national natural person and legal entity if that arises from the international treaties and conventions acceded to or ratified by Bosnia and

Herzegovina (hereinafter referred to as the «international treaties and conventions») or from the application of the principle of reciprocity.

(2) The existence of reciprocity shall be presumed until proven to the contrary.

## **Article 5**

### **(Representation)**

(1) Representation in the procedure carried out before the Institute for Intellectual Property of Bosnia and Herzegovina (hereinafter referred to as the «Institute») shall be performed by authorized representatives, i.e. natural persons and legal entities entered in the Register of Patent Representatives which is maintained in electronic form by the Institute.

(2) A natural person and legal entity fulfilling the conditions laid down in a separate regulation shall be entered in the Register of Patent Representatives referred to in paragraph (1) of this Article.

(3) A foreign natural person and legal entity may perform the acts in the procedure before the Institute only through the representative referred to in paragraph (1) of this Article.

(4) By way of derogation from the provision of paragraph (3) of this Article, a foreign natural person and legal entity may perform the following acts by themselves without a representative:

a) file patent applications,

b) undertake other acts related to the accordance of the filing date of a patent application,

c) file copies of the first patent application when claiming priority right referred to in Article 24 of this Law,

d) receive notifications communicated by the Institute in connection with the procedures referred to in items a) to c) of this paragraph,

e) pay taxes and special procedural charges in accordance with Article 15 of this Law.

(5) In the case of performing the acts referred to in paragraph (4) of this Article by themselves, foreign natural persons and legal entities shall communicate to the Institute the address for correspondence which shall be in the territory of Bosnia and Herzegovina.

(6) If a foreign natural person or legal entity fails to appoint a representative or fails to communicate to the Institute the address for correspondence in accordance with the provision of paragraph (5) of this Article, the Institute shall invite such person in writing through a Consulate of Bosnia and Herzegovina to appoint a representative or communicate the address for correspondence within three months.

(7) If a foreign natural person or legal entity fails to comply with the invitation of the Institute referred to in paragraph (6) of this Article, the Institute shall reject its submission by a conclusion and deliver it by means of a public announcement on the bulletin board of the Institute.

(8) By way of derogation from the provision of paragraph (3) of this Article, the fees and special procedural charges for the maintenance of a patent may be paid by any person.

## **PART TWO – SUBJECT MATTER OF PATENT PROTECTION**

### **Article 6**

#### **(Patentable Invention)**

(1) A patent shall be granted for any invention in any field of technology which is new, which involves an inventive step and which is susceptible of industrial application.

(2) According to the conditions referred to in paragraph (1) of this Article, a patent shall be granted also for an invention which concerns:

- a) a product consisting of biological material or containing biological material,
- b) a process by means of which such biological material is produced, processed or used,
- c) biological material isolated from natural environment or produced by means of a technical process even if it previously occurred in nature.

(3) Biological material referred to in paragraph (2) of this Article shall be any material containing genetic information and capable of self-reproducing or being reproduced in a biological system.

(4) According to the conditions laid down in paragraph (1) of this Article, an invention which concerns plants and animals shall be regarded as patentable if the technological feasibility thereof is not confined to a certain animal variety or animal breed and if the process for carrying out the invention is not essentially biological.

(5) A process for the production of plants or animals referred to in paragraph (4) of this Article is essentially biological if it entirely consists of natural processes such as crossing or selection.

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

- a) discoveries, scientific theories and mathematical methods,
- b) aesthetic creations,
- c) schemes, rules and methods for performing mental acts, playing games or doing business,

- d) computer programmes,
- e) presentation of information defined by the content of such information itself.

(7) The provision of paragraph (6) of this Article shall apply only to the extent in which a subject matter of the application for the protection of an invention is such an element or an activity as such.

## **Article 7**

### **(Exclusions from Patentability)**

(1) A patent shall not be granted for:

a) inventions concerning animal breeds and plant varieties and essentially biological processes for the production plants or animals, with the exception of inventions which concern non-biological and microbiological processes and products resulting from such processes, as provided for in paragraph (4) of article 6 of this law, whereby, within the meaning of this Law, a microbiological process shall imply any process which involves or which is performed upon microbiological material or which results in microbiological material.

b) the human body, 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,

c) inventions concerning diagnostic or surgical methods or methods of treatment which are practiced directly on the human or animal body, with the exception of the products, in particular substances and compositions used in such methods.

(2) An invention which concerns an element isolated from the human body or produced by means of technical process, including the sequence or partial sequence of a gene referred to in item b) of paragraph (1) of this article, may be patentable even if the structure thereof is identical to the structure of a natural element. The industrial applicability of the sequence or partial sequence of a gene must be disclosed in the patent application as originally filed.

(3) Inventions shall not be regarded as patentable where their commercial exploitation would be contrary to public order or morality, but not merely because such exploitation is prohibited by law or other regulation.

(4) The following in particular shall be regarded as inventions referred to in paragraph (3) of this article:

a) processes for cloning human beings,

b) processes for modifying the germ line genetic identity of human beings,

c) use of human embryos for industrial or commercial purposes and

d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, as well as animals resulting from such processes.

## **Article 8**

### **(Novelty of an Invention)**

- (1) An invention is new if it does not form part of the state of the art.
- (2) The state of the art shall comprise everything that has been made available to the public in the world, by means of a written or oral description, by use, or in any other way, before the date of filing the patent application.
- (3) The state of the art also includes the contents of all the patent applications having effect in Bosnia and Herzegovina, such as filed, with filing dates earlier than the filing date of the application referred to in paragraph (2) of this Article or thereafter, in the manner as provided in this Law.
- (4) The provisions of paragraphs (1) to (3) of this Article shall not exclude the possibility for patent protection of a substance or compositions forming part of the state of the art, which are used in processes referred to in item c) of paragraph (1) of article 7 of this Law, provided that their use in the mentioned processes is not part of the state of the art.
- (5) An invention shall be considered to form part of the state of the art if it became available to the public by means of publication, display at an exhibition, presentation or use thereof in the manner enabling the persons skilled in the art to carry it out.

## **Article 9**

### **(Non-Prejudicial Disclosures)**

An invention shall be considered new if not more than six months prior to the filing date of the patent application it formed part of the state of the art due to or in consequence of:

- a) evident abuse in relation to the patent applicant or its legal predecessor or,
- b) display at an official or officially recognized exhibition in accordance with the Convention on International Exhibitions signed in Paris on November 22, 1928 and last revised on November 30, 1972, provided that the applicant indicates in the patent application at the time of filing thereof that the invention has been displayed and files a corresponding certificate of the display of the invention not later than within four months from the filing date of the application.

## **Article 10**

### **(Inventive Step)**

- (1) An invention shall be considered to involve an inventive step if, having regard to the state of the art, the solution to a certain problem is not obvious to a person skilled in the art.

(2) When examining whether an invention involves an inventive step, the content of the applications referred to in paragraph (3) of Article 8 of this Law shall not be taken into consideration.

## **Article 11**

### **(Industrial Applicability)**

An invention shall be considered industrially applicable if a subject matter of the invention is technically feasible and if it may be manufactured or used in any type of industry, including agriculture.

## **PART THREE – RIGHT TO PROTECTION OF AN INVENTION**

## **Article 12**

### **(Inventor and Inventor's Rights)**

(1) An inventor shall be the person who has created an invention by his creative work.

(2) The right to protection of an invention shall belong to the inventor or his legal successor.

(3) If an invention has been created jointly by several inventors, the right to a patent shall belong to all the inventors.

## **Article 13**

### **(Moral Right of an Inventor)**

(1) The inventor shall have a moral right to be indicated as such in the patent application, all the documents issued in relation to the patent granted and in the respective Registers.

(2) If the invention protected under this Law is the result of a creative work of several persons, all such persons shall be indicated as inventors in the patent application and the documents referred to in paragraph (1) of this Article.

## **PART FOUR – PROCEDURE FOR THE GRANT OF A PATENT**

## **Article 14**

### **(Competence of the Institute)**

- (1) The procedure for the acquisition, maintenance, termination and record of the transfer of a patent and a consensual patent shall be carried out by the Institute.
- (2) The Institute shall maintain the following Registers for the field of patents:
  - a) Register of Patent Applications
  - b) Register of Patents
- (3) Decisions issued by the Institute in the first instance may be appealed and appeals shall be decided upon by the Board of Appeal of the Institute. The appellate procedure shall be regulated more closely by the implementing regulation.
- (4) Decisions issued by the Institute in the second instance may not be appealed, however an administrative dispute may be instituted by bringing an action before the Court of Bosnia and Herzegovina.

## **Article 15**

### **(Fees and Procedural Charges in the Procedure for the Acquisition and Maintenance of Rights)**

- (1) All the acts in the procedure for the acquisition, maintenance, record of the transfer and termination of a patent, as well as providing information services shall be subject to the payment of fees in accordance with the applicable regulation governing national administrative fees (hereinafter: the fees) and procedural charges (hereinafter: the charges) in the amount specified by a special tariff, enacted by the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, upon the motion of the Director of the Institute.
- (2) If the fees and charges are not paid in the course of the procedure for the grant of a patent, patent application shall be considered as withdrawn, while in the case of non-payment of fees and charges for the maintenance of a patent and the rights conferred by the patent application, such right shall lapse.
- (3) The filing of an appeal shall be subject to the fee and charges in accordance with special regulations. If the fee and charges are not paid prior to the expiration of the appeal period, the Institute shall invite the applicant to pay them within 15 days. If the fee and charges are not paid, the appeal shall not be considered as filed.

## **Article 16**

### **(Regulations Applied in the Procedure Before the Institute)**

- (1) The matters relating to the procedure carried out before the Institute shall be regulated more closely by the implementing regulation (hereinafter: the implementing regulation).

(2) The provisions of the Administrative Procedure Act (Official Journal of BiH volumes 29/02, 12/04, 88/07 and 93/09) shall apply to certain matters that are not regulated by this Law and the implementing regulation.

## **Article 17**

### **(Institution of the Procedure)**

(1) A patent grant procedure shall be instituted by filing an application for the grant of a patent (hereinafter: the application) with the Institute, in accordance with this Law and in a manner as provided for by the implementing regulation.

(2) The applications shall be examined in the order in which they were filed.

(3) By way of derogation from the provision of paragraph (2) of this Article, the application may be examined in an expeditious procedure in the case of a legal or another dispute in which the completion of the procedure carried out on an application represents the resolution of the preliminary matter.

(4) The Institute shall carry out an expeditious examination on the basis of a reasoned request, including evidence, as filed.

## **Article 18**

### **(Unity of Invention)**

(1) A separate patent application shall be filed for each invention.

(2) One patent application may be used to apply for the protection of a group of inventions only if such inventions are so linked as to form a single general inventive concept (unity of invention).

## **Article 19**

### **(Language of a Patent Application)**

(1) A patent application shall be drafted in one of the official languages of Bosnia and Herzegovina.

(2) If the text of an application is filed in a foreign language, translation of the text of the application into one of the official languages of Bosnia and Herzegovina shall be filed with the Institute.

## **Article 20**

### **(Content of a Patent Application)**

(1) A patent application shall contain:



- a) request for the grant of a patent,
  - b) description of the invention
  - c) one or more patent claims,
  - d) drawing referred to in the description of the invention and patent claims,
  - e) an abstract.
- (2) The request referred to in item a) of paragraph (1) of this Article shall contain:
- a) an explicit indication that the grant of a patent is applied for,
  - b) the title of the invention expressing its essence,
  - c) information regarding the applicant,
  - d) information regarding the inventor or an indication that the inventor does not wish to be mentioned in the application
- (3) The description referred to in item b) of paragraph (1) of this Article shall disclose the invention in the manner sufficiently clear and detailed for it to be carried out by a person skilled in the relevant art. If the invention concerns viable biological material and if it is impossible to apply it on the basis of the description of the invention, it shall be considered that the description of the invention fulfils the condition referred to in this paragraph if a sample of the naturally replicating viable biological material has been deposited with the competent institution not later than on the filing date of the patent application. The competent institution under this paragraph shall be the institution determined as such on the basis of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure as concluded in 1977 and revised in 1980.
- (4) The patent claims referred to in item c) of paragraph (1) of this Article shall define the scope and subject matter of the protection of an invention. They shall be clear, concise and fully supported by the description of an invention and drawings, if any. 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 an invention as defined in an independent or another dependent patent claim.
- (5) The abstract referred to in item e) of paragraph (1) of this Article is a short summary of the essence of an invention serving exclusively the purpose of providing technical information and not affecting the scope of the protection sought.
- (6) A patent application shall be considered as correct if it meets the conditions laid down in paragraph (1) of this Article.
- (7) The elements of a patent application referred to in items b) to e) of paragraph 1 of this Article shall be considered as the text of the application.
- (8) The elements referred to in paragraph (1) of this Article and the attachments to the application shall be filed in the manner and the number of copies specified in the implementing regulation.

## **Article 21**

### **(Declaration Made by the Inventor)**

(1) If an inventor does not wish his name to be mentioned either in an application for the grant of a patent or other documents prescribed by this Law, the applicant shall file with the Institute, together with the application for the grant of a patent, a written declaration of the inventor to that effect, not later than three months from the filing date of the application.

(2) The inventor may, in the course of the procedure, but by the publication of the patent application at the latest, withdraw its declaration to the effect that he does not wish his name to be mentioned in the application or in other documents prescribed by this Law.

## **Article 22**

### **(Filing Date of the Application)**

The accordance of the filing date of the application requires that the application filed with the Institute contains the following on such date:

- a) an explicit indication that the grant of a patent is applied for,
- b) information concerning the applicant,
- c) a part of the application appearing at first glance as the description of the invention, even though such description does not meet all the requirements prescribed by this Law and the implementing regulation.

## **Article 23**

### **(Division of an Application)**

(1) The applicant may, on his own initiative or at the request of the Institute, divide the subject matter of the patent application which has been accorded the filing date (the original application) into two or more applications (a divisional application) and on the basis of each of them continue a separate procedure, a conclusion to that effect being issued by the Institute.

(2) The subject matter of a divisional application shall not exceed the scope of the protection of the application as originally filed.

(3) The division of the original application shall be permitted until the issuing of the decision concerning the application for the grant of a patent.

(4) A divisional application shall preserve the filing date of the original application and, if there are grounds for that within the meaning of the provision of article 24 of this Law, shall enjoy the priority right of the original patent application.

## **Article 24**

### **(Priority Right)**

(1) As of the date established as the filing date of the patent application referred to in Article 22 of this Law, the applicant shall have the right of priority over any other applicant who files the application for the same invention later, provided that the application is published in accordance with the provisions of Article 37 of this Law.

(2) The priority shall be in effect as of the date of filing the patent application with the Institute, except where the conditions for the grant of priority right referred to in Article 25 of this law have been fulfilled.

## **Article 25**

### **(Union Priority Right)**

(1) Any natural person or legal entity who files in any Member State of the Paris Union for the Protection of Industrial Property (hereinafter: the Paris Union), or in any Member State of the World Trade Organization (hereinafter: WTO), a correct application for the same invention shall be granted priority right in Bosnia and Herzegovina, if so requested within 12 months counting from the date of filing the first application.

(2) The correct application referred to in paragraph (1) of this Article shall be considered to be an application whose filing date is established in accordance with the national legislation of the Member State of the Paris Union or the Member State of WTO in which it was filed or in accordance with an international treaty concluded among the Member States regardless of the subsequent outcome thereof.

(3) A subsequent patent application filed in the same or for the same State shall be considered as the first application for the purposes of determining priority right in such part which concerns the subject matter of an invention of the first application if, on the date of filing the subsequent application, the first application, serving as a basis for determining priority right, has been withdrawn, refused or rejected prior to its being made available to the public and has not produced any legal effects. The first patent application may not serve thereafter as a basis for claiming priority right.

## **Article 26**

### **(Priority Claim)**

(1) The patent applicant who intends on taking advantage of the priority right referred to in Article 25 of this Law in Bosnia and Herzegovina shall file with the Institute:

a) a priority claim containing essential data concerning the first application in respect of which the priority is claimed (number and date of filing the application, a Member State of the Paris Union or WTO in which or for which the application was filed), not later

than up to the expiration of the period of two months from the date of filing the application in Bosnia and Herzegovina and

b) a copy of the first application certified by the competent authority of the Member State of the Paris Union or WTO in which or for which the application was filed, not later than up to the expiration of the period of three months from the date of filing the priority claim or four months from the date of filing the patent application in Bosnia and Herzegovina or sixteen months from the earliest of the dates of priorities claimed, whichever of the indicated periods expires earlier.

(2) If a patent application for which the priority of the first application is claimed is filed on the date which is later than the date of the expiration of the priority period referred to in paragraph (1) of Article 25 of this Law, the patent applicant may file a request for the restoration of priority right.

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

(4) The Institute shall uphold a request for the restoration of the priority right provided that the applicant:

a) states the reasons confirming that the failure to comply with a time limit within which the priority period is granted occurred in spite of due care required by the circumstances and

b) pays taxes and procedural charges referred to in Article 15 of this Law.

(5) The Institute shall notify the applicant of the reasons why it intends to refuse the request for the restoration of priority right in part or in whole and shall invite him to file his observations on such reasons within one month from the day of receipt of the invitation.

## **Article 27**

### **(Correction or Addition of Priority Claim)**

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

(2) For the request referred to in paragraph (1) of this Article the applicant shall pay the fees and procedural charges referred to in Article 15 of this Law. If the applicant fails to pay the fees and procedural charges, the request shall be rejected by a conclusion.

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

## **Article 28**

### **(Limitations to the Grant of Priority)**

The requests referred to in paragraph (2) of Article 26 and paragraph (1) of Article 27 of this Law may not be filed after the patent applicant has filed a request for publication of the application in accordance with paragraph (2) of Article 37 of this Law, unless such a request for publication is withdrawn before the completion of technical preparations for the publication of the application.

## **Article 29**

### **(Multiple Priority Claim)**

The applicant may claim multiple priorities on the basis of several applications filed earlier in one or more Member States of the Paris Union or WTO under the conditions laid down in article 25 of this Law.

## **Article 30**

### **(Characteristics of the Invention which is the Subject of a Priority Claim)**

(1) A priority claim may relate only to such characteristics of the invention which are contained in the first application or applications in respect of which priority is claimed.

(2) If certain characteristics of the invention to which a priority claim relates do not appear in patent claims contained in the first application or applications, priority right shall be granted, provided that the application elements as a whole disclose all such characteristics.

## **Article 31**

### **(Date of Granted Priority Right)**

When applying the provisions of paragraphs (2) and (3) of Article 8 and paragraph (1) of Article 24 of this Law, the date of granted priority right shall be considered as the date of filing the patent application with the Institute.

## **CHAPTER I. FORMALITY EXAMINATION**

## **Article 32**

### **(Procedure upon Receipt of an Application)**

(1) Upon receipt of a patent application, the Institute shall examine whether:

- a) the application fulfils the conditions for accordance of the filing date referred to in Article 22 of this Law,
- b) the fee and procedural charges for filing the application have been paid in accordance with Article 15 of this Law,
- c) the translation of the application into one of the official languages of Bosnia and Herzegovina has been filed if the application has been drafted in a foreign language,
- d) the drawings referred to in item d) of paragraph (1) of Article 20 of this Law have been filed,
- e) the applicant referred to in paragraph (3) of Article 5 of this Law is represented by a person allowed to perform representation activities in accordance with paragraph (1) of Article 5 of this Law.

(2) If the application does not fulfil the conditions for accordance of the filing date referred to in Article 22 of this Law, the Institute shall invite the applicant to remove the deficiencies explicitly indicated in the invitation within a period of one month from the day of receipt of the invitation.

(3) If the applicant fails to comply with the invitation of the Institute within the period referred to in paragraph (2) of this Article, the patent application shall be rejected by a conclusion.

(4) If the applicant removes deficiencies within the period referred to in paragraph (2) of this Article, the Institute shall issue a conclusion whereby the date of receipt of the required corrections shall be accorded as the filing date of the patent application.

(5) Where a patent application refers to the drawings which are not included in the application, the Institute shall invite the applicant to file the drawings within the period of one month from the day of receipt of the invitation. If the applicant complies with the invitation of the Institute, the filing date of the application shall be considered to be the date of receipt of the drawings by the Institute. If the drawings are not filed, it shall be considered that the applicant has not referred to them.

(6) The Institute shall invite the applicant who has not paid the fee and procedural charges or has not filed the translation of the patent application into one of the official languages of Bosnia and Herzegovina to remove such deficiencies within the period of one month from the day of receipt of the invitation.

(7) At the reasoned request of the applicant, the Institute may extend the time limits set out in this Law for a period it deems justified, but not for more than three months.

(8) If the applicant fails to comply with the invitation of the Institute referred to in Article 6 of this Law, the patent application having been accorded the filing date shall be considered as withdrawn, whereabout a special conclusion shall be issued on the suspension of the procedure.

### **Article 33**

#### **(Entry of a Patent Application in the Register)**

(1) The patent application to which the filing date was accorded by conclusion is entered in the Register of Patent Applications, which is maintained in electronic form by the Institute.

(2) If the Institute finds that the application not fulfilling the conditions laid down in paragraph (1) of Article 22 of this Law is entered in the Register referred to in paragraph (1) of this Article, the Institute shall issue a conclusion on the cancellation of such an application from the Register.

(3) The contents and the manner of maintaining the Register of Patent Applications shall be regulated more closely by the implementing regulation.

#### **Article 34**

##### **(Priority Certificate)**

(1) At the request of the applicant the Institute shall issue a priority certificate.

(2) The requirements for and the manner of issuing, as well as the contents of the certificate referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

#### **Article 35**

##### **(Examination of Conditions for the Publication of a Patent Application)**

(1) The examination of the conditions for the publication of a patent application shall establish whether the application fulfils the following conditions:

a) whether it contains all the elements referred to in Article 20 of this Law drafted in the prescribed manner and the required attachments prescribed by this Law,

b) whether the inventor is indicated,

c) whether a correct priority claim is filed within the meaning of Article 24 of this Law if the priority right is claimed.

(2) If by carrying out the examination it is established that the conditions referred to in paragraph (1) of this Article are not fulfilled, the Institute shall invite the applicant to remove the deficiencies explicitly indicated in the invitation within an appropriate time limit. Such time limit shall neither be less than one month nor more than three months from the day of receipt of the invitation.

(3) At a reasoned request of the applicant, the Institute may extend the time limit referred to in paragraph (2) of this Article for a period it deems justified.

(4) If the applicant fails to remove the deficiencies referred to in paragraph (1) of this Article within a specified time limit, the Institute shall issue a conclusion on the rejection of the patent application.

(5) The Institute shall not grant the right of priority if the applicant fails to comply with the invitation referred to in paragraph (2) of this article in respect of the correction of the priority claim.

## **Article 36**

### **(Subsequent Amendments of a Patent Application)**

(1) The patent application which has been accorded the filing date may not be subsequently amended by extending the scope of protection of the subject matter of the application.

(2) The amendments of the data contained in the application, not extending the scope of protection may be made until the completion of the procedure.

## **Article 37**

### **(Manner and Contents of the Publication of a Patent Application)**

(1) A patent application, established in the examination to fulfil all the conditions referred to in Article 35 of this Law, concerning which the Institute shall issue a conclusion, shall be published in the Official Gazette of the Institute (hereinafter: the Official Gazette) after the expiration of the period of eighteen months from the filing date or from the date of granted priority right, whereby it shall become available to the public.

(2) The patent application referred to in paragraph (1) of this Article may be published, at the request of the applicant, even before the expiration of the said period, but not before the expiration of the period of three months from the date of the filing thereof with the Institute.

(3) The patent application which was published or otherwise made available to the public by the Institute, in spite of having been withdrawn or being considered withdrawn, shall not form part of the state of the art.

(4) The contents of the publication of a patent application shall be regulated more closely by the implementing regulation.

## **CHAPTER II. PROCEDURE AFTER THE PUBLICATION OF A PATENT APPLICATION**

## **Article 38**

### **(Requests)**

(1) Within six months from the date of publication of a patent application in the Official Gazette, the applicant may file a request for:



- a) the grant of patent by means of carrying out substantive examination of the patent application or
  - b) the grant of patent on the basis of submitted results of the substantive examination of the patent application, as accepted.
  - c) the deferment of the procedure of the substantive examination of the patent application and the grant of consensual patent.
- (2) If, within the prescribed time limit, one of the requests referred to in paragraph (1) of this Article has not been filed and the fee and procedural charges have not been paid in accordance with Article 15 of this Law, the patent application shall be considered as withdrawn and the Institute shall issue a conclusion on suspension of the procedure for the grant of patent.
- (3) The contents of the request referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 39**

### **(Substantive Examination Procedure)**

- (1) The substantive examination of a patent application shall establish whether the invention meets all the conditions for the grant of patent, i.e whether the subject matter of the application is an invention which:
- a) is not excluded from patent protection in accordance with paragraph (6) of Article 6 and Article 7 of this Law,
  - b) is in accordance with the rule of unity of invention referred to in Article 18 of this Law,
  - c) is disclosed in the application in accordance with paragraph (3) of Article 20 of this Law,
  - d) is new in accordance with Articles 8 and 9 of this Law, involves an inventive step in accordance with Article 10 of this Law and is susceptible of industrial application in accordance with Article 11 of this Law.
- (2) The Institute may carry out the substantive examination of the application referred to in paragraph (1) of this Article in part or in whole, in cooperation with patent offices referred to in Article 32 of the Patent Cooperation Treaty (PCT) as a general rule, as well as with patent offices of other countries which carry out substantive examination and with which the Institute has concluded a cooperation agreement to that effect.

## **Article 40**

### **(Filing of the Results of Substantive Examination of a Granted Patent)**

- (1) A request for the grant of patent by accepting the results of substantive examination in accordance with item b) of paragraph (1) of Article 38 of this Law may be

filed only where the patent application for the same invention has been filed with one or more patent offices.

(2) The offices referred to in paragraph (1) of this Article shall be the offices which carry out substantive examination procedure with which, at the time of filing the request referred to in item b) of paragraph (1) of Article 38 of this Law, the Institute has a cooperation agreement to that effect signed and national and international offices which, by virtue of article 32 of the Patent Cooperation Treaty (PCT), have the status of the International Preliminary Examining Authority for international patent applications.

(3) The applicant referred to in item b) of paragraph (1) of Article 38 of this Law shall attach to the request a signed declaration to the effect that he will furnish the evidence of the result of substantive examination carried out in one of the offices referred to in paragraph (2) of this Article, within six months from the day of the grant of patent by the office referred to in paragraph (2) of this Article, and not later than five years from the date of filing of the request referred to in item b) of paragraph (1) of Article 38 of this Law.

(4) On the basis of a reasoned request of the applicant and evidence attached thereto, the Institute may extend the time limit referred to in paragraph (3) of this Article.

(5) If, within a prescribed time limit, the applicant fails to file the results of substantive examination procedure sufficient for the Institute to make a decision concerning the request for the grant of patent, the application shall be considered as withdrawn and the Institute shall issue a conclusion on the suspension of the procedure.

(6) The Institute shall issue a decision concerning a request for the grant of patent if the conditions referred to in paragraph (1) of Article 39 of this Law are fulfilled, on the basis of taking into consideration the results of the substantive examination procedure as submitted.

(7) The documents to be filed by the applicant as evidence of the result of the substantive examination procedure carried out by the office referred to in paragraph (2) of this Article shall be regulated more closely by the implementing regulation.

## **Article 41**

### **(Consensual Patent)**

(1) An application for the grant of a consensual patent referred to in item c) of paragraph (1) of Article 38 of this Law shall be published in the Official Gazette.

(2) The manner and contents of the publication referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 42**

### **(Opposition to the Application for the Grant of a Consensual Patent)**

(1) Any natural person or legal entity may, within six months after the publication of the application referred to in Article 41 of this Law, file with the Institute an opposition to the grant of a consensual patent or file with the Institute a request for the substantive examination procedure in accordance with Article 39 of this Law.

(2) The opposition referred to in paragraph (1) of this article shall be accompanied by evidence of the payment of procedural charges for the opposition which amounts to one third of procedural charges for substantive examination, in accordance with Article 15 of this Law.

(3) The request for the substantive examination procedure referred to in paragraph (1) of this Article shall be accompanied by evidence of the payment of procedural charges for the substantive examination procedure, in accordance with Article 15 of this Law.

(4) If an opposition to the application for the grant of a consensual patent is filed or a request for the substantive examination procedure, and if the prescribed fees and procedural charges are paid for them, the Institute shall promptly notify thereof the applicant for the grant of a consensual patent.

(5) The applicant for the grant of a consensual patent may, within six months from the receipt of notification of the opposition filed in accordance with paragraph (1) of this Article, file a request for the grant of a patent on the basis of the substantive examination procedure in accordance with item a) of paragraph (1) of Article 39 of this Law, and shall pay the difference between the fee paid for filing an opposition and the fee prescribed for the substantive examination procedure, in accordance with Article 15 of this Law.

(6) If the applicant for the grant of a consensual patent fails to comply with paragraph (5) of this Article, the Institute shall reject the application by a conclusion.

(7) For the entire duration of a consensual patent, its holder, as well as any other natural person or legal entity may file a request for the substantive examination of the patent application concerned, and the procedure shall be carried out in accordance with Article 39 of this Law, provided that the fee and procedural charges have been paid in accordance with article 15 of this Law.

(8) The content of the opposition referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 43**

### **(Refusal of an Application for the Grant of a Patent)**

(1) An application for the grant of a patent shall be refused if:

a) it has been established in the procedure referred to in Articles 39 and 40 of this Law that a patent application does not fulfil the conditions for the grant of a patent referred to in paragraph (1) of Article 39 of this Law or

b) it has been established at first glance that an application for the grant of a consensual patent does not fulfil the conditions referred to in items a), b) and c) of

paragraph (1) of Article 39 of this Law, in which cases the Institute shall notify the applicant in writing of the reasons for which the patent shall not be granted and invite him to comment in writing on the stated reasons within a specified time limit which shall neither be less than one month nor more than two months from the day of the receipt of the invitation.

(2) The Institute may extend the time limit referred to in paragraph (1) of this Article at a reasoned request of the applicant, but for not more than 90 days.

(3) If the applicant fails to comply with the invitation referred to in paragraph (1) of this Article, the Institute shall issue a decision on the refusal of a patent.

## **Article 44**

### **(Grant of a Patent or of a Consensual Patent)**

(1) The Institute shall issue a decision on the grant of a patent or a consensual patent if a patent application or a consensual patent application:

a) fulfils all the conditions for the grant of a patent referred to in paragraph (1) of Article 39 of this Law or

b) fulfils the conditions referred to in items a), b) and c) of paragraph (1) of Article 39 of this Law for the grant of a consensual patent and if an opposition has not been filed in accordance with Article 42 of this Law.

(2) The Institute shall communicate to the applicant the text of the patent application on which it intends to grant a patent and shall invite him to file written declaration on the text of patent claims as communicated to him, within a period of one month from the day of receipt of the invitation.

(3) If the applicant fails to comply with the invitation within the time limit referred to in paragraph (2) of this Article, he shall be considered as having filed a declaration on his approval of the communicated text and the Institute shall issue a decision on the grant of a patent.

(4) If the patent applicant duly files with the Institute a written declaration to the effect that he disapproves of the text of the application referred to in paragraph (2) of this Article, he shall state the reasons for that and file with the Institute his proposal of the amended text of patent claims.

(5) If the Institute accepts the reasons of the applicant and amends the text of patent claims referred to in paragraph (4) of this Article, it shall issue a decision on the grant of a patent according to the text of patent claims, as accepted by it.

(6) The Institute shall issue the decision referred to in paragraphs (3) and (5) of this Article provided that the fees and procedural charges are paid in accordance with Article 15 of this Law for: the maintenance of a patent and printing of the publication of a patent.

## **Article 45**

### **(Entry of a Patent in the Register)**

- (1) The data specified in the decision on the grant of a patent or the grant of a consensual patent shall be entered in the Register of Patents maintained in electronic form by the Institute, with the date of issue of the decision.
- (2) The data specified in the decision on the refusal of a patent application shall be entered in the Register of Patent Applications.
- (3) The contents and the manner of keeping the Register of Patents shall be regulated by the implementing regulation.

## **Article 46**

### **(Patent Certificate)**

- (1) The patent holder shall be issued a patent certificate and the holder of a consensual patent shall be issued a consensual patent certificate.
- (2) The certificate referred to in paragraph (1) of this Article shall be issued at the request of the holder and following the payment of procedural charges.
- (3) The content and form of the certificate referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 47**

### **(Patent Specification)**

- (1) The holder of a patent shall be issued a patent specification which, where a consensual patent is concerned, shall be designated as a consensual patent specification.
- (2) The specification referred to in paragraph (1) of this Article shall be issued at the request of the holder and following the payment of procedural charges.
- (3) The contents and the form of the specification referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 48**

### **(Publication of the Mention of the Grant of a Patent)**

- (1) The mention of a granted patent or a granted consensual patent shall be published in the Official Gazette. A decision on the grant of a patent or of a consensual patent shall have effect as of the date of publication of the mention of the grant of a patent or the grant of a consensual patent.

(2) The content of the publication referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

### **CHAPTER III. CONTINUED PROCESSING AND REINSTATEMENT OF RIGHTS**

#### **Article 49**

##### **(Continued Processing)**

(1) If the applicant or the holder of a patent or of a consensual patent failed to perform an act in the course of the procedure before the Institute within a time limit prescribed by this Law, a direct consequence of which is a loss of rights conferred by a patent application or a patent or a consensual patent, he may file a request for the continued processing. The Institute shall allow the continued processing provided that the applicant:

- a) files a request for the continued processing and performs all the omitted acts within the time limit referred to in paragraph (2) of this Article.
- b) pays the fee and procedural charges in accordance with Article 15 of this Law.

(2) The time limit for filing the request or performing the omitted acts referred to in paragraph (1) of this Article may not be longer than two months from the date of expiration of the time limit prescribed by this Law and arising of legal consequences referred to in paragraph (1) of this Article.

(3) If the omitted acts are not performed within the time limit referred to in paragraph (2) of this Article or if the fees and procedural charges referred to in Article 15 of this Law have not been paid, a request for the continued processing shall be considered as not filed and the Institute shall issue a conclusion to that effect.

(4) A request for the continued processing may not be filed in the case of failure to comply with the time limit:

- a) referred to in paragraph (2) of this Article,
- b) for filing the request referred to in Articles 26 and 27 of this Law,
- c) for the filing of the proposal referred to in Article 50 of this Law,
- d) for all the acts in the appellate procedure,
- e) for all the acts in procedures before the Institute involving several parties.

(5) The contents of the request, the conditions and the procedure concerning the request referred to in paragraph (1) of this Article shall be regulated more closely by the implementing regulation.

## **Article 50**

### **(Reinstatement of Rights)**

(1) If the applicant or the holder of a patent or of a consensual patent, despite due care required by the circumstances, failed to perform an act in the procedure before the Institute within a time limit prescribed by this Law, the direct consequence of which was a loss of rights conferred by the patent application or the patent or the consensual patent, the Institute shall authorize the reinstatement of rights, provided that the applicant:

- a) files a proposal for the reinstatement of rights,
- b) indicates the circumstances that prevented him from performing the omitted act within time limit,
- c) pays the fee and charges in accordance with Article 15 of this Law. The Institute shall issue a conclusion on the authorization for the reinstatement of rights.

(2) A proposal for the reinstatement of rights shall be filed within three months, counting from the day when the reason for failure ceased to exist, and if the applicant learnt of the failure later, then from the day when he learnt thereof.

(3) The proposal referred to in paragraph (1) of this Article may not be filed after the expiration of the period of one year from the date of the failure to comply with the time limit.

(4) If the Institute establishes that the proposal referred to in paragraph (1) of this Article is unjustified and intends to refuse it therefore in whole or in part, it shall, prior to the refusal, inform the applicant of the proposal and invite him to file observations on such reasons within one month from the day of receipt of the invitation. The Institute shall issue a conclusion on the refusal of the proposal for the reinstatement of rights.

(5) a proposal for the reinstatement of rights may not be filed in connection with the failure to comply with the time limit for the following acts:

- a) filing of the proposal referred to in paragraph (1) of this Article,
- b) filing of a request for the extension of a time limit,
- c) filing of the requests referred to in Articles 26 and 27 of this Law,
- d) filing of one of the requests referred to in Article 38 of this Law,
- e) filing of the opposition referred to in Article 42 paragraph (3) of this Law,
- f) filing of the request referred to in Article 49 of this Law,
- g) filing of the translation referred to in Article 32 of this Law,
- h) performing all the acts in the appeal procedure,
- i) performing all the acts in procedures before the Institute, involving several parties.

(6) Any person who exploited or made real and serious preparations for the exploitation of the invention, which is the subject matter of the published application, in good faith may, in the period between the loss of rights referred to in paragraph (1) of this article and the publication of data on the acceptance of the proposal for the reinstatement of rights, to continue such exploitation, without the obligation to pay compensation for damages, for the purposes of his own business and needs related to such business.

(7) The content of the proposal, the conditions and the procedure related to the proposal referred to in paragraph (1) of this article, as well as the publication of data on the reinstatement of rights shall be regulated more closely by the implementing regulation.

#### **CHAPTER IV: ENTRY OF CHANGE, EXCERPT, INSPECTION OF FILE, CORRECTION OF DEFICIENCY**

##### **Article 51**

###### **(Entry of a Change in the Register)**

(1) The Institute shall decide on the request of a party for the entry of a change in the Register of Patent Applications or the Register of Patents by a decision.

(2) The entered change relating to a published patent application and a patent shall be published in the Official Gazette of the Institute.

(3) The procedure for the entry of change in the Register of the Institute and the publication thereof in the Official Gazette, as well as the payment of fees and procedural charges shall be regulated more closely by the implementing regulation.

##### **Article 52**

###### **(Excerpt from the Register)**

(1) At the request of a natural person or legal entity, the Institute shall issue an excerpt from the Register of Patent Applications or the Register of Patents.

(2) The manner of issuing and the contents of an excerpt shall be regulated more closely by the implementing regulation.

##### **Article 53**

###### **(Inspection of a File)**

(1) At the request of a natural person or legal entity, the Institute shall make available the required texts of the published patent applications, as well as patent specifications.



(2) Prior to the publication of a patent application in the Official Gazette, the Institute may communicate to an interested natural person or legal entity, at his request, the following data: the number of the application, information on the applicant, the title of the invention, the date of filing the application, or in the case where priority is claimed, the indication of the state or the organization with which the first application was filed, including the number and filing date thereof.

(3) The content of the patent specification and the manner and content of providing such services, as well as the charges shall be regulated more closely by the implementing regulation.

## **Article 54**

### **(Correction of Deficiencies in the Documents)**

(1) Linguistic errors, typing errors, as well as other similar deficiencies in documents shall be corrected at the request of the applicant, the patent holder or the holder of a consensual patent or ex officio, concerning which the Institute shall issue a conclusion.

(2) The correction procedure, the publication of a particular correction in the Official Gazette, and the payment of the fees and procedural charges shall be regulated more closely by the implementing regulation.

## **PART V – TERM, MAINTENANCE AND LAPSE OF PATENT**

## **Article 55**

### **(Term of Patent)**

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

(2) The term of consensual patent shall be ten years, counting from the date of filing an application.

## **Article 56**

### **(Maintenance of Patent)**

(1) The maintenance of the rights conferred by an application and a granted patent or a consensual patent shall be subject to the payment of the prescribed annual fee and procedural charges, in the manner prescribed by a special regulation.

(2) The annual fee and the procedural charges referred to in paragraph (1) of this Article shall be paid for the third and every subsequent year, counting from the application filing date.

(3) The annual fee and the procedural charges referred to in paragraph (1) of this Article shall be paid for each year within a time limit which expires before the end of the preceding year.

(4) If the holder of a patent or a consensual patent fails to pay the fee and procedural charges in accordance with paragraph (2), but within the deadline referred to in paragraph (3) of this Article, he may pay them in the amount increased by 50% within the grace period of six months.

(5) The Institute shall inform the holder of a patent or a consensual patent, as well as the applicant on the failure to comply with a time limit for the payment of the annual fee and procedural charges for the maintenance of a patent and the rights conferred by patent application, indicating the consequences of the nonpayment thereof and the possibility of payment within the grace period according to paragraph (4) of this Article.

(6) The annual fees and procedural charges referred to in paragraph (1) of this Article may not be validly paid more than a year before they are due.

(7) If a patent applicant fails to pay the prescribed fee and procedural charges for the maintenance of the rights conferred by the application in due time, the Institute shall issue a conclusion on the rejection of the application.

## **Article 57**

### **(Reasons for the Lapse of a Patent)**

(1) If the holder of a patent or of a consensual patent fails to duly pay the prescribed fee and the procedural charges for the maintenance of a patent or a consensual patent, it shall lapse on the day following the day of the expiration of the time limit for payment referred to in paragraph (3) of Article 56 of this Law.

(2) The holder of a patent or of a consensual patent may surrender the patent in whole or in part by written declaration, concerning which the Institute shall issue a conclusion. The effects of the declaration on the surrender shall take effect on the day following the day on which the declaration has been communicated to the Institute.

(3) If a particular right has been entered in the Register of Patents in favor of a third party, the holder of a patent or of a consensual patent may not surrender the patent without prior certified written consent of such party.

(4) The surrender of a patent or a consensual patent shall be entered in the Register of Patents and the information to that effect shall be published in the Official Gazette.

(5) A patent or a consensual patent shall lapse on the day of the patent holder's death or on the day of the loss of legal capacity, unless it has been transferred to his heirs or legal successors. This provision shall be analogously applied to the supplementary protection certificate referred to in paragraph (1) of Article 58 of this law.

## **PART SIX – SUPPLEMENTARY PROTECTION CERTIFICATE**

### **Article 58**

#### **(Notion)**

(1) A supplementary protection certificate may be granted where a basic patent has been granted for a medicinal product intended for humans or animals or for a plant protection product, the marketing of which requires prior authorization of the competent authority.

(2) A basic patent is the patent which has been designated by its holder for the purposes of the procedure for the grant of a supplementary protection certificate and which protects a product as such or the process for obtaining a product or the application of a product.

(3) The procedure concerning an application for the grant of a supplementary protection certificate shall be regulated more closely by the implementing regulation.

### **Article 59**

#### **(The Subject Matter and Effects of Protection)**

(1) The subject matter of the protection conferred by the certificate shall be only a product covered by the marketing authorization for a medicinal product intended for humans or animals or for a plant protection product, and for any use of such product as a medicinal product intended for humans or animals or as a plant protection product, that was authorized before the expiry of the certificate.

(2) The effects of the certificate shall take effect immediately after the expiration of the lawful term of the basic patent.

(3) A supplementary protection certificate shall confer to a holder the same rights as are conferred by a patent and, analogously, such rights shall be subject to the same limitations.

### **Article 60**

#### **(Conditions for Obtaining the Certificate)**

The certificate shall be granted at the request of the holder of a basic patent, if the following conditions are fulfilled on the day of filing the application for the grant of the certificate:

a) a medicinal product intended for humans or animals or a plant protection product is protected by a basic patent in force,

b) a marketing authorization has been issued for a medicinal product intended for humans or animals or a plant protection product and it is valid,

- c) a basic patent for a medicinal product intended for humans or animals or a plant protection product has not already been the subject of the certificate,
- d) the application for a basic patent was filed in Bosnia and Herzegovina after August 27, 2002,
- e) the first market authorization for a medicinal product intended for humans or animals or a plant protection product was issued after the date fixed for the application of this Law;

## **Article 61**

### **(Time Limit for Filing an Application)**

The application for the grant of a certificate shall be filed with the Institute within six months from the date of issuing the market authorization for a medicinal product intended for humans or animals or a plant protection product referred to in item b) of Article 60 of this Law, and if the authorization is granted before the grant of the basic patent, within six months from the date of publication of the mention of the grant of the patent referred to in Article 48 of this Law.

## **Article 62**

### **(Term of Protection)**

- (1) The rights conferred by the certificate may run for a period equal to the period which elapsed between the date of filing the application for a basic patent and the date of issuance of the first market authorization for a medicinal product intended for humans or animals or a plant protection product protected by such patent, reduced by five years.
- (2) The certificate has a maximum life time of five years from its coming into force.
- (3) The life time of the certificate shall be specified by the decision of the Institute.

## **Article 63**

### **(Publication and Entry of Certificate in the Register)**

- (1) The Institute shall publish in the official gazette the data on the application filed for the grant of a certificate, issuance of the decision on the grant of a certificate or the refusal of the application for the grant of a certificate and the termination of the certificate. The data to be published shall be regulated more closely by the implementing regulation.
- (2) The data concerning the procedure relating to the application for the grant of a certificate and the life time thereof shall be entered in the respective register in accordance with the provisions of the implementing regulation.

## **Article 64**

### **(Relation to a Consensual Patent)**

The provisions of Articles 58 to 63 of this Law shall not apply to a consensual patent.

## **PART SEVEN – INVENTION CREATED DURING THE COURSE OF EMPLOYMENT**

## **Article 65**

### **(Employee Invention)**

The right to file a patent application for an invention created in the course of employment shall be regulated by a separate regulation, general acts of the employer or an employment contract.

## **PART EIGHT – CONTENT AND SCOPE OF A PATENT**

## **Article 66**

### **(Exclusive Rights Conferred by a Patent)**

- (1) Any other person not having a patent holder's consent is prohibited from:
  - a) making, offering for sale, selling, using, exporting or importing and storing for such purposes a product carried out according to a protected invention;
  - b) using a process which is the subject matter of a protected invention or offering the use thereof;
  - c) offering for sale, selling, using, exporting or importing and storing for such purposes a product obtained directly from a process which is the subject matter of a protected invention,
- (2) Any other person not having a patent holder's consent is also prohibited from offering and supplying a product (substance, composition, a part of the apparatus) constituting an essential element of a protected invention to persons who are not entitled to exploit such an invention if the offerer or supplier knows or must have known from the circumstances of the case that such an invention is intended for putting into function the protected invention of another person.
- (3) The provisions of paragraph (2) of this Article shall not apply if the product which is offered or supplied is a staple commercial product, except where the offerer or supplier induces other persons to undertake the acts referred to in paragraph (1) of this Article.
- (4) In the absence of proof to the contrary, a product shall be considered as having been obtained by a protected process if it is new or if it is likely that the product was

obtained by a protected process and that a patent holder was not able, despite reasonable efforts, to determine which process was actually used. The likelihood that the product was obtained by a protected process exists in particular where the protected process is the only process known.

## **Article 67**

### **(Exclusive Rights in Respect of Patents in the Field of Biotechnology)**

(1) If a patent protected biological material possessing specific characteristics arising from such an invention is protected by patent, the exclusive rights referred to in paragraphs (1) and (2) of Article 66 of this Law shall also extend to any biological material derived from such a biological material by propagation or multiplication in the identical or divergent form with identical characteristics.

(2) If a patent protected process allowing for the production of a biological material possessing specific characteristics resulting from the invention is protected by a patent, the exclusive rights referred to in paragraphs (1) and

(2) of Article 66 of this Law shall relate also to the biological material directly obtained by that process, as well as to any biological material derived from such a biological material by propagation or multiplication in the identical or divergent form with identical 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 66 of this Law shall also extend to the entire material in which such product is embedded and in which genetic information is contained and performs its function, with the exception of the human body, various stages of its formation and development or a simple discovery of one of its elements, including the sequence or partial sequence of a gene.

## **Article 68**

### **(Scope of the Exclusive Rights)**

(1) The extent of the exclusive rights of patent holders shall be determined by the patent claims which are finally accepted in the patent grant procedure, whereas the description and drawings shall serve to interpret the patent claims. The terms used in patent claims shall not be strictly confined to the literal meaning of the words nor shall the description and drawings be taken into account solely for the purpose of clarifying vagueness in the patent claims. The patent claims shall neither be taken as guidelines indicating that the scope of the exclusive rights may extend to the matter which a person skilled in the art might take, on the basis of the description and drawings, as the intended scope of protection.

(2) Within the time period from the date of the publication of a patent application up to the patent grant, the scope of protection shall be determined by the patent claims contained in the patent application published in accordance with this Law, however, the patent, as finally granted or amended after the revocation procedure in which it has been

partially revoked, shall retroactively determine the rights conferred by the patent application, provided that the scope of protection is not thereby extended.

## **Article 69**

### **(Rights Conferred by a Patent Application and Rights Conferred by a Consensual Patent)**

(1) By the publication of a patent application in accordance with Article 37 of this Law, the patent applicant shall acquire provisional rights on the basis of which he may claim damages from any third party who has exploited the invention in the period between the date of publication of the patent application and the date of publication of the mention of the grant of the patent, contrary to Articles 66 and 67 of this Law, which could be prohibited after the patent grant.

(2) The patent application which has been refused, rejected, withdrawn or considered as withdrawn shall not have the effects prescribed by the provision of paragraph (1) of this Article.

(3) The holder of a consensual patent shall have the rights referred to in paragraph (1) of this Article.

## **CHAPTER I. TRANSFER OF RIGHTS**

### **Article 70**

#### **(Assignment of Rights and a License)**

(1) A patent may be the subject matter of a contract on the entire or partial assignment of rights, as well as the subject matter of a license contract.

(2) The right to exploit the protected invention shall be transferred by a license contract.

(3) A contract on the assignment of rights as well as a license contract shall be concluded under the conditions and in the manner as prescribed by special regulations governing contractual relationships.

(4) The conclusion of a contract on the assignment of rights as well as a license contract requires the consent of all the holders of rights.

(5) The assignment of rights and licenses shall have effect against third parties from the date of the entry thereof in the Register of Patent Applications or the Register of Patents.

(6) The entry of a license in the Register referred to in paragraph (5) of this Article shall be made at the request of one of the parties to a contract and published in the official gazette.

(7) The provisions of this article shall apply mutatis mutandis to the conclusion of contracts on assignment of rights and license contracts, the subject matter of which are the rights conferred by a patent application, a consensual patent and a supplementary protection certificate.

(8) A decision on the refusal of a patent application shall not have retroactive effect on a contract on the assignment of rights conferred by the application or a license contract if and to the extent to which such a contract is executed, unless a transferor or a licensor has acted in bad faith.

(9) The entry in the Register and the publication referred to in paragraph (6) of this Article shall be regulated more closely by the implementing regulation.

## **Article 71**

### **(Pledge and Levy of Execution)**

(1) A patent may be the subject of lien and the subject of levy of execution.

(2) A lien shall be entered in the Register of Patents at the request of a lienor or a lienee. The lien grant shall have effect against third parties from the date of the entry thereof in the Register of Patents.

(3) The court levying an execution ex officio shall inform the Institute without delay on the execution levied upon a patent for the purpose of entry of the levy of execution in the Register of Patents. The entry of the levy of execution in the Register of Patents shall be carried out at the expense of the execution creditor.

(4) The provisions of this article shall apply mutatis mutandis to the grant of lien and the levy of execution upon the right conferred by a patent application, a consensual patent and a supplementary protection certificate.

## **Article 72**

### **(Bankruptcy Proceedings)**

Where a patent, the right conferred by a patent, a consensual patent or a supplementary protection certificate are part of a bankruptcy estate, a bankruptcy trustee shall inform the Institute ex officio of the institution of bankruptcy proceedings for the purpose of entry of the bankruptcy in the respective register.



## **CHAPTER II. LIMITATION OF THE EFFECTS OF PATENTS**

### **Article 73**

#### **(Exceptions from the Exclusive Rights)**

The patent holder's exclusive right shall not apply to:

- a) acts in which an invention is exploited for private and noncommercial purposes,
- b) acts performed for research and development purposes, and for experiments relating to the subject matter of the protected invention, including the acts necessary for obtaining registration or marketing authorization for the product which is a medicine intended for humans or animals or a medicinal product,
- c) direct or individual preparation of a medicine in a pharmacy on the basis of an individual medical prescription and procedures relating to the medicine so prepared.

### **Article 74**

#### **(Right of Prior Use)**

(1) A patent shall have no effect against a person who had, prior to the filing date or prior to the date of the granted priority of a patent application, exploited or manufactured in good faith and within his economic activities a product according to the protected invention or had made real and serious preparations for such an exploitation of the invention in Bosnia and Herzegovina.

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

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

### **Article 75**

#### **(Limitations of Effects if Respect of the Patents in the Field of Biotechnology)**

(1) The exclusive rights deriving from the provision of Article 67 of this Law shall not apply to the biological material obtained from the propagation and multiplication of the biological material marketed in Bosnia and Herzegovina by the patent holder or with his consent, where the propagation and multiplication necessarily result from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for further propagation and multiplication.

(2) By way of derogation from the provision of Article 67 of this Law, by means of the sale or another form of commercialization of the plant propagating material to a farmer by the patent holder or with his consent, for farming purposes, the farmer acquires the authorization to use the products of his harvest for the propagation or multiplication on his farm.

(3) By way of derogation from the provision of Article 67 of this Law, by means of the sale or another form of commercialization of breeding stock or another animal reproductive material to a farmer by the patent holder or with his consent, the farmer acquires the authorization to use the protected livestock for agricultural purposes, including at the same time the availability of the animal or another animal reproductive material for the purpose of carrying out his own farming activities, but not the sale within the framework or for the purpose of commercial reproduction activity.

## **Article 76**

### **(Exhaustion of Rights)**

The placing on the market within the territory of Bosnia and Herzegovina of a product made according to a protected invention or a product directly obtained by a process which is the subject matter of an invention by the patent holder or with his explicit consent shall exhaust for the territory of Bosnia and Herzegovina the exclusive rights conferred by the patent in respect of such a product.

## **Article 77**

### **(Vehicles in International Traffic)**

The use of products made according to a protected invention in the construction or equipment of a vessel, aircraft or land vehicle belonging to any of the Member States of the Paris Union or WTO shall not be considered a patent infringement where such transport means is temporarily or accidentally in the territory of Bosnia and Herzegovina, provided that the built-in product serves exclusively for the purposes of the said means of transport.

## **Article 78**

### **(Limitation of the effects of the Rights Conferred by a Patent Application, a Consensual Patent and a Supplementary Protection Certificate)**

The provisions of Articles 73 to 77 of this Law shall also apply, where possible and mutatis mutandis, to the rights conferred by a patent application, to a consensual patent and to a supplementary protection certificate.

## **Article 79**

### **(Compulsory License)**

(1) If the right holder refuses to assign the right to the economic exploitation of a protected invention in Bosnia and Herzegovina or imposes unreasonable conditions for such an assignment without having made effective and serious preparations for the exploitation thereof in Bosnia and Herzegovina, the Court of Bosnia and Herzegovina may grant a compulsory license at the request of an interested party. In such a case, the right holder shall be informed of the grant of the compulsory license within a shortest possible time limit.

(2) The request for the grant of a compulsory license referred to in paragraph (1) of this Article may be filed after the expiration of the four-year period from the filing date of a patent application or after the expiration of the three-year time limit from the date of the grant of a patent, whichever of these two time limits expires later.

(3) A compulsory license may be granted only if the person filing the request referred to in paragraph (2) of this Article unsuccessfully attempted, within a reasonable period of time, to obtain authorization from the patent holder for the exploitation of the protected invention on reasonable commercial terms and conditions.

(4) A compulsory license may not be granted if the patent holder proves the existence of legitimate reasons justifying non-exploitation or insufficient exploitation of the protected invention.

(5) At a reasoned request, the Court of Bosnia and Herzegovina may grant a compulsory license for somebody else's patent to the patent holder who cannot exploit his protected invention without infringing somebody else's patent.

(6) The compulsory license referred to in paragraph (5) of this Article may be granted, provided that:

a) a patent owned by the person filing the request referred to in paragraph

(2) of this Article involves an important technological advance, which is of considerable economic significance in relation to the invention protected by the patent for which the grant of a compulsory license is requested.

b) the holder of the patent for which the grant of a compulsory license is requested is entitled to a cross license on reasonable terms and conditions.

(7) A compulsory license may not be exclusive, and the scope and duration thereof shall be exclusively limited to the purpose for which it was granted.

(8) A compulsory license may be transferred only together with the production plant or the part thereof in which the invention for which it was granted is exploited.

(9) A compulsory license shall be authorized primarily for the purpose of supplying domestic market, unless it is necessary to correct the practices determined in a judicial or administrative process to be uncompetitive .

(10) At a reasoned request of an interested party, the Court of Bosnia and Herzegovina shall cancel a compulsory license if and when the circumstances which led to the

authorization thereof cease to exist and are unlikely to recur, but provided that the legitimate rights of the licensee are protected.

(11) The patent holder shall be entitled to remuneration taking into account the economic value of a license and the need for correcting uncompetitive practices.

(12) The compulsory license referred to in paragraph (5) of this Article shall be non-transferable, except in the case of simultaneous transfer of the patent for which it was granted.

(13) The provisions of paragraphs (5), (6) and (12) of this Article shall apply mutatis mutandis to the right to protection of a plant variety.

## **Article 80**

### **(Compulsory License in Public Interest)**

(1) The Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as the Council of Ministers) may grant a compulsory license if the exploitation of the invention protected by a patent is necessary due to national emergencies for the purpose of:

- a) State security,
- b) protection of public interest in the field of health and nutrition,
- c) protection and improvement of human environment,
- d) special interest in a particular branch of economy or where it is necessary to correct practices determined in a judicial or administrative process to be uncompetitive.

(2) In the case of semi-conductor technology, a compulsory license may be granted only in the cases referred to in paragraph (1) of this Article.

(3) The provision of paragraph (3) of Article 79 of this Law shall not apply in the cases referred to in paragraph (1) of this Article.

## **PART NINE – INTERNATIONAL APPLICATION UNDER THE PATENT COOPERATION TREATY (PCT)**

### **Article 81**

#### **(International Patent Application)**

(1) An international patent application shall be the application filed under the Patent Cooperation Treaty (hereinafter referred to as the PCT). Each reference to PCT in this part of the Law shall also be considered a reference to the provisions of the Regulations under the PCT.

(2) The provisions of the PCT, this Law and the regulations enacted by virtue of this Law shall apply to the international applications filed with the Institute as the receiving office or in which the Institute is indicated as the designated or elected office.

## **Article 82**

### **(International Patent Application Filed with the Institute as the Receiving Office)**

(1) An international application may be filed with the Institute as the receiving office if the applicant is a national of Bosnia and Herzegovina or a natural person domiciled in Bosnia and Herzegovina or a juridical person having its principal place of business in Bosnia and Herzegovina.

(2) The filing of the international application referred to in paragraph (1) of this Article is subject to the payment of the prescribed fee and procedural charges in accordance with Article 15 of this Law for the transmittal to the International Bureau, within time limit fixed by PCT provisions.

## **Article 83**

### **(International Patent Application Filed with the Institute as the Designated or Elected Office)**

(1) The international application, in which Bosnia and Herzegovina is designated or elected for the grant of a national patent in accordance with the PCT provisions, for which the fee and procedural charges have been paid, shall be filed with the Institute in one of the official languages of Bosnia and Herzegovina not later than up to the expiration of 34 months, counting from the international filing date or priority date if priority is claimed in the international application in accordance with article 8 of the PCT.

(2) The international application filed with the Institute as the designated or elected office shall be published in the official gazette in the manner stipulated in Article 37 of this Law.

(3) A person filing the international application referred to in paragraph (1) of this Article shall acquire the provisional rights prescribed by the provision of Article 69 of this Law on the date of publication of the patent application in one of the official languages of Bosnia and Herzegovina.

(4) In respect of the international application referred to in paragraph (1) of this Article, a time limit within which one of the requests referred to in Article 38 of this Law may be filed shall run from the date of publication in the official gazette.

(5) The international application published according to Article 21 of the PCT shall not be considered to form part of the state of the art in accordance with the provision of Article 8 paragraph (3) of this Law, as long as the conditions laid down in paragraph (1) of this Article have not been fulfilled.

## **PART TEN – EXTENDED EUROPEAN PATENT (EPC)**

### **Article 84**

#### **(Extension of the Effects of the European Patent)**

(1) A European patent application and a European patent extended to Bosnia and Herzegovina in accordance with the provisions of this part shall have the same effect and shall be subject to the same conditions as a national patent application and a national patent according to this Law.

(2) According to this Law:

a) a European patent application shall mean an application for a European patent filed under the European Patent Convention (hereinafter referred to as the EPC), as well as an international application filed under the PCT, for which the European Patent Office (hereinafter referred to as the EPO) acts as the designated or elected office, and in which Bosnia and Herzegovina is designated,

b) an extended European patent shall mean a European patent granted by the EPO on the basis of the European patent application in respect of which the extension to Bosnia and Herzegovina has been requested.

c) a national patent application shall mean a patent application filed with the Institute under this Law,

d) a national patent shall mean a patent granted on the basis of a national patent application.

### **Article 85**

#### **(Request for Extension)**

(1) A European patent application and a European patent granted on the basis of such application shall be extended to Bosnia and Herzegovina at the request of the applicant. A request for the extension shall be considered to be filed for each European patent application filed on the date of coming into effect of the Cooperation and Extension Agreement between the Council of Ministers of Bosnia and Herzegovina and the European Patent Organization (Official Gazette of BiH – International Treaties, volume 2/04; entered into force on 01/12/2004 or after that date.

(2) The Institute shall publish, as soon as possible, in the official gazette of the Institute the information concerning each request for extension, after it is informed by the EPO that the prescribed extension fee has been paid, but not before the expiry of the 18 month period from the filing date or, where priority has been claimed, from the earliest priority date.

(3) The request for extension may be withdrawn at any time. The request shall be considered as withdrawn where the prescribed extension fee has not been paid in time or where the European patent application has been finally refused or withdrawn or considered to be withdrawn. The Institute shall publish the information on changes in the official gazette as soon as possible if the request for extension has already been published in accordance with paragraph (2) of this Article.

(4) The manner and content of the publication in accordance with paragraphs (2) and (3) of this Article shall be regulated more closely by a special regulation.

## **Article 86**

### **(Extension Fee)**

(1) According to Article 85 of this Law, the extension fee shall be paid to the EPO within the time limits stipulated in the EPC for payment of the designation fee.

(2) The extension fee may still be validly paid after the expiration of the time limit referred to in paragraph (1) of this Article within the grace period of two months, provided that it is paid in the amount increased by 50% within such period.

(3) The EPC rules relating to fees shall apply mutatis mutandis to the payment of extension fees. The validly paid extension fees may not be refunded.

## **Article 87**

### **(Effects of European Patent Applications)**

(1) The European patent application which has been accorded a filing date shall be equivalent to a regular national patent application with the priority right claimed for the European patent application, when granted, irrespective of the outcome of the procedure conducted.

(2) A published European patent application shall provisionally confer the equal protection as is conferred by a published national patent application under Article 69 of this Law from the date on which the translation of patent claims of the published patent application into one of the official languages of Bosnia and Herzegovina has been communicated by the applicant to the person using such an invention in Bosnia and Herzegovina.

(3) The European patent application shall be considered not to have had ab initio the effects referred to in paragraph (2) of this article where the request for extension has been withdrawn or is considered as withdrawn.

## **Article 88**

### **(Effects of Extended European Patents)**

(1) An extended European patent shall, subject to the provisions of paragraphs (2) to

(6) of this Article, confer the same rights as would be conferred by a national patent granted under this Law from the date of publication of the mention of its grant by the EPO.

(2) Within three months from the date of publication of the mention of the grant of a European patent, the patent holder shall file with the Institute a request for the entry of the extended European patent in the Register of Patents, patent specification of the European patent as published in the official gazette of the EPO, translation of patent claims into one of the official languages of Bosnia and Herzegovina, and shall pay the fee and procedural charges for the publication and printing of the translation of the European patent specification into one of the official languages of Bosnia and Herzegovina, in accordance with a special regulation.

(3) If, as a result of an opposition filed with the EPO, a European patent remains in force with amended patent claims, the patent holder shall file with the Institute the translation of the amended patent claims into one of the official languages of Bosnia and Herzegovina and shall pay the prescribed fee and procedural charges for publication in the official gazette, within three months from the date of publication of the decision to maintain the European patent with amended patent claims.

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

(5) The Institute shall publish in the official gazette, as soon as possible, the mention of any translation duly filed according to paragraph (2) or (3) of this Article. The content of the application shall be regulated more closely by the implementing regulation.

(6) If the translation referred to in paragraph (2) or (3) is not filed within the prescribed time limit or if the prescribed fee and procedural charges are not paid within a specified time limit, the extended European patent shall be deemed to be void ab initio. Article 122 of the EPC shall apply mutatis mutandis.

(7) An extended European patent and the application on which it is based shall be deemed not to have had ab initio the effects referred to in paragraph (1) of this article and paragraph (2) of article 87 of this Law to the extent that such patent was declared invalid in the opposition proceedings before the EPO.

(8) The Institute shall enter the mention of the entry of the extended European patent in the Register of Patents referred to in article 45 of this Law.

(9) The entry in the Register shall be regulated more closely by the implementing regulation.

## **Article 89**

### **Authentic Text of the European Patent Application or the European Patent**

1. The text of a European patent application or a European patent in the language of the proceedings before the EPO shall be the authentic text in any proceedings in Bosnia and Herzegovina.



2. Where the translation into one of the official languages of Bosnia and Herzegovina confers protection narrower than that conferred by the extended European patent application or the extended European patent, the translation prescribed by paragraph (2) of Article 88 of this Law shall be considered as authentic, except in cancellation proceedings.

3. The applicant or the holder of a patent may, at any time, file a corrected translation of patent claims formulated in the European patent application or the European patent. The corrected translation shall not have any legal effect until it has been published by the Institute.

4. Any person who uses an invention in good faith or who has made effective and serious preparations for the use of an invention, and the use of which would not constitute infringement of the rights conferred by the application or the patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof, without payment of remuneration.

## **Article 90**

### **Rights of Earlier Date**

1. A European patent application for which the extension fee has been paid and an extended European patent shall have, with regard to an application filed directly with the Institute (hereinafter: a national application) and a patent granted on the basis of such an application (hereinafter: a national patent) the same state of the art effect as a national patent application and a national patent.

2. A national patent application and a national patent shall have, with regard to an extended European patent, the same state of the art effect as they have with regard to a national patent.

## **Article 91**

### **Simultaneous Protection**

Where an extended European patent and a national patent have the same filing date or where priority has been claimed, the same priority date has been granted to the same person or his successor in title, the national patent shall have no effect to the extent that it covers the same invention as the extended European patent as of the date on which the time limit for filing an opposition to the granted European patent has expired, and in the case that an opposition has not been filed, as of the date on which the final decision has been made in the opposition procedure to the effect that the European patent remains in force.

## **Article 92**

### **Renewal Fees for Extended European Patents**

1. Renewal fees and procedural charges for the extended European patents shall be paid to the Institute for the years following the year in which the mention of the grant of the European patent was published.
2. Paragraph (2) of Article 141 of the EPC shall apply mutatis mutandis.

## **PART ELEVEN - DECLARATION OF DECISION ON THE GRANT OF A PATENT NULL AND VOID**

### **Article 93**

#### **Reasons for the Declaration of a Decision on the Grant of a Patent Null and Void**

A decision on the grant of a patent may be declared null and void at any time ex officio or upon proposal of any interested party or a State Attorney of BiH or Ombudsman of BiH if the patent has been granted:

- a) for the subject matter of protection which may not be protected by a patent within the meaning of paragraph (6) of Article 6 and Article 7 of this Law;
- b) for an invention which, on the filing date of the patent application or on the date of granted priority was not new or did not involve an inventive step;
- c) for an invention which is not industrially applicable;
- d) for an invention which is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, including the case of unavailability of viable biological material in the competent institution;
- e) for the subject matter of protection extending beyond the contents of the patent application as filed or if the patent was granted on the basis of a divisional application extending beyond the contents of the application as filed;
- f) on behalf of a person not entitled to the patent protection of an invention;

### **Article 94**

#### **Proposal for the Declaration of a Decision on the Grant of a Patent Null and Void**

1. The procedure concerning the declaration of a decision on the grant of a patent null and void shall be initiated by filing a proposal with the Institute.
2. The proposal referred to in paragraph (1) of this Article shall contain indications concerning a person filing the proposal, the holder of the patent, the number of the decision and the registration number of the patent, the reasons for the proposal for the declaration of a decision on the grant of the patent null and void, supported by necessary evidence.

## **Article 95**

### **Procedure Concerning Proposal for the Declaration of a Decision on the Grant of a Patent Null and Void**

1. If the proposal for the declaration of a decision on the grant of a patent null and void is not drafted in accordance with the provision of paragraph (2) of Article 94 of this Law or if the fee and procedural charges have not been paid in accordance with Article 15 of this Law, the Institute shall invite the applicant to correct the deficiencies within a period of one month from the day of receipt of the invitation.
2. If the applicant fails to correct the proposal within the time limit stipulated in paragraph (1) of this Article, the Institute shall reject the proposal.
3. The Institute shall communicate the correct proposal to the patent holder and shall invite him to submit his response within a period which shall neither be less than one month nor more than two months from the day of the receipt thereof.
4. In the course of the procedure concerning the declaration of a decision on the grant of a patent null and void, the Institute shall invite the parties to submit, within the period referred to in paragraph (3) of this Article, their comments on the submissions of the other party. Where necessary, the Institute shall also invite the holder of a patent to file the description, the claims and the drawings as amended, provided that the subject matter of protection does not extend beyond the content of the patent as granted.
5. Before making a decision to maintain a patent as amended, the Institute shall inform the parties that it intends to maintain the patent as amended in the procedure for the declaration of nullity and shall invite them to file their reasoned observations within the period referred to in paragraph (3) of this Article if they disapprove of the text on the basis of which it intends to maintain the patent. If the parties disapprove of such text, the procedure for the declaration of a decision on the grant of a patent null and void may be continued.
6. If the parties approve of the text on the basis of which the Institute intends to maintain the patent or if they fail to respond to the invitation referred to in paragraph (5) of this Article, the Institute shall invite the holder of a patent to pay the fee and procedural charges for printing a new patent specification within a period of one month from the receipt of the invitation. If the fee and procedural charges are not paid, a decision on the grant of a patent shall be declared null and void within the limits of the motion.
7. At a reasoned request, the Institute may extend the time limits referred to in this Article for a period it considers to be justified, but two months at the most.
8. The Office may hold oral proceedings if it considers it to be necessary in order to establish the facts essential decision making.
9. If a proposal for the declaration of a decision on the grant of a consensual patent null and void is filed, and where the supporting evidence referred to in paragraph (2) of Article 94 of this Law is sufficient for likelihood that the consensual patent does not comply with the requirements referred to in Article 41 of this Law, a respond to the invitation referred to in paragraph (3) of this Article shall also contain a request for a substantive examination procedure.

10. If the person filing a proposal for the declaration of a decision on the grant of a patent null and void abandons the proposal in the course of the procedure, the Institute may continue the procedure ex officio.

11. The provisions of this Article shall apply mutatis mutandis also where the holder has surrendered a patent or where a patent has expired, and shall apply analogously to a supplementary protection certificate.

## **Article 96**

### **Decision Concerning a Proposal for the Declaration of a Decision on the Grant of a Patent Null and Void**

1. On the basis of the results of the procedure as conducted, the Institute shall issue a decision on the declaration of a decision on the grant of a patent null and void, in whole or in part, or a decision on the refusal of the proposal.

2. The patent application and the patent granted on the basis of that application shall not have ab initio the effects referred to in Articles 66 to 68 of this Law to the extent to which the decision on the grant of a patent has been declared null and void.

3. The declaration of a decision on the grant of a patent null and void shall not have retroactive effect to final judicial decisions concerning the establishment of the infringement of rights and concluded contracts on the transfer of rights or ceding of licenses if and to the extent to which such contracts are executed, provided that the plaintiff or the holder of patent rights acted in good faith.

## **PART TWELVE - APPELLATE PROCEDURE**

### **Article 97**

#### **Right of Appeal**

1. A party whose application has not been complied with in part or in whole shall have the right to appeal first-instance decisions of the Institute within 15 days from the day of receipt of decision.

2. Other parties to the procedure completed by an appealed decision shall have the right to be the parties to the appellate procedure.

### **Article 98**

#### **Contents of an Appeal**

In addition to the indications which must be contained in any submission, an appeal shall contain:

- a) an indication of the decision appealed,
- b) a statement to the effect whether a decision is contested in whole or in part,
- c) the grounds for appeal,
- d) a statement of grounds for an appeal, and evidence supporting the appellant's allegations contained in the appeal,
- e) the signature of the appellant,
- f) a power of attorney if the appeal is filed through a representative.

## **Article 99**

### **Board of Appeal of the Institute**

1. The Board of Appeal of the Institute, responsible for deciding on appeals against decisions issued by the Institute (hereinafter: the Board of Appeal) shall be established as an independent body responsible to decide on appeals in accordance with the provisions of this Law.

2. The Board of Appeal shall be composed of three members, one of whom shall be the Chairman, and three alternate members, one of whom shall be the Deputy Chairman. The members of the Board of Appeal shall be appointed by the Council of Ministers from among the independent experts in the field of industrial property law and the employees of the Institute in the manner as determined by the Decision of the Council of Ministers.

3. The seat of the Board of Appeal shall be at the Institute. The Board of Appeal shall have its seal. The Institute shall provide to the Board of Appeal the premises and equipment as necessary for the performance of its tasks. The Institute shall perform clerical and other administrative tasks for the Board of Appeal.

4. The Chairman of the Board of Appeal (hereinafter: the Chairman) shall administer the work of the Board of Appeal. Where the Chairman or a member of the Board of Appeal is prevented from participating in a session, he shall be replaced by the Deputy Chairman or an alternate member.

5. The Chairman and members of the Board of Appeal shall be independent, not bound by any instructions of the Director of the Institute, and they shall perform their tasks impartially, in accordance with the law and professional standards.

6. The Chairman and members of the Board of Appeal shall have the status of independent experts, and shall receive compensation for their service on the Board in accordance with the implementing regulation on compensations for the work of the Board of appeal of the Institute and the decision of the Council of Ministers.

7. The members of the Board of Appeal and alternate members who have participated in decision making in the first-instance procedure or where other reasons for their exclusion exist, shall not participate in the appellate procedure concerning the same case.

8. The details concerning the work of the Board of Appeal shall be regulated by the Rules of Procedure to be enacted by the Board of Appeal.

## **Article 100**

### **Deciding on an Appeal**

1. The Board of Appeal shall make decisions in sessions, by a majority vote.
2. The Board of Appeal shall make decisions on the basis of submissions filed by the parties, and where it considers it necessary, it may order oral proceedings.
3. The provisions of Articles 43 and 44 or 97 of this Law shall apply mutatis mutandis to the decisions of the Board of Appeal on an appeal.

## **PART THIRTEEN - PROTECTION OF RIGHTS**

### **CHAPTER I. GENERAL PROVISIONS**

#### **Article 101**

##### **Persons Entitled to Protection**

1. A person whose rights under this Law are infringed (hereinafter: the right holder) may seek the protection of such rights and indemnification from the infringer according to the general rules on indemnification, unless otherwise provided by this Law.
2. The equal protection may be sought by a right holder when there is an actual threat of infringement of his rights under this Law.

#### **Article 102**

##### **Solidarity of Right Holders**

Where more persons are entitled to seek the protection of a right, each of them may seek the protection of such right in whole.

### **CHAPTER II. JUDICIAL PROTECTION IN CIVIL PROCEDURE**

#### **Article 103**

##### **Claims**

1. Where an exclusive right under this Law is infringed, the holder of such right may claim in an action:

- a) the establishment of the infringement;
- b) the prohibition of the continuation of infringement and of future similar infringements by means of cessation or omission of acts which are infringing such right;
- c) the rectification of the situation caused by the infringement;
- d) the recall of the objects of infringement from the channels of commerce, respecting the interests of third parties who act in good faith;
- e) the definitive removal of the objects of infringement from the channels of commerce;
- f) the destruction of the objects of infringement;
- g) the destruction of the means which are exclusively or predominantly intended or used for infringing acts, and which are owned by the infringer;
- h) the surrender of the objects of infringement to the right holder on reimbursement of the production costs;
- i) the publication of the judgment at the expense of the defendant;
- j) damages and reimbursement of reasonable expenses of the proceedings.

2. The holder of a consensual patent shall, before bringing an action referred to in paragraph (1) of this Article, possess evidence that he has filed an application for the grant of a patent on the basis of the procedure of the substantive examination of a patent application.

3. The right to bring an action referred to in paragraph (1) shall also belong to the person who filed a patent application which has been published and to the holder of the exclusive license.

4. When deciding on the claims referred to in items c) to h) of paragraph (1) of this Article, the court shall take into account all the circumstances of the case, in particular the proportionality between the weight of the infringement and the claim, as well as the interest of the right holder for ensuring the effective protection of his rights.

5. In the proceedings against persons whose services were used for the infringement of rights, when the infringement has already been established in the proceedings against a third party, the infringement shall be presumed to exist.

6. The action referred to in paragraph (1) of this Article may be brought within the period of three years from the day of learning of the infringement and the infringer, but not after the expiration of the period of five years from the day on which the infringement was committed.

## **Article 104**

### **Indemnification**

19 The general rules governing indemnification and liability for damages shall apply to all the infringements of rights under this Law, unless otherwise provided by this Law.

20 The infringer shall pay the right holder the indemnification in the amount determined pursuant to the general rules governing the indemnification or in the amount equivalent to the stipulated or customary remuneration for the lawful use of the subject matter of protection.

## **Article 105**

### **Penalty**

1. If the holder's right conferred by a patent is infringed intentionally or by gross negligence, the right holder may claim compensation against the infringer up to the treble amount of the stipulated remuneration or usual remuneration if the remuneration has not been agreed upon.

2. When deciding the claim for the payment of penalty, the court shall take into account all the circumstances of the case, in particular the extent of the damage incurred, the degree of guilt of the infringer, the amount of the agreed or usual remuneration, and the preventive purpose of the penalty.

3. If the damage incurred is in excess of the amount of penalty referred to in paragraph (1) of this Article, the right holder is entitled to claim the difference up to the amount of full indemnification.

## **Article 106**

### **Non-Material Damage**

1. The inventor shall be entitled to request, through an action before the court, the entry of his name in the patent application and in all the documents issued for a patent, as well as in the respective Registers of the Institute, if the person mentioned as inventor in the application is not the inventor.

2. The right to the action referred to in paragraph (1) of this Article shall also belong to the inventor of the joint invention who is not mentioned in the patent application.

3. The request referred to in paragraph (1) of this Article may be accompanied by a request for the final judicial decision to be published at the expense of the defendant.

4. The deadline for bringing an action referred to in paragraphs (1) and (2) of this Article shall not be limited. After the death of the inventor, the right to an action shall belong to his heirs.

5. Regardless of compensation for material damage, as well as in the case that there is no such damage, the inventor may claim the award of equitable monetary satisfaction



for mental pain suffered as a result of the infringement of his moral rights. When deciding the claim, the court shall take into account all the circumstances of the case and in particular, the intensity and duration of mental pain caused by the infringement of moral rights.

6. The claim referred to in paragraph (1) of this Article shall not be subject to the statute of limitations and shall be inherited.

## **Article 107**

### **Provisional Measures**

1. The court shall order a provisional measure to secure claims under the provisions of this Law if the applicant demonstrates as probable:

- a) that he is the right holder under this Law, and
- b) that his right has been infringed or that there is an actual threat of infringement.

2. The right holder shall also demonstrate as probable one of the following assumptions:

- a) the danger that the enforcement of claim will be made impossible or considerably more difficult;
- b) that a provisional measure is necessary in order to prevent damage which will be difficult to repair later, or
- c) that the ordering of a provisional measure, which would later in the course of the proceedings prove to be unfounded, would not have more detrimental consequences for the alleged infringer, than would have the non-adoption of such provisional measure for the right holder.

3. The right holder who applies for a provisional measure without prior notification and hearing of the opposite party shall demonstrate as probable, in addition to the requirements under paragraphs (1) and (2) of this Article that any delay in ordering of a provisional measure would cause to the right holder damage difficult to repair. In case of ordering of a provisional measure under the provisions of this paragraph, the court shall serve the decision on a provisional measure to the opposite party immediately after the execution thereof.

4. The right holder shall not have to prove the existence of a danger that the enforcement of claim will be made impossible or considerably difficult if he demonstrates as probable that the proposed provisional measure will cause to the alleged infringer only insignificant damage. The danger shall be deemed to exist when the claims are to be enforced abroad.

5. To secure the claims under paragraph (1) of this Article, the court may order any provisional measure with which the purpose of security can be achieved, in particular:

- a) prohibit the alleged infringer to proceed with actions which infringe the right under this Law;

b) to seize, remove from circulation and take into custody the objects of infringement and the means of infringement, which are exclusively or predominantly intended or used for the commission of infringements.

6. If the measure was ordered before the filing of the claim, the court shall in its order specify a time limit within which the claimant must bring an action for the justification of this measure. The time limit may not be longer than 20 working days or 31 calendar days from the day of delivery of the decision to the applicant, whichever expires later.

7. The court shall decide on the opposition against the order of a provisional measure within one month from the day of filing of the answer to the opposition or the expiry of the time limit for filing such answer.

8. The provisions of the law governing civil procedure shall apply in the proceedings for ordering of a provisional measure, unless otherwise stipulated by this Law. The proceedings in relation to ordering of a provisional measure shall be expeditious.

9. At a request of the person against whom the proceedings for ordering of a provisional measure has been initiated, the court may, at the expense of the applicant for ordering a provisional measure, order an adequate amount to be deposited as a security instrument in the case the application is found to be unjustified.

## **Article 108**

### **Preservation of Evidence**

1. The court shall issue an order to preserve evidence if the applicant demonstrates as probable that:

- a) he is the right holder under this Law;
- b) his right has been infringed or that there is an actual threat of infringement;
- c) the evidence of infringement shall be destroyed or impossible to be presented later.

2. The right holder who applies for the order to preserve evidence without prior notification and hearing of the opposite party shall, in addition to the requirements under paragraph (1) of this Article, demonstrate as probable that there is a danger that the evidence of infringement shall be destroyed or impossible to collect later, due to the actions of the opposite party. In the case of ordering the preservation of evidence pursuant to the provisions of this paragraph, the court shall serve its order for the preservation to the opposite party immediately after the evidence is collected.

3. The court may order, by the decision referred to in paragraph (1) of this Article, the collection of any evidence, and in particular:

- a) the inspection of premises, business records, inventory, databases, computer memory units or other material objects;
- b) the seizure of samples of the objects of infringement;

- c) the examination and surrender of documents;
- d) the appointment and examination of experts;
- e) the hearing of witnesses.

4. The preservation of evidence may also be sought after the completion of proceedings by a final decision if it is necessary for the institution of proceedings on the grounds of extraordinary remedies or during such proceedings.

5. In the proceedings for the preservation of evidence, according to the provisions of this Article, the respective provisions of the law governing civil procedure pertaining to judicial measures for the preservation of evidence, unless otherwise stipulated by this Law. The proceedings for the preservation of evidence shall be expeditious.

6. Where subsequently found that the claim for the preservation of evidence is unjustified, or if the right holder does not justify such claim, the opposite party may request:

- a) the return of seized objects;
- b) the prohibition of the use of information obtained;
- c) indemnification.

7. The court shall ensure the protection of confidential information pertaining to the parties in the proceedings for the preservation of evidence under the provisions of this Article, and take care that the court proceedings are not abused solely for the purpose of obtaining confidential information of the opposite party.

8. At a request of the person against whom the proceedings for the preservation of evidence has been instituted, the court may, at the expense of the applicant for such a measure, fix an adequate amount to be deposited as a security instrument in the case that such claim is found to be unjustified.

## **Article 109**

### **Obligation to Furnish Information**

1. During the lawsuit in the matter of the infringement of a right under this Law, and on the basis of a justified claim of one of the parties, the court may order the infringer of the right to provide information on the source and distribution channels of the goods or services infringing the right under this Law.

2. The court may order that the information referred to in paragraph (1) of this Article be provided to the court also by persons who, within the scope of commercial activity:

- a) possess the goods presumed to infringe the right under this Law;
- b) use the services presumed to infringe the right under this Law, or
- c) render the services presumed to infringe the right under this Law.

3. It shall be considered that an act has been carried out on a commercial scale if carried out for direct or indirect economic benefit. The notion of the activity on a commercial scale does not include the acts of bona fide ultimate consumers.

4. The court may order that the information referred to in paragraph (1) of this Article is provided to the court also by a person indicated by any person referred to in paragraph (2) of this Article as involved in manufacturing, making and distribution of goods or rendering of services presumed to infringe the right under this Law.

5. The information requested on the grounds of paragraph (1) of this Article may include in particular:

a) name, addresses, or trade name and registered office of the manufacturer, maker, distributor, supplier and other former possessors of goods or service providers, as well as the intended wholesalers and retailers;

b) information on the quantities of manufactured, made, delivered, received or ordered goods or services, as well as the prices obtained for the goods and services concerned.

## **Article 110**

### **Presentation of Evidence**

1. Where the court decides to allow the proposed evidence held by the opposite party to be presented, that party shall surrender such evidence at the request of the court.

2. Paragraph (1) of this Article pertains also to banking, financial and business documents controlled by the opposite party if the infringement was committed on a commercial scale.

3. The respective provisions of the law regulating civil procedure shall apply in the procedure for the presentation of evidence, unless otherwise stipulated by this Law.

4. Following the presentation of evidence, the court shall, according to paragraph (1) of this Article, ensure the protection of confidential information pertaining to the parties, and take care that judicial proceeding is not abused solely with the intention to obtain confidential information of the opposite party.

## **Article 111**

### **Burden of Proof**

1. If the subject matter of infringement is a patent protected process for obtaining a new substance protected by patent, any equal substance or any substance of equal composition shall be considered as resulting from the protected process, until proved to the contrary.

2. The burden of proof shall be on the defendant obtaining such a substance or composition.

## **Article 112**

### **Expeditious Procedure and Application of the Provisions of Other Laws**

1. The procedure concerning the infringement of rights under this Law shall be expeditious.

2. The provisions of the Law on Civil Procedure and the Law on Execution Procedure shall apply to the procedures concerning the infringement of rights.

3. At the request of the court or any of the parties to the procedure concerning the infringement of a patent, the Institute shall immediately act upon a request for the declaration of the decision on the grant of a patent null and void, or the Board of Appeal shall immediately act upon an appeal if the request for the declaration of the decision on the grant of a patent null and void or the appeal is filed before or during the lawsuit and shall act upon them in an expeditious procedure. The court shall, taking into consideration the circumstances of the case, decide whether it shall stay the proceedings up to the final decision on the request for the declaration of the decision of the grant of a patent null and void or not.

## **CHAPTER III. CUSTOMS MEASURES**

### **Article 113**

#### **Request of a Right Holder**

1. The holder of the exclusive rights under this Law, who reasonably believes that the importation, transit or exportation of the goods manufactured in contravention of the provisions of this Law shall take place, may file a request for the protection of his rights with the authority competent for customs matters (hereinafter: the customs authority) by means of customs measures of temporary impounding of the goods.

2. The request for the protection of rights under paragraph (1) of this Article must contain:

- a) details of the applicant and the holder of the exclusive right under this Law if they are not the same person;
- b) detailed description of the goods, enabling the identification thereof;
- c) proofs that the applicant or a person authorized by him is the holder of the exclusive right under this Law in connection with such goods;
- d) proof that the exclusive right is likely to have been infringed;

e) other details held by the applicant relevant for deciding on the request, such as details of the location of the goods and the destination thereof, the expected date of arrival or dispatch of the package, means of transportation, details of the importer, exporter or recipient, and the like;

f) time period within which the customs authorities shall act upon such request, which may not be longer than two years from the date of the filing thereof.

3. The customs authority may, before issuing decision by which it complies with the request referred to in paragraph (1) of this Article, inquire the right holder to deposit a security instrument for the costs of the storage and transportation of the goods, as well as for the compensation for other costs or damage, which may be incurred by the customs authority in connection with the goods and by the party against which the request referred to in paragraph (1) of this Article is upheld.

4. If the customs authority complies with the request under paragraph (1) of this Article, it shall inform all the customs outposts and the right holder about it.

## **Article 114**

### **Procedure Following the Temporary Impounding of Goods**

1. Where in the course of the customs procedure a customs outpost finds the goods matching the description of the goods indicated in the decision of the competent customs authority, it shall temporarily impound such goods. The decision on the temporary impounding of the goods shall be delivered to the right holder and to its importer. It shall be specified in the decision on impounding that the owner of the goods, or a person authorized to keep the goods in his possession may declare, within ten working days from the date of temporary impounding, whether the goods are infringing a right under this Law.

2. Where the customs authority does not receive a written declaration of the owner or a person authorized to keep the goods in his possession, within the period referred to in paragraph (1) of this Article, it may seize and destroy the goods at the request of the right holder, and at his expense.

3. Where the owner of the goods, or a person entitled to keep the goods in his possession declares, within the period referred to in paragraph (1) of this Article, that the goods are not infringing a right under this Law, the right holder may, within ten working days from the receipt of the notification of such declaration, bring an action for the infringement of rights. Where particular circumstances of the case justify it, the customs authority may allow, at the request of the right holder, additional time for bringing an action, which may not be longer than ten working days.

4. During the temporary impounding of the goods, the right holder or a person authorized by him, may carry out the inspection and the control of the goods and accompanying documents to the extent necessary for establishing his claims and for the realization of judicial protection of his rights, ensuring at the same time the protection of confidential information. The importer shall also be entitled to carry out the inspection and the control of the goods.

5. If the right holder fails to bring an action in accordance with the provisions of paragraph (3) of this Article, the temporarily impounded goods shall be released to the requested customs approved use or circulation, provided that all other conditions prescribed by the law have been fulfilled.

6. If the right holder brings an action in accordance with the provisions of paragraph (3) of this Article, and the competent court issues a decision on the provisional measure involving the impoundment of goods within the time limit referred to in paragraph (3) of this Article, the customs authority shall issue a decision on the confiscation of goods until the issue of the final court decision.

7. If the right holder brings an action in accordance with the provisions of paragraph (3) of this Article, and the competent court fails to order a provisional measure involving the impoundment of goods within a time limit referred to in paragraph (3) of this Article, the owner of the temporarily impounded goods or a person authorized to dispose of it shall have the right to request the release of such goods if he deposits a security instruments in the amount sufficient to cover the possible indemnification of the right holder, provided that all other conditions for the release of such goods have been fulfilled.

## **Article 115**

### **Ex-Officio Procedure**

1. Where a customs outpost reasonably believes, during the customs procedure in connection with the importation, transit or exportation of the goods, that the rights under this Law are infringed by certain goods, it shall temporarily impound the goods and inform the customs authority about it.

2. The customs authority shall inform the right holder in writing on the impoundment of the goods, the suspicion that his rights are infringed and the possibility of filing the request under Article 113 of this Law, within five working days from the date of impoundment.

3. Where the right holder files the request in accordance with paragraph (2) of this Article, the goods shall be impounded until the decision of the customs authority. If the customs authority complies with the request under Article 113 of this Law, the goods shall be temporarily impounded for another ten working days. The right holder must carry out the actions specified in paragraph (4) of Article 114 of this Law within such period.

4. The provisions of Articles 114 and 115 of this Law shall not apply to importation, transit or exportation of small quantities of the goods intended for private and non-commercial use, which are brought into or taken out of the country as part of traveler's personal luggage or are sent in small consignments.

## **Article 116**

### **Application of Other Customs Regulations**

1. Other customs regulations shall apply mutatis mutandis to the customs procedure in connection with the goods infringing the rights under this Law, unless otherwise stipulated by this Law.
2. The regulations governing the implementation of customs measures under this Law shall be brought by the Council of Ministers, upon the motion of the Indirect Taxation Authority of Bosnia and Herzegovina.
3. The customs procedure in connection with the goods infringing the rights under this Law shall be expeditious.

## **PART FOURTEEN - TRANSITIONAL AND FINAL PROVISIONS**

## **Article 117**

### **Patents Granted Until the Commencement of Application of this Law**

The patents granted and entered in the Register of Patents until the day on which the application of this Law shall start shall remain in force, and the provisions of this Law shall apply to them.

## **Article 118**

### **Pending Procedures**

1. The provisions of this Law shall not apply to patent applications and international applications referred to in Article 81 of this Law, whose filing dates are earlier than the date of the commencement of application of this Law.
2. The patent applications filed with the Institute before February 27, 2002 and which are still pending shall be refused or rejected in the part in which the protection of substances or compositions in the treatment of humans or animals is claimed. The use of substances or compositions for the production of a medicine for humans or animals shall not constitute the infringement of patent for the invention of such a substance or composition if the application for the grant of patent for such an invention was filed before February 27, 2002.

## **Article 119**

### **Regulations for the Application of this Law**

1. With the exception of the regulation referred to in paragraph (3) of Article 58 and paragraph (2) of Article 116 of this Law, the implementing regulations for the



implementation of this Law shall be enacted by the Director of the Institute within six months from the day of the entry of this Law into force.

2. The implementing regulations within the meaning of paragraph (1) of this Article are: Regulations Concerning Procedure for the Grant of a Patent or a Consensual Patent, Decision on Special Costs of the Procedure for the Acquisition and Maintenance of Industrial Property Rights, Decision on the Conditions for the Entry in the Registers of Representatives for the Protection of Industrial Property, Regulations on the Professional Examination for Industrial Property Protection Representatives and the Decision on the Compensation for the Service on the Board of Appeal.

## **Article 120**

### **Deferred Entry into Force of the Provisions on Supplementary Protection Certificate and Special Rights in the Transitional Period**

The provisions of Articles 58 to 64 of this Law shall start to apply after the date determined for the application of this Law.

## **Article 121**

### **Ceasing of Effect of Other Provisions**

1. On the date of the commencement of application of this Law, the provisions of Chapter II. TYPES OF INDUSTRIAL PROPERTY RIGHTS, Section 1. Patent (Articles

21 to 68) of the Law on Industrial Property in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina volume 3/02), as well as the provisions which may apply to patents accordingly, shall cease to have effect.

2. By way of derogation from the provision of paragraph (1) of this Article, and in accordance with Article 118 of this Law, the Law on Industrial Property in Bosnia and Herzegovina referred to in paragraph (1) of this Article shall continue to apply to the procedures for the grant of a patent initiated before the entry of this Law into force.

## **Article 122**

### **(Application of International Treaties)**

The provisions of international treaties in relation to patents, which Bosnia and Herzegovina acceded to, shall apply to subject-matters treated by this Law and in the case of conflict with the provisions of this Law, the provisions of international treaties shall apply.

### **Article 123**

#### **(Unified Application of the Provisions on the Board of Appeal in the Trademark Law, the Law on the Protection of Indications of Geographical Origin and the Law on Industrial Designs)**

The provisions of articles 99 and 100 of this Law and the relevant provisions of the Trademark Law, the Law on Industrial Designs and the Law on the Protection of Indications of Geographical Origin, governing the Institute's Board of Appeal, shall be applied in the manner that one board of appeal shall be established.

### **Article 124**

#### **Entry into Force and Application of this Law**

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of BiH, and shall apply as of January 1, 2011.