THE PATENT LAW

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I. GENERAL PROVISIONS

Subject matter
Article 1

This Law shall regulate the conditions for legal protection of patent. Patent is legally protected invention.

Territorial effect
Article 2

This Law shall also apply to the sea and submarine areas adjacent to the territory of Montenegro in which Montenegro exercises sovereign rights or jurisdiction in accordance with international law.

Equal treatment of foreign and national entitles
Article 3

(1) Foreign legal and natural persons shall, in relation to the registration and protection of inventions in Montenegro, enjoy the same rights as national legal and natural persons, where such rights derive from international agreements or from the principle of reciprocity.
(2) The reciprocity under Article 1 shall be proved by the person who claims that it exists.

Representation
Article 4

(1) In the proceedings before the administrative authority competent for intellectual property affairs (hereinafter: competent authority), a foreign legal or natural person, which has no headquarters, or approved permanent or temporary residence in Montenegro, must be represented by a legal or natural person listed in the *Register of Representatives* kept by the competent authority (hereinafter: representative), or by an attorney enlisted in the Directory of the Bar Association of Montenegro.
(2) Notwithstanding the provisions of paragraph 1 above, foreign legal or natural person can independently without representation:
1) file an application for a patent (hereinafter: patent application), and take actions related to the accordance of the filing date of the patent application,
2) file copies of the first patent application when claiming priority referred to in Article 32 of this Law,
3) pay administrative fees and expenses of the proceedings provided for in this Law, and
4) receive notification from the competent authority in relation to proceedings referred to in items 1 to 3 of this paragraph.

(3) In the event of taking action under paragraph 2 of this Article, a foreign natural or legal person shall submit to the competent authority an address in the territory of Montenegro for the receipt of the documents.

(4) The competent authority shall invite in writing a foreign legal or natural person who fails to appoint the representative or to submit the address for the receipt of documents in accordance with paragraph 3 of this Article, to appoint a representative or submit the address for the receipt of documents within three months from the day of receipt of the invitation.

(5) If a foreign legal or natural person fails to comply with the invitation referred to in paragraph 4 of this Article, the competent authority shall reject the submission, and the submission shall be made public via the notice board of the competent authority.

(6) Notwithstanding paragraph 1 of this Article, the maintenance fee of the rights of the patent application and granted patent may be paid by any person in the name and on behalf of the applicant, or the patent holder.

II. SUBJECT MATTER OF THE PATENT PROTECTION

Patentable Inventions
Article 5

(1) A patent is legally protected invention in any field of technology. Patent enjoys legal protection if it is new, involves an inventive step and if it is susceptible of industrial application.

(2) The subject matter of an invention protected by a patent may be a product (e.g. a device, substance, composition) or a process.

(3) The subject matter protected by a patent may also be related to:

1) a product consisting of or containing biological material;
2) a process by means of which biological material is produced, processed or used;
3) a biological material isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature.

(4) For the purpose of this Law, biological material shall mean any material containing genetic information and capable of reproducing itself or being reproduced in a biological system (e.g. micro-organisms, plant and animal cell cultures, sequence of genes).

(5) The following, in particular, shall not be regarded as inventions, within the meaning of this Law:

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

(6) The provisions of paragraph 5 of this Article shall exclude patentability of subject matter or activities only to the extent to which the application for a patent or a patent relate to the subject matter or activity as such.

Patentability of Human Body and its Elements
Article 6

(1) Inventions relating to the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot be patentable.

(2) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may be patentable, even if the structure of that element is identical to that of a natural element.

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

Exceptions to Patentability
Article 7

(1) The following shall not be patentable:

1) inventions the commercial use of which would be contrary to *ordre public* or morality, particularly in respect of:

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

2) inventions concerning methods for treatment by surgery or diagnostic methods or therapy practiced directly on the human or animal body, except products, in particular substances or compositions, for use in any of these methods;

3) a plant or animal variety or an essentially biological process for the production of a plant or animal, except:

- a biotechnological invention concerning a plant or animal, if the technical feasibility of the invention is not confined to a particular plant or animal variety;
- a microbiological or other technical process, or a product obtained by means of such process other than a plant or animal variety.

(2) It shall not be considered that the use of Paragraph 1, Item 1 of this Article is contrary to *ordre public* or morality merely because such use is prohibited by law or regulation.

(3) For the purposes of this Law:

1) plant variety shall have the meaning laid down in the law governing the protection of new plant varieties;

2) an essentially biological process for the production of plants or animals shall be a process consisting entirely of natural phenomena such as crossing or selection;
3) a microbiological process shall be a process involving or performed upon or resulting in microbiological material;
4) biotechnological inventions are inventions that concern a product consisting of or containing biological material or a process by means of which a biological material is produced, processed or used.

III. CONDITIONS FOR PATENT PROTECTION AND THE PATENT GRANT

Novelty of an Invention
Article 8

(1) An invention shall be deemed to be new if it does not form part of the state of the art.

(2) For the purposes of this Law the state of the art shall comprise:

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

2) the content of all patent applications in Montenegro as filed with the effect for Montenegro, the filing dates of which precede the date referred to in item 1 of this paragraph and published on or after that date, in the manner prescribed by this Law.

(3) The provisions of paragraphs 1 and 2 of this Article shall not exclude the patentability of any substance or composition included in the state of the art, for use in treatment by surgical or diagnostic or therapeutic methods, provided its use for any of such method is not comprised in the state of the art.

(4) Paragraphs 1 and 2 above shall also not exclude the patentability of any substance or composition referred to in paragraph 3 of this Article for any specific use in a surgical, diagnostic or therapeutic method, provided that such use is not comprised in the state of the art.

Non-Prejudicial Disclosure of Invention
Article 9

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

1) an evident abuse in relation to the patent applicant or his legal predecessor, or
2) the invention being displayed by the patent applicant or his legal predecessor at an official, or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions, signed in Paris on 22 November 1928, with all subsequent revisions, provided that the applicant states, on filing the application, that the invention has been so exhibited and that he provides an appropriate certificate to support this statement within a period of four months from the filing date of the application.

Inventive Step
Article 10

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

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

Industrial Applicability
Article 11

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

Entitlement to Protection
Article 12

(1) The right to obtain a patent shall belong to the inventor or his successor in rights, or in cases provided for by this Law, to the employer or his successor in rights.

(2) If an invention is the result of the joint effort of a number of inventors, the right to a patent shall belong to such inventors jointly.

(3) A person rendering technical assistance to an inventor shall not be considered to be an inventor.

Rights of the Inventor
Article 13

(1) The inventor shall have the right to be designated as such in the patent application, specifications, registers, certificates and publications related to his invention, in the manner stipulated by this Law.

(2) The rights of an inventor who has come up with an invention within the course of employment and the rights of the organisation in which such invention has been made, shall be governed by this Law, by general legal acts and by contract concluded between the employer and employee or between their representatives, as the case may be.

IV. PATENT GRANT PROCEDURE

1. Common Procedural Provisions

Procedure before the Competent Authority
Article 14

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

(2) Within the administrative procedure referred to in paragraph 1 of this Article, provisions of the law regulating the general administrative procedure shall apply, unless other provided by the law.

(3) The decision of competent authority may be subject to appeal, before the state authority in charge of the industrial property affairs (hereinafter: The Ministry).

Inspection of the Patent Application
Article 15

(1) During the procedure for the protection of an invention, the competent authority shall not make an application available for inspection to any person or body, before the application has been published.

(2) Notwithstanding the provision of Paragraph 1 above, the competent authority shall make patent application available prior to the publication thereof at the written request of the patent applicant or person authorized by him.

Administrative Fees and special Procedural Charges

Article 16

(1) The administrative procedure before the competent authority shall be subject to payment of the administrative fees in accordance with the law governing payment of administrative fees, as well of the special procedural charges and information services.
(2) The amount of the special procedural charges and charges for information services shall be determined by the Government of Montenegro (hereinafter: the Government).

Registers
Article 17

(1) The competent authority shall keep the Register of Patent Applications, the Register of Patents, the Register of Supplementary Protection Certificates and the Register of Representatives.

(2) Registers under Paragraph 1 above shall be considered public records.

(3) Excerpt from Registers under paragraph 1 above, shall be issued by the competent authority at the request of an interested person, with a proof of payment of administrative fee.

(4) The content and manner of keeping registers referred to in paragraph 1 of this Article, and the manner of issuance and content of the excerpts shall be governed by a regulation issued by the Ministry.

Correcting Errors in Documents
Article 18

(1) At the request of the patent applicant, or the patent holder or ex officio, the competent authority shall correct errors in names or numbers, writing or arithmetic, and other obvious defects in the registers, patent documents or publications in the official gazette issued by competent authority (hereinafter: the Official Gazette) by issuing a conclusion.

(2) The filing of a request for the correction of errors under paragraph 1 of this Article shall imply payment of special procedural costs only if the error was made by patent applicant or patent holder.

(3) If a patent application has been published, the corrections referred to in paragraph 1 of this Article shall be published in the Official Gazette.

(4) The method of application under paragraph 1 of this Article shall be governed by regulation of the Ministry.

Publication in the Official Gazette
Article 19

Any information prescribed by this Law and by implementing regulations for this Law shall be published in the Official Gazette.

Availability of information
Article 20

(1) The competent authority shall, at a request, make available to legal entities and other legal and natural persons copies of patent applications published in its Official Gazette, as well as copies of granted, patents and information on the state of the art and on rights concerning the protection of inventions.

(2) Evidence of payment of special procedural charges shall be submitted with the request referred to in article 1 above.

(3) The manner of providing services under Article 1 above shall governed by the regulation of the Ministry.

2. Institution of the Patent Granting Procedure

Patent Application

Article 21

(1) The patent grant procedure shall be instituted by the filing of an application with the competent authority.

(2) Patent application shall be submitted in Montenegrin language.

(3) Patent application may be submitted in a foreign language, with the translation in Montenegrin language.

(4) Patent application shall be submitted in written form, in person or by mail.

(5) Patent application for the protection of inventions abroad shall also be filed in accordance with this Law, and in accordance with the international agreements.

(6) Legal protection of inventions in Montenegro shall also be granted in respect of applications filed abroad, if so provided by the international agreements.

(7) The application under paragraph 6 above shall have the same effects as a national application, unless otherwise provided for by the relevant international agreements.

Unity of Invention
Article 22

(1) As a rule, a separate patent application shall be filed for each individual invention.

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

Content of a Patent Application
Article 23

(1) A patent application shall contain:

1) a request for the grant of a patent;
2) a description of the invention;
3) one or more claims for the protection of an invention by a patent (hereinafter: patent claims),
4) a drawing referred to in the description or claims, when appropriate;
5) an abstract.

(2) The filing and attachments to the patent application, the method of drafting particular parts of a patent application, and data relevant to the deposit of biological material referred to in Article 25 paragraph 2 of this Law shall be regulated by the Ministry.

Request for the Grant of a Patent
Article 24

(1) A request for the grant of a patent shall contain an explicit indication that a patent is being sought, details concerning the applicant, details concerning the inventor or a statement to the effect that the inventor does not wish to be mentioned in the application, and the title of the invention clearly reflecting its essence.

(2) The competent authority shall not investigate whether the applicant is entitled to protection.

(3) If the inventor does not wish his name mentioned in the request for the grant of a patent and in other documents under this Law, the applicant shall be required to furnish the competent authority with the inventor's written statement to that effect, within a period of three months from the date of the filing of the application at the latest.

Description of the Invention
Article 25

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

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

(3) The relevant depository institution referred to in paragraph 2 of this Article shall be an institution designated in accordance with the provisions of the Budapest Treaty on the International Recognition of the Deposits of Microorganisms for the Purpose of Patent Procedure concluded on 28 April 1977 with all subsequent revisions.

Patent Claims
Article 26

(1) Patent claims shall define the subject matter for which protection is sought.

(2) The claims under Paragraph 1 above shall be clear, concise and fully supported by the description of the invention.

Abstract
Article 27

The abstract shall be a short summary of the essence of the invention and shall serve exclusively for the purpose of technical information.

Content of a Patent Application Necessary for the Accordance of a Filing Date
Article 28

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

1) an indication that the grant of a patent is being sought;
2) information on the patent applicant or contact information on the patent applicant;
3) part seeming to be a description of the invention, even if it does not fulfil the prescribed requirements, or reference to a previously filed patent application.

Division of a Patent Application
Article 29

(1) The applicant may divide the subject matter of the patent application which has already been accorded a date of filing (original application) into two or more independent applications (divisional application) at his own discretion or at the request of the competent authority, provided that the original application relates to several inventions which are interrelated as single general inventive concept refereed to under Article 22 above.

(2) The division of original application shall be allowed only until the adoption of the decision on grant of patent.

(3) The subject matter of the divisional application may not extend beyond the content of the original application, as filed. It shall retain the filing date of the original application and, where appropriate, shall enjoy the right of the priority of that application.

Amendments to Pending Applications
Article 30

(1) A patent application to which the filing date has been accorded cannot be subsequently amended in a manner that would extend the subject matter for which protection is being sought.

(2) Any amendments to the particulars of the application that do not extend its subject matter may take place prior to the taking of a decision on the application.

3. PRIORITY RIGHT

The Grant of the Priority Right
Article 31

(1) If two or more inventors come up with the same invention independently of each other, the applicant with an earlier application filing date shall have the priority right with respect to the granting of the patent.

(2) The priority shall count from the filing date of the application with the competent authority, where conditions for the granting of the priority right pursuant to Article 32 of this Law have been fulfilled.

International Priority Right
Article 32

(1) A legal or natural person who has duly filed an application for any kind of protection of an invention in or for any State member of the Paris Union for the Protection of Industrial Property (Hereinafter: Paris Union) or any Member of the World Trade Organisation (hereinafter: WTO), or his successor in right, shall be granted priority in Montenegro from the date of filing of such application, provided that:

1) such person files a claim to that effect with the competent authority when filing an application for the protection of the same invention or not later than three months form the filing date of the application; and
2) not more than twelve months have elapsed since the date of filing of the first application in or for the State party to the Paris Union or for the Member of WTO.

(2) A claim for priority referred to in paragraph 1 of this Article shall include information of the filing date of the application that is the basis for the grant of priority right, number of the application and the State member of the Paris Union or the Member of WTO in or for which it was made and international organization where it has been filed.

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

Submission of Proof of Priority Right
Article 33

(1) An applicant who intends to take advantage of the priority right under Article 31 of this Law, shall be required to submit to the competent authority a copy of the prior application certified by the competent authority of the member state of the Paris Union or member state of WTO, with which the application has been filed, not later than 16 months of the earliest priority date claimed.

(2) A certified translation into Montenegrin shall be submitted with the copy of the application referred to in paragraph 1 of this Article, provided that the competent authority or the Court deems necessary so.

Multiple Priority Right
Article 34

(1) Subject to the requirements of Article 32 paragraph 1 of this Law, an applicant may claim multiple priority rights in respect of a number of prior applications filed in or for one or more States members of the Paris Union or Members of the WTO.

(2) Where multiple priority right has been granted, any time limits running from the priority date under this Law, shall run from the earliest date of the multiple priority right.

Characteristics of the Invention for Which Priority Right is Claimed
Article 35

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

(2) If certain characteristics of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority right shall be granted where the application elements as a whole specifically disclose all such characteristics.

Date of a Granted Priority Right
Article 36

The date of a granted priority shall be the date of filing the patent application for the purpose of Articles 8 Paragraph 2 and Article 31 of this Law.

Restoration of priority right
Article 37

(1) If a patent application for which priority of the first patent application is claimed, in spite of due care required by the circumstances, is filed on the later date than the date on which the priority

period under Article 32, paragraph 1, item 2 of this Law expired, but within a period of two months from that date, the applicant may file a request for the restoration of priority right.

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

(3) The competent authority may only grant a request for restoration of priority right, provided that:

1) the applicant states the reasons and submit the evidence supporting the failure to comply with the priority period occurred in spite of due care required by the circumstances having been taken, and

2) pays the prescribed administrative fees and special procedural charges.

(4) Should the competent authority find that a request for the restoration of the priority right is to be rejected in whole or in part, it shall previously inform the applicant of the reasons for the rejection and shall invite him to comment on those reasons within two months from the date of receipt of the invitation.

(5) At the reasoned request of the applicant for restoration of priority right, the deadline referred to in paragraph 4 of this Article may be extended by one month.

Correction and Amendment of the Priority Right

Article 38

(1) The applicant may file a request for the correction or addition of a priority claim within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that such a request is filed within four months from the filing date of the patent application.

(2) With the request referred to in paragraph 1 of this Article, the applicant shall submit proof of payment of the prescribed administrative fees and special procedural charges.

(3) Where the correction or addition of a priority claim causes a change in the priority date, any time limit shall be computed from the priority date as so changed.

(4) The request referred to in paragraph 1 above may not be filed after the applicant has filed a request for publication under Article 44 paragraph 2 of the present Law, unless that request is withdrawn before the technical preparations for publication have been completed.

IV. EXAMINATION AND PUBLICATION OF A PATENT APPLICATION

Accordance of the Filing Date
Article 39

(1) Upon receipt of a patent application, the competent authority shall examine whether it meets the requirements laid down in Article 28 of this Law for accordance of its date of filing.

(2) If it establishes that the requirements under Article 28 of this Law have been fulfilled, the competent authority shall issue decision on accordance of patent date of filing.

(3) If it establishes that the requirements under Article 28 of this Law have not been fulfilled, the competent authority shall invite the applicant to rectify the deficiencies identified, within three months from the date of receipt of the notification, together with a warning on the legal consequences of failure to respond within the prescribed time limit.

(4) If the applicant rectifies the deficiencies within the period provided for in paragraph 3 of this Article, the competent authority shall recognize the date on which the applicant rectified the deficiencies observed as the application filing date.

(5) If the applicants fails to rectify the deficiencies within the times limit under paragraph 3 above, the competent authority shall reject patent application through a decision.

(6) Where reference is made in the application to drawings that were not attached to the application or determines that a part of the description of the invention appears to be missing, the competent authority shall invite the applicant to file the drawings or parts missing within a period of three months from the date of receipt of its notification.

(7) If the applicant furnishes drawings or part of the description of the invention appearing to be missing within the deadline specified under paragraph 6 above, the date on which the drawings and description have been filed shall be treated as the filing date of the application.

(8) If the drawings or parts of the description are not furnished within the deadline under paragraph 6 above, any reference to them in the application shall be deemed not to have been made.

(9) An application for which a filing date has been accorded shall be entered into the Register of Patent Applications.

Certificate of Priority
Article 40

(1)The competent authority shall issue a certificate of the right of priority at the request of the applicant, accompanied by the evidence on payment of the administrative fees and special procedural charges.

(2) The content of the request for certificate and the content of the certificate of the right of priority shall be prescribed by the Ministry.

Formal Examination of Patent Application

Article 41

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

1) the administrative fee for filing the application has been paid;
2) the certified translation of the patent application in Montenegrin language has been filed, if the patent application has been submitted in a foreign language;
3) the valid authorisation for the representative has been filed, where appropriate;
4) the application contains the designation of the inventor;
5) if the applicant is a foreign natural or a legal person, is the application filed through a representative, pursuant to Article 4 of this Law;
6) the application contains all documents prescribed by Article 23 of this Law;
7) the claim for the right of priority, satisfies requirements under Article 32 of this Law, if a priority right is claimed.

(2) If the application is not in conformity with the provisions of paragraph 1 above, the competent authority shall invite the applicant to correct the deficiencies expressly indicated within an appropriate time limit, which shall not be less than 60 nor more than 90 days.

(3) Upon substantiated request by the applicant, the competent authority may extend the time limit referred to in paragraph 2 of this Article, for a period it deems appropriate, but not exceeding 90 days.

(4) If the applicant fails to correct the deficiencies referred to in paragraph 1 items 1 to 6 above within the deadline under paragraphs 2 and 3 of this Article, the competent authority shall take a decision to reject the application.

(5) If the applicant fails to correct the deficiencies with respect to the claim for the right of priority referred to in paragraphs 2 and 3 in conjunction with paragraph 1 item 7 above, the competent authority shall not grant the priority right.

Examination of the Conditions for the Grant of a Patent
Article 42

(1) By examination of the conditions for the grant of a patent it shall be determined whether the subject matter of the patent application:

1) is an invention which is not considered patentable in accordance with Article 5, paragraph 5, and Art. 6 and 7 of this Law;

2) is an invention which unequivocally may be determined not to be susceptible of industrial application in accordance with Article 11 of this Law.

(2) A patent application for which the competent authority has determined that it meets the conditions for the grant under paragraph 1 of this Article shall be published in the Official Gazette.

The Refusal of a Patent Application
Article 43

(1) If the competent authority determines that the patent application does not meet the conditions for the grant under Article 42, paragraph 1 of this Law, it shall issue a decision on the refusal of the patent in whole or in part.

(2) Prior to issuing a decision on the refusal of the patent in whole or in part, the competent authority shall inform the applicant in writing of the reasons why patent may not be granted and invite him to comment on those reasons and submit amended patent claims within two months from the receipt of the notification.

(3) If the patent applicant fails to submit the declaration and amended claims within the time limit referred to in paragraph 2 of this Article the competent authority issue a decision on the refusal of a patent.

(4) At the reasoned request of the applicant, the competent authority may extend the period referred to in paragraph 2 of this Article for a period it deems appropriate, but not more than three months.

Publication of a Patent Application
Article 44

(1) A patent application that satisfies all the requirements laid down in Articles 41 and 42, paragraph 1 of this Law shall be published in the Official Gazette, as soon as possible upon the expiry of eighteen months from the filing date of the application or from the claimed date of priority.

(2) At the request of the applicant, the patent application may be published earlier, but not before the expiry of three months from the filing date.

(3) The content of the publication in the Official Gazette shall be regulated by a regulation of the Ministry.

5. GRANTING OF A PATENT AND PROVING THE PATENTABILITY

Granting of a Patent
Article 45

(1) The competent authority shall issue a decision on granting of a patent and enlist the data on the granted patent into the Register of Patents.

(2) The date of publication of the patent application shall be the date of a patent grant.

(3) The competent authority shall publish the information on the patent granted in the Official Gazette, in parallel with the publication of information under the patent application.

(4) The patent holder shall be issued a patent certificate and the patent specification as soon as possible after the date of the decision to grant a patent, provided that the prescribed fees and special procedural charges have been paid.

(5) If the special procedural charges have not been paid, the patent application shall be deemed to be withdrawn.

(6) The content and form of the patent certificate and the patent specification, and the content of the data on the granted patent, to be published in the Official Gazette, shall be prescribed by the regulation of the Ministry.

Proving Patentability
Article 46

(1) The holder of the patent shall, not later than the expiration of the ninth year of the patent submit the written evidence that the invention protected by the patent meets the requirements of Art. 5 to 8 and Art. 10 and 11 of this Law.

(2) The holder of the patent shall upon submission of evidence referred to in paragraph 1 of this Article, or within two months of receipt of the invitation of the competent authority, pay the prescribed administrative fee for issuing the decision referred to in Article 48 of this Law.

(3) If the patent holder fails to pay the administrative fee referred to in paragraph 2 of this Article, it shall be deemed that the evidence referred to in paragraph 1 of this Article is not delivered.

(4) If the patent holder fails to submit written evidence referred to in paragraph 1 of this Article, the patent shall cease to exist on the date of the expiration of ten years of its duration.

Evidence of Patentability
Article 47

(1) Written evidence referred to in Article 46, paragraph 1 hereof shall be a certified translation into Montenegrin of a specification of a patent granted for the same invention in the course of the substantive examination of a patent application carried out by national and international offices in accordance with Article 32 of the Patent Cooperation Treaty as well as other institutions, with which at the time of submission of the evidence of patentability competent authority has signed a cooperation agreement.

(2) If the patent granting procedure in the institution referred in paragraph 1 of this Article has not been completed, the patent holder shall, within the time limit referred to in Article 46, paragraph 1 hereof, notify the competent authority, which may extend the deadline for the submission of written evidence of patentability for another three months after the completion of the procedure for the grant of the patent.

(3) If the patent holder fails to provide the evidence in the additional period referred to in paragraph 2 of this Article, the patent shall cease to exist on the date of the expiration of ten years of its duration.

(4) If the patent holder has not filed a patent application for the same invention to any of the institution specified in paragraph 1 of this Article, it may, within the deadline specified in Article 46

paragraph 1 of this Law, request the competent authority to obtain the result of the examination of the patentability of his invention by one of the patent offices of the state with whom it has signed a cooperation contract, provided that the required administrative fees and special charges of the proceedings are paid.

The Decision on the Basis of Evidence of Patentability
Article 48

(1) Based on the evidence referred to in Article 47 of this Law, the competent authority may issue a decision declaring that the invention:

1) meets the requirements prescribed by Art. 5 to 8 and Art. 10 and 11 of this Law;
2) partially meets the conditions prescribed by Art. 5 to 8 and Art. 10 and 11 of this Law, with the appropriate amendment of the patent claims of the granted patent, and
3) does not meet the conditions prescribed by Art. 5 to 8 and Art. 10 and 11 of this Law, and that the patent is declared null and void.

(2) Before issuing a decision under paragraph 1, items 2 and 3 of this Article, the competent authority shall previously notify the patent holder on the need to amend the claims or on the annulment of the granted patent, and shall invite him to provide the statement on the notice of the competent authority or submit amended claims within three months of receiving the invitation.

(3) If the patent holder submits the statement referred to in paragraph 2 of this article or submits the amended claims in a timely manner, the competent authority shall, before issuing the decision referred to in paragraph 1, items 2 and 3 of this paragraph check the merits of the allegations in the statement or amended claim.

(4) If the patent holder fails to submit the statement and amended claims referred to in paragraph 2 of this Article, the competent authority shall issue a decision referred to in paragraph 1, items 2 and 3 of this Article.

(5) If, on the basis of submitted evidence, the competent authority determines that the granted patent does not meet the requirements of Article 22 of this Law, it shall divide the patent on two or more parts, keeping the date of filing, and if requested, the priority of the earlier application.

(6) The particulars of the decision referred to in paragraph 1 of this article to be published in the Official Gazette shall be determined by the regulation of the Ministry.

V. CONTENT AND SCOPE OF RIGHTS

Content of Rights
Article 49

The patent holder shall have the exclusive right to give authorization or prevent third parties to:
1) make, use, offer for sale, place into circulation, export, import or store for these purposes the product made according to the protected invention;
2) use the patented process;
3) offer the patented process for sale;

4) make, use, offer for sale, place into circulation, export, import or store for these purposes the product directly obtained from the patented process;
5) offer for sale or supply products that constitute essential elements of the invention to persons not entitled to use such invention, if the offerer or the supplier knows or should have known from the circumstances of the case that such products are intended for the use of the invention owned by someone else.

Content of Rights Conferred by Patents in the Field of Biotechnology
Article 50

(1) If the patent concerns biological material possessing specific characteristics which are the result of a biotechnological invention, the rights laid down in Article 49 of this Law, shall extend to any biological material derived from that biological material through propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

(2) If the patent concerns a product containing or consisting of genetic information, the rights laid down in Article 49 of this Law shall extend to all other material in which the product is incorporated, provided it contains genetic information that performs its function, except the human body at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene in which the product is incorporated, provided it contains genetic information that performs its function.

(3) If the patent concerns a process that enables a production of biological material possessing specific characteristics as a result of the biotechnological invention, the rights laid down in Article 49 of this Law shall also extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication, in an identical or divergent form and possessing those same characteristics.

Exceptions from Protection
Article 51

The protection referred to in Article 50 of this Law shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market by the holder of the patent or with his consent, where the propagation or multiplication necessarily results from the application for which the biological material has been marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

Scope of Rights
Article 52

(1) The scope of exclusive rights acquired by a patent shall be determined by the content of the claims, whereby the description and drawings shall be used to interpret the claims.

(2) Until the decision referred to in Article 48, paragraph 1, items 1 and 2 of this Law, has been issued, the scope of protection of a patent shall be determined by the claims published in accordance with the Law.

(3) Finally granted patent or modified patent after the procedure of nullification or the proceedings on the appeal, shall determine the rights of the patent with effect from the filing date, provided that the scope of rights is not thereby extended.

(4) The terms used in the claims shall not be limited to the literal meaning of the words neither shall the description and drawings be taken into account only to clarify the ambiguity in the claims.

(5) The claims should not be construed only as a guide that the scope of exclusive rights can relate to what person skilled in the art might conclude to be the intended scope of protection, based on the description and drawings.

(6) In determining the scope of protection, due regard must be given to every element that is equivalent to an element specified in the claims.

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

VI. LIMITATION OF RIGHTS

1. Exceptions from the Exclusive Rights, Exhaustion of Rights and the Rights of Third Parties

Article 53

The exclusive rights of a patent holder referred to in Articles 49 and 50 of this Law shall not apply to:

1) the use of an invention for personal and non-commercial purposes;
2) research and development activities relating to the subject matter of the protected invention, including activities that are necessary for obtaining an authorisation for placing on the market of a product, which is a drug intended for use on humans or animals, or a medicinal product;
3) the direct, individual preparation of a drug in a pharmacy based on a single prescription, and to the placement of such drug on the market.

Exhaustion of the Patent Holder's Rights
Article 54

(1) The placing on the market of a product made under the patent or product directly obtained by a process which is the subject of a patent by the patent holder or with his express consent, in Montenegro, shall exhaust the exclusive rights deriving from a patent in relation to such product, unless there are reasonable grounds based on which the patent holder retains exclusive rights deriving from the patent.

(2) The placing on the market of a product made under the patent or product directly obtained by procedure subject to a process which is the subject of a patent by the patent holder or with his express consent, in the territory of any of the states of the European Union or states that are parties to the Agreement Creating the European Economic Area, shall exhaust the exclusive rights deriving from a patent in relation to such product, unless there are reasonable grounds on which the patent holder retains exclusive rights deriving from the patent.

Right of the Prior User
Article 55

(1) A patent shall have no effect against the person acting in good faith who had, prior to the date of granted priority, already started exploiting a protected invention in production in the territory of Montenegro, or has made all necessary preparations to initiate such use.

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

(3) The person referred to in paragraph 1 of this Article cannot transfer his right to exploitation of the invention to another person, except together with the company or part thereof, where the preparation for use or the use of the invention has taken place.

Limitation of Rights to Facilitate International Traffic
Article 56

A patent shall have no effect against a person who uses devices made on the basis of a protected invention where such devices constitute an element in the structure or equipment of a vessel, aircraft or land vehicle or serve exclusively for the operation of such vessel, aircraft or land vehicle belonging to a state that is a party to the Paris Convention or member of WTO, when it enters the territory of Montenegro temporarily or accidentally.

2. Compulsory Licences

Compulsory License
Article 57

(1) If the holder of a patent refuses to license the right of commercial use of a protected invention to other persons or sets unreasonable conditions for such licensing, the state administrative authority competent for the field in which the invention shall be employed may, after considering the merits of each individual case, grant a compulsory licence upon a request of the interested person if:
1) patent holder himself or a person authorised by him does not use the protected invention or uses it insufficiently in Montenegro;
2) the commercial use of an invention that has been subsequently protected in the name of another person is not possible, without the use of the protected invention in whole or in part.

(2) The interested person shall be required to prove that he has made reasonable efforts, before filing the request referred to in paragraph 1 of this Article, to obtain authorisation from the right-holder to use the protected invention on reasonable commercial terms and conditions and that he has not received such authorisation within a reasonable period of time.

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

(4) In the case referred to in paragraph 1, item 2 of this Article, an interested person may only be the holder of the patent for subsequently protected invention, provided that:

1) the subsequently protected invention involves a technical advancement of special economic significance in relation to the invention protected by the first patent; and that
2) the holder of the first patent is entitled, on reasonable terms, to a cross-licence to use the subsequent invention.

(5) Authorisation for the use of the invention protected by the first patent shall be non-transferable except in the case of simultaneous transfer of the subsequent patent.

Remuneration
Article 58

(1) The holder of a compulsory licence shall be required to pay the patent holder a mutually agreed remuneration.

(2) In the absence of an agreement on the amount and method of payment of such remuneration, the competent court shall decide, taking into account the merits of each individual case and the economic value of the compulsory licence.

Approval and Revocation of Compulsory License
Article 59

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

(2) A compulsory licence shall not be exclusive.

(3) A compulsory licence may be assigned only with the company or a part thereof, where it is used.

(4) A compulsory licence shall predominantly be granted for the supply of the domestic market.

(5) A compulsory licence may be terminated, subject to adequate protection of the legitimate interest of the persons so authorized, if and when circumstances that have led to its grant cease to exist and are unlikely to recur.

(6) Upon substantiated request, the state administrative authority referred to Article 57 paragraph 1 of this Law shall re-examine the further existence of circumstances under paragraph 5 above.

(7) A request for the grant of a compulsory licence cannot be filed before the expiry of a period of four years from the filing date of the patent application or three years from the date of the grant of a patent, whichever of the two time limits expires later.

(8) A compulsory licence shall not be granted if the patent holder provides valid reasons for non-use or for insufficient use of a protected invention.

Compulsory Licence in the Public Interest
Article 60

(1) The compulsory licence under Article 57 of this Law may also be granted prior to the expiry of the time limit specified in Article 59, paragraph 7, if the exploitation of the protected invention is necessary for the fulfilment of public interest (the protection of public health and providing food, and the protection of public interests in the fields of vital significance for socio-economic and technological development) or if the protected invention is used in a manner considered to be contrary to the principles of free competition.

(2) In the event of public interest, the provisions of Article 57, paragraph 2 of this Law shall not apply. Nevertheless, the right-holder shall be notified of the compulsory licence grant proceedings as soon as possible.

(3) The decision on the request of an interested person for the grant of a compulsory licence in the public interest shall be taken by the Government, after it reviews the merits of each individual case.

(4) A compulsory licence in public interest may be terminated if the circumstances that have led to its grant cease to exist and are unlikely to recur.

(5) Upon substantiated request, the Government shall re-examine the further existence of circumstances under Article 4 above.

(6) If it is likely that the circumstances that led to distortion of the competition in the market re-occur, the Government may reject the termination of a compulsory licence in the public interest.

Remuneration for the Compulsory License in the Public Interest
Article 61

(1) The holder of a compulsory licence in the public interest shall be required to pay the patent holder remuneration referred to in Article 58 of the Law.

(2) If a compulsory license in public interest has been granted in order to rectify anti-competitive practice, when determining the total amount of remuneration, the need to remedy such practice shall be taken into account.

(3) The compulsory licence in the public interest shall be subject to the provisions of Article 59, paragraphs 1, 2, 3, and 5 and Article 60, paragraphs 4 and 5 of this Law.

(4) Notwithstanding the provisions of paragraph 3 of this Article, the provisions of Article 59, paragraph 3 of this Law shall not apply to the compulsory license in the public interest, if the license was issued for reasons to eliminate the circumstances that led to a distortion of the competition in the market.

Issuing Compulsory Licensing of Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems
Article 62

(1) The Government may issue a compulsory license for a patent and/or supplementary protection certificate necessary for the manufacture and sale of pharmaceutical products, when such products are intended for export to eligible importing countries in need of such products in order to address public health problems to any person who submits the request for the issuance of a compulsory license in accordance with the provisions of this Law.

(2) The request for a compulsory license under paragraph 1 of this Article may be filed if there is a patent or supplementary protection certificate in Montenegro covering the manufacture and sale for export to eligible importing countries with public health problems.

(3) When deciding on the issuance of a compulsory license what shall specifically be taken into consideration is the need to implement the Decision of the General Council of WTO of 30 June 2003 on the implementation of point 6 of the Doha Declaration on the TRIPS Agreement and Public Health of 14 November 2001 (hereinafter the Decision).

(4) The pharmaceutical product referred to in paragraph 1 of this Article is each product of the

pharmaceutical industry, including drugs for human use, which implies any substance or combination of substances intended for the treatment or prevention of disease in humans, as well as any substance or combination of substances which can be applied to human beings for the purpose of restoring, correcting or modifying physiological functions by inducing pharmacological, immunological or metabolic action, or to making a medical diagnosis, including active ingredients and diagnostic kits ex vivo.

(5) The importing country referred to in paragraph 1 of this Article is each country in which is exporting pharmaceutical product, which can be:
1) any least-developed country appearing as such in the United Nations list;
2) WTO member, other than the least developed member states under item 1 of this paragraph, that has made a notification to the Council for TRIPS of its intention to use the system as an importing country, whether it will use it as a whole or in a limited way;
3) a country that is not a member of the WTO, but the Committee for the Development Assistance of the Organization for Economic Cooperation and Development (hereinafter OECD) listed it on the list of low-income countries whose gross national product per capita of less than 745 dollars, and that has sent a notice to government of its intention to use the system as an importing country, whether it is used as a whole or in a limited way.

(6) Any WTO member state that has made a declaration to the WTO that it will not use the system as an importing WTO member is not an eligible importing country that meets the requirements of paragraph 5 of this Article.

Extension to Least Developed Countries and the Developing Countries which are not Members of the WTO
Article 63

(1) The importing country which is not a member of the WTO, which is the least-developed country i.e. developing country, and which meets the requirements of Article 62, paragraph 5 of this Law, must meet additional requirements, namely to:

1) in accordance with the Decision send due notice of intention to use the system as an importing country directly to the Government;
2) indicate in the notice referred to in item 1 of this paragraph that the system of the importing country shall be used to solve the problem of public health, not as a means to achieve the goals of industrial and trade policies, and to adopt the measures referred to in paragraph 4 of the Decision.

(2) The Government may, at the request of the right holder or upon its own initiative, terminate the compulsory license if the importing country fails to respect its obligations under paragraph 1, item 2 of this article.

An Application for the Issuance of a Compulsory License
Article 64

An application for the issuance of a compulsory license under Article 62, paragraph 1 of this law contains:

1) information on the requirements for the issuance of compulsory licenses in other countries for the same product with information on the quantities and the respective importing country;
2) information on request for the issuance of a compulsory license and his representative, if any;

3) non-proprietary name of the pharmaceutical product which the applicant intends to manufacture and sell under the compulsory license;
4) the quantity of the pharmaceutical product which the applicant intends to manufacture under a compulsory license;
5) the importing country or countries ;
6) evidence of prior negotiations with the right-holder, in accordance with the provisions of Article 66 of this Law;
7) evidence of a special request which specifies the amount of the required product, sent by the authorized representative of the importing country or non-governmental organization acting with the formal authorization of one or more importing countries or UN bodies and other international health organizations that work with formal authority of one or more of the importing countries.

Verification
Article 65

(1) In deciding on the request for the issuance of a compulsory license under Article 62, paragraph 1 of this Law, the Government is obliged to verify in particular:

1) whether each of the importing countries cited in the request, which is a member of the WTO, has made a notification to the WTO in accordance with the Decision, or whether each importing country cited in the request, which is not a member of the WTO, has sent a notice to the Government in accordance with the provisions of this Law in respect of each of the products of the request, without prejudice to the possibility that the least developed countries have under the Decision of the Council for TRIPS of 27 June 2002;

2) that the quantity of the product specified in the request does not exceed the quantity of which the importing country which is a member of the WTO informed the WTO or the quantity of which the importing country which is not a member of the WTO informed the Government;

3) that, taking into account other compulsory licenses issued in another country, the total quantity of the product authorized to be produced in relation to any importing country does not significantly exceed the quantity of which the importing country which is a member of the WTO informed the WTO, i.e. the Government if the importing country is not a member of the WTO.

(2) An applicant for a compulsory license shall specify in the request, or include the information referred to in paragraph 1 of this Article in the request.

Prior Negotiations
Article 66

(1) A compulsory license under Article 62, paragraph 1 of this Law may be issued only if the applicant proves that he has put reasonable effort, for a period of 30 days before applying for a compulsory license, to get approval of the right-holder for use of the invention on reasonable market terms and conditions.

(2) The provisions of paragraph 1 of this Article shall not apply in cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use under Article 31 item b of the TRIPS Agreement.

The Conditions under Which Compulsory License is Issued
Article 67

(1) A compulsory license under Article 62, paragraph 1 of this Law shall be issued as a non-exclusive, and its scope and duration, which must be stated in the decision on the issuance of compulsory license, are related solely to the reasons for which the license was issued.

(2) The quantity of product that, based on the license referred to in paragraph 1 of this Article, may be manufactured shall not exceed the quantity necessary to satisfy the needs of the importing country or importing countries cited in the request, taking into account the quantity of products manufactured under compulsory licenses issued in another country.

(3) The license conditions do not affect the method of distribution in the importing country.

(4) A compulsory license under paragraph 1 of this Article may be transferred only together with the manufacturing plant in which the invention for which it was issued is exploited.

(5) The decision referred to in paragraph 1 of this Article shall specify the actions the applicant is entitled to and which are necessary for the manufacture for export and distribution in the country or countries that are listed in the request.

(6) No product produced or imported under a compulsory license may be offered for sale or put on the market in any country which is not specified in the request, unless the importing country avails itself of point 6 sub-item (i) of the decision to export in co-party of regional trade agreement with which it shares a health problem for which the license was issued.

Additional Terms
Article 68

(1) The decision referred to in Article 67, paragraph 1 of this law shall order that products manufactured under a compulsory license shall be clearly identified through special labels and markings as products manufactured under a compulsory license.

(2) The products referred to in paragraph 1 of this Article shall be distinguished from products produced by the right-holder through special packaging and/or special colours or shapes, if possible, and if there is no significant impact on price.

(3) Packages or documents relating to the product must contain a note that the product was manufactured under a compulsory license, the name of the authority that issued the compulsory license and license number, and a clear note that the product is intended solely for export and distribution in the importing country or importing countries.

(4) Detailed information on the characteristics of the products referred to in paragraph 1 of this Article shall be made available to the administrative authority in charge of customs (hereinafter referred to as the Customs Authority) in Montenegro.

(5) Detailed information about the characteristics of the product referred to in paragraph 1 of this Article shall be made available to the customs authorities of the Member States of the European Union.

(6) The decision referred to in paragraph 1 of this Article orders the licensee, that prior to shipment to the importing country, post on its website, the address of which shall be communicated to the Government, the following information:

1) the quantities of the product and the importing countries to which the products are delivered under the compulsory license;
2) the distinguishing features in product labelling in accordance with paragraph 2 of this Article.

(7) If the product for which a compulsory license is issued in Montenegro is patented in the importing country cited in the request, this product can be exported only if the importing country has issued a compulsory license for the importation, sale and/or distribution of the product concerned.

Payment of Remuneration to the Rights-holder
Article 69

The decision referred to in Article 67, paragraph 1 of this Law shall order the applicant to pay remuneration to the rights-holder, as determined as follows:

1) in the cases of emergency or other circumstances of extreme urgency or in cases of public non-commercial use, in accordance with Article 31 (b) of the TRIPS Agreement, the remuneration shall be a maximum of 4% of the total price to be paid by the importing country or to be paid on its behalf;
2) In all other cases, the remuneration shall be determined taking into account the economic value of the authorization by the country of import or the importing country under the license, as well as humanitarian and non-commercial circumstances in connection with the issuance of the license.

Inspection of the Books and Documents of the Licensee
Article 70

(1) Upon the finality of the decision referred to in Article 67, paragraph 1 above, at the request of the right-holder for the preservation of evidence, the competent court may inspect the books and other business records of the licensee, for the sole purpose of verifying the fulfilment of all obligations of the decision determining the issuing of a compulsory license, in particular test data on the final destination of the product.

(2) In the business records and other documentation, the licensee is required to record the data on the export of products in the form of export declarations certified by the Customs, as well as the evidence of import.

Refusal of the request for the Issuance of a Compulsory License
Article 71

The Government shall refuse a request to issue a compulsory license under Article 62, paragraph 1 of this Law, which does not contain the elements necessary for a decision under Articles 64 and 65 of this Law, or if the conditions for issuing a compulsory license under this Law have not been met.

Termination or Modification of a Compulsory License
Article 72

(1) The right holder or licensee may submit a request to the Government to terminate the compulsory license if it finds that the other party fails to comply with a decision on issuing a compulsory license.

(2) Through the decision on the termination of the compulsory license, the Government shall determine the period within which the licensee shall, at his own expense, redirect all of the products that are in his ownership, care, control or authority to the importing countries with public health problems or otherwise remove them in consultation with rights-holder.

(3) If the importing country provides notice to the licensee that the amount of pharmaceutical products has become insufficient to meet its needs, the licensee may require modification of the license for the production and export of additional quantities of the product to the extent necessary to meet the needs of the importing country.

(4) The procedure according the requirement referred to in paragraph 3 of this Article is urgent.

(5) In deciding on application under paragraph 3 of this Article, the provisions of Article 65, paragraph 1 above shall not apply, if the additional quantity of the product requested does not exceed 25% of the originally approved amount.

Notifying the Council for TRIPS
Article 73

(1) The Government shall notify the Council for TRIPS of its final decisions on issuing compulsory licenses for export to countries with public health problems, the conditions under which they were issued, as well as of their termination and modification within 30 days of the final decision on issuing a compulsory license, or its termination and modification.

(2) The notice referred to in paragraph 1 of this Article shall include:

1) the name and address or the name and registered office of the licensee;
2) the product concerned;
3) the quantity to be supplied;
4) the importing country;
5) the duration of the license;
6) the website address referred to in Article 68, paragraph 6 of this Law.

Prohibition of importation
Article 74

(1) It shall be prohibited to import into Montenegro products produced under a compulsory license issued in accordance with the provisions of Articles 62 to 69 of this Law for free circulation, re-export, placing in the suspensive procedure and placing in a free zone or free warehouses.

(2) It shall be prohibited to import into EU Member States products produced under a compulsory license issued in accordance with the provisions of Articles 62 to 69 of this Law for free trade, re-export, placing in the suspensive procedure and placing in a free zone or free warehouses.

(3) The provisions of paragraphs 1 and 2 of this Article shall not apply in the case of re-export to the importing country listed in the request and identified on the packaging and documentation accompanying the product, or placing in the transit procedure or the customs warehousing or free zone or free warehouse for re-export to the importing countries.

Action by Customs Authorities
Article 75

(1) If there are sufficient grounds for suspecting that products manufactured under a compulsory license granted in accordance with the provisions of Articles 62 to 69 of this Law are imported into the territory of Montenegro, contrary to the prohibition under Article 74 of this Law, the customs authority shall detain products concerned for the time necessary to obtain a decision of the Government on the type of product being imported, but no longer than 10 working days.

(2) The customs authority may, if circumstances require so, extend the period referred to in paragraph 1 of this Article for a maximum of 10 working days.

(3) The right-holder and the manufacturer or exporter of the products concerned shall be informed without delay of the detention of the products referred to in paragraphs 1 and 2 of this Article and shall be given ample opportunity to supply the custom authority with information and evidence on the relevant products.

(4) If it is confirmed in the period under paragraphs 1 and 2 above, the violation of the compulsory license contrary to the prohibition of the Article 74 of this Law, custom authority shall ensure that the products are seized in accordance with customs regulations.

(5) The procedure of detention or seizure of the goods shall be carried out at the expense of the importer in accordance with customs regulations.

(6) The costs under paragraph 5 above shall be borne jointly with the importer by any other illicit importer.

(7) Where the customs authority founds that the import of products that have been detained in accordance with paragraphs 1 to 4 of this Article are not in violation of the prohibition of Article 74 of this Law and if customs regulations are respected, it shall put these products on the market in the territory of Montenegro.

(8) The customs authority shall notify the Government of the detention of the product in accordance with provisions of paragraphs 1 to 7 of this Article.

Exceptions to the Prohibition of Imports
Article 76

Articles 74 and 75 of this Law, shall not apply to import of small quantities of goods contained in travellers' personal luggage for personal and non-commercial use within the limits laid down in respect of relief from customs duty.

Compulsory Licence Granted to Plant Breeders
Article 77

(1) Where a plant breeder cannot obtain or exploit a right of protection of plant variety without infringing a prior patent concerning a biotechnological invention, he may file a request with the authority referred to in Article 57 paragraph 1 of this Law for a non-exclusive compulsory licence for

the use of the invention protected by the patent insofar as the licence is necessary for the exploitation of the protected plant variety.

(2) If such a compulsory licence referred to in paragraph 1 above is granted, the holder of the patent shall be entitled to a compulsory cross-licence to use the protected plant variety on reasonable terms.

(3) Where the holder of a patent concerning a biotechnological invention cannot exploit it without infringing a prior right of protection of plant variety, he may file a request with the authority under paragraph 1 above for a non-exclusive compulsory licence for the use of the plant variety protected by that right.

(4) If such a compulsory licence under paragraph 3 above is granted, the holder of the plant variety right shall be entitled to a compulsory cross-licence to use the protected biotechnological invention under reasonable terms.

(5) The compulsory license referred to in paragraphs 1 and 3 of this Article is subject to appropriate fee.

(6) The compulsory license under paragraphs 1 and 3 above shall be non-exclusive.

(7) An applicant for the compulsory licence referred to in paragraphs 1 and 3 of this Article must prove that:

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

(8) The compulsory licence referred to in paragraphs 1 and 3 of this Article may only be assigned with the company or the part thereof, where it is used.

3. Limitation of Rights
Limitation of Rights Concerning Biotechnological Material
Article 78

(1) The sale or other form of commercialisation of plant propagating material to a farmer by the holder of the patent or with his consent for agricultural use implies authorisation for the farmer to use the product of his harvest for further propagation or multiplication by him on his own farm, under conditions prescribed by the law on the protection of plant varieties, whereas products obtained thereby may not be used for commercial purposes.

(2) The sale or other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the holder of the patent or with his consent implies authorisation for the farmer to make the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of commercial reproduction of animals or reproduction materials.

Article 79

Administrative acts effected by the competent authorities pursuant to the provisions of Articles 57, 60, 62, 71, 72 and 77 of this Law, shall be final and an administrative dispute against such acts may be instituted before the competent court.

VII. DURATION AND TERMINATION OF A PATENT

1. Duration and Maintenance of Right

Patent Term
Article 80

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

Maintenance of Rights Conferred by a Patent Application and a Patent
Article 81

(1) Prescribed fees shall be payable for the maintenance of rights conferred by the application for a patent and by the patent granted.

(2) The fees under paragraph 1 of this Article shall be paid for the third year and each subsequent year. They shall be due on the anniversary of the date of filing of the application.

(3) Fees for maintaining the original application already due at the date on which the divisional application is filed, shall also be paid for the divisional application on its filing.

(4) Where an applicant or a patent holder fails to pay the fees referred to in paragraphs 1 and 3 of this Article, the fee may be validly paid within an additional time period of six months, provided a prescribed additional fee is paid at the same time**.**

(5) The proof of payment of the fees under paragraphs 1 and 3 above shall be submitted to the competent authority.

2. Termination of Rights

Non-Payment of Maintenance Fees
Article 82

Where an applicant or a patent holder fails to pay the prescribed fee for the maintenance of rights, such rights shall terminate on the day following the due date referred to in Article 81 Paragraph 2 above.

Surrender of Patent Rights
Article 83

(1) If the holder of a patent files a declaration in writing with the competent authority surrendering its right to a patent, such right shall lapse on the day following the filing of the declaration.

(2) Patent holder may surrender a patent in full or in part.

(3) If any right of a third party with respect to the patent has been entered in the Register, the holder of the patent cannot surrender its right without prior written consent from the party in whose name a licence, pledge or any other right has been entered.

(4) The surrender of a patent shall be listed in the Register of Patents and published in the Official Gazette.

Death or Dissolution of a Rights-Holder
Article 84

(1) A right shall cease to exist on the day of the death of a natural person or on the day of dissolution of a legal person who is the holder of the patent, unless it has been transferred to heirs or successors in rights.

(2) Paragraph 1 of this Article shall apply *mutatis mutandis* to patent applicants as well.

3. Restitution of Rights and Continuation of Proceedings

Article 85

(1) If, in spite of having taken all due care required by given circumstances, the applicant or the holder of a patent fails to perform any procedural act within the prescribed time limit, resulting in the loss of rights conferred by the patent application or the granted patent, the competent authority shall allow the restitution of such rights if the applicant or the holder of the patent:

1) files an application for the restitution of rights and completes the omitted act within the prescribed time limit;
2) states the reasons that have impeded the performance of the omitted act in due time.
3) pays the prescribed administrative fee and additional special procedural charges.

(2) The application for the restitution of rights shall be filed within three months from the date on which grounds for the omission ceased to exist or, if the applicant learned about the omission subsequently, from the date on which he found out about the omission, but not later than 12 months from the date of non-observance of the time limit.

(3) If the applicant or patent holder fails to meet the requirements of paragraph 1 of this Article, the competent authority shall invite him in writing within two months from the receipt of the invitation to rectify the identified deficiencies.

(4) If the applicant for a patent or the patent holder fails to remedy identified deficiencies within the period referred to in paragraph 3 of this Article, the competent authority shall reject a proposal for the restitution of rights.

(5) The competent authority cannot refuse the application referred to in paragraph 1 of this Article, fully or partially, without prior notification to the applicant specifying grounds for refusal and inviting him to comment in writing, within a period of 2 months.

(6) An application for the restitution of rights cannot be filed for non-observance of time limits for the performance of the following procedural acts:

1) the filing of the application for restitution of rights;
2) the filing of a request for the extension of a time limit; 3) the filing of the application for the Continuation of Proceedings;
4) the filing of the application for restoration, correction or amendment of priority right;
5) providing the translation of the patent application and the translation of the claims of the granted European patent;
6) the filing of the appeal, and
7) any procedural steps involving several parties in the proceedings before the competent authority.

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

(8) The content of the application and publication of information on application under Paragraph 1 item 1 above shall be regulated by a specific regulation.

Continuation of Proceedings
Article 86

(1) If the patent applicant or patent holder failed to take an action within the prescribed period pending before the competent authority, which results in the loss of the rights of the patent application or patent, the competent authority may allow the continued proceedings in relation to a patent application or patent, if the applicant:

1) files an application for the continuation of proceedings and performs all the omitted acts within the prescribed time limit, and
2) pays the administrative fee and additional special procedural charges.

(2) A request for the continuation of proceedings can be filed within two months from the date of receipt of the notification of the loss of rights by the competent authority.

(3) If the omitted act have not been performed within the time limit referred to in paragraph 2 of this Article, or if the prescribed administrative fees and special procedural charges are not paid, it shall be deemed that a request for continuation of the proceedings is not filed, of which the competent authority shall take appropriate note.
(4) An application for the continuation of proceedings cannot be filed for non-observance of time limits:

1) referred to in paragraph 2 of this Article;
2) for the filing of the application for restoration, correction or amendment of priority;
3) for the filing of the application for restitution of rights;
4) for the filing of an appeal; and
5) for taking any procedural steps involving several parties in the proceedings before the competent authority.
(5) The procedure related to the application under paragraph 1 of this Article, Article 85, paragraph 7 of the Law shall apply.

(6) The content of the application and publication of information on application referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

VIII. SUPPLEMENTARY PROTECTION CERTIFICATE

Supplementary Protection Certificate
Article 87

(1) If a basic patent has been granted for a product which is a component part of a medicinal product intended for humans or animals, or for a plant protection product, the placing on the market of which requires prior authorisation in accordance with special law, the competent authority may grant the Supplementary Protection Certificate (hereinafter referred to as: the certificate), under the conditions provided for by this Law**.**

(2) For the purposes of Articles 87 to 99 and Article 102 of this Law:

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

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

- protect plants or plant products against all harmful organisms or prevent the action of such organisms, if such substances or products are not otherwise defined by a special regulation;

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

-preserve plant products during storage, which is applied before or after harvest or picking except preservatives;

-destroy undesirable plants or
destroy parts of plants**,**check or prevent undesirable growth of plants;

3) basic patent is a patent determined by the holder of a patent in the application for the grant of a certificate, which protects a product as such, a process for obtaining a product or an application of the product;

4) product is the active ingredient or combination of active ingredients of a medicinal product or active substance as defined in point 6 of this paragraph or combination of active substances of plant protection products;

5) substances, in respect to the Supplementary Protection Certificates for plant protection products**,** are chemical elements and their compounds, naturall or manufactured, including impurity inevitably resulting from the manufacturing process;

6) active substances, in respect to the Supplementary Protection Certificates for plant protection products**,** are substances or micro-organisms including viruses, having general or specific action:

- against harmful organisms, or
- on plants, parts of plants or plant products;

7) preparations are mixtures or solutions composed of two or more substances, of which at least one is an active substance, intended for use as plant protection products;

8) plants are live plants and live parts of plants, including fresh fruit and seeds;

9) plant products are products in the unprocessed state or having undergone only simple preparation such as milling, drying or pressing, derived from plants, but excluding plants themselves from item 8 of this paragraph;

10) harmful organisms are pests of plants or plant products belonging to the animal or plant kingdom, and also viruses, bacteria and mycoplasmas and other pathogens;

11) application for an extension of the duration means an application for an extension of the duration of the certificate in accordance with Article 95 par. 3 and 4 of this Law.

Subject Matter of Protection and Legal Effects
Article 88

(1) Within the limits of the protection conferred by the basic patent, the protection conferred by the Certificate shall extend only to the product for human or animal use and plant protection product covered by the authorization for placing such products on market as medicine for human or animal use or plant protection product, for which license has been issued before the expiry of the certificate.

(2) The certificate shall confer to the holder the rights identical to those conferred by the basic patent and these rights shall be subject to the same limitations and obligations.

Entitlement to a Certificate
Article 89

(1) A certificate shall be granted to the holder of the basic patent covering the product or to his successor in right.

Conditions for Obtaining the Certificate
Article 90

Upon the application of the patent holder, a certificate shall be granted if the following conditions are fulfilled on the filing date of its application:
1) that the product is protected by a basic patent in force;
2) that an authorisation to place the product on the market has been granted in accordance with special regulations,
3) that the authorisation under item 2 of the paragraph is the first license for placing the product on the market, and
4) that the product as:
- a medicinal product for human or animal use has not already been the subject of the certificate;
- plant protection product has not already been the subject of the certificate.

Time Limit for the Filing an Application for Recognition or Extension of the Certificate
Article 91

(1) The application for a certificate shall be filed with the competent authority within 6 months from the date on which the authorization under Article 90 items 2 and 3 of the Law has been granted.

(2) Where the authorization has been granted before the grant of the basic patent, the application for the certificate shall be filed within six months from the date on which the information on granted patent has been published within the meaning Article 45, paragraph 3 of this Law.

(3) The application for an extension of the duration of the certificate recognized for protection of medicines for paediatric use may be submitted when filing the application for the grant of the certificate or during the process of deciding on the application for the grant of the certificate, provided that the requirements of Article 92 para. 3 and 4 of this Law have been met.

(4) The application for an extension of the duration of the certificate already granted for protection of medicines for paediatric use shall be filed not later than two years before it expires.

(5) The process of a grant of certificate shall be subject to payment of an administrative fee and special procedural charges.

(6) Information on the application for the grant of the certificate shall be entered in the Register of Supplementary Protection Certificates and published in the Official Gazette within six months from the date of filing.

Application for a Certificate
Article 92

(1) The application for a certificate shall contain:

1) A request for the grant of a certificate stating the following information:

- An explicit indication, that the grant of the certificate is required, or the extension of the duration of the certificate, granted for protection of medicines for paediatric use;
- The name and address of the applicant for natural person, or the name and registered office for legal entities;
- The name and address of the representative of a natural person, or the name and registered office for legal entities;
- The number of the granted basic patent, and
- The title of the invention.

2) The number and date of the first authorization to place the product on the market, or the number and date of the first authorization if the authorization filed is not the first authorization to place the product on the market.

(2) The application referred to in paragraph 1 of this Article, shall contain the following:

1) authorization for placing the product on the market referred to in Article 90 items 2 and 3 of this Law;

2) proof that contains information based on which the type of product and method of procedure can be determined, as well as a copy of the notice of the publication of the license data, provided that the license referred to in paragraph 3 of this Article is not the first license for placement of the product on the market, and

3) proof of payment of administrative fees and procedural charges for the grant of the certificate and the extension of the duration of the certificate granted for protection of medicines for paediatric use.

(3) If, in addition to the application for the grant of the certificate the application for the extension of the duration of the certificate granted for protection of medicines for paediatric use is submitted, it shall be accompanied by:

1) copy of the statement which states that the extension is completed in accordance with the agreed completed paediatric investigation plan of in accordance with special regulations, and

2) when appropriate, a copy of the authorization to place the product on the market shall be accompanied by proof of possession of authorization to place the product on the market of all other Member States, in accordance with a special regulation.

(4) If the proceedings on the application for the grant of the certificate are in progress, the application for extension of the duration of the certificate granted for protection of medicines for paediatric use must contain attachments referred to in paragraph 3 of this Article, and a reference to an application filed.

(5) The application for an extension of the duration of the certificate granted for protection of medicines for paediatric use must contain attachments referred to in paragraph 3 of this Article, and a reference to a copy of a recognized certificate.

(6) The application form and the application of paragraph 1, item 1 and paragraph 3 of this Article shall be submitted on a form whose content shall be regulated by the Ministry.

The Process of Formal Examination of an Application for a Certificate
Article 93

(1) In the examination of the application for the grant of a certificate the competent authority shall determine whether:

1) the application is filed within the period defined and in the prescribed form, and that it contains all the necessary information;

2) the payment of the prescribed administrative fee and charges;

3) the evidence prescribed under this Law are submitted with the application; and

4) the basic patent was in force at the time of filing.

(2) If the application for the grant of a certificate does not contain the elements specified in paragraph 1 of this Article, the competent authority shall invite the applicant, within two months of receipt of the invitation, to rectify the deficiencies.

(3) If the applicant within the period referred to in paragraph 2 of this Article fails to rectify the identified deficiencies, the competent authority shall reject the application for the grant of the certificate.

(4) If the applicant rectifies the deficiencies referred to in paragraph 2 of this Article, the competent authority shall conduct the test procedure requirements for recognition of certificates.

(5) The provisions of paragraphs 1 to 4 of this Article shall apply to the procedure for examining the application for an extension of the duration of the certificate recognized for protection of medicines for paediatric use.

The Process of Examining the Conditions for the Grant of the Certificate
Article 94

(1) In the process of examining the conditions for the grant of a certificate the competent authority checks whether on the date of filing the application the requirements of Article 90 of this Law have been met.

(2) If the competent authority in the proceedings referred to in paragraph 1 of this Article determines that the requirements of Article 90 of this Law have been met, it shall issue a decision on the grant of the certificate and specify its duration.

(3) The content of the certificate shall be regulated by a specific regulation of the Ministry.

(4) If the competent authority in the proceedings referred to in paragraph 1 of this Article determines that the conditions under Article 90 of this Law have not been met, it shall reject the application for the grant of the certificate.

(5) The provisions of paragraphs 1 to 4 of this Article shall apply to the procedure for examining the application for extension of the duration of the certificate recognized for protection of medicines for paediatric use.

Term of Protection
Article 95

(1) The certificate shall take effect immediately at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was filed and the date of the first authorization to place the product on the market, reduced by a period of five years.

(2) The duration of the certificate may not extend beyond five years of the date on which it takes effect.

(3) The duration of the certificate shall be extended only once by six months if an authorized medicinal product which is protected by a certificate or a patent that qualifies for the granting of a certificate has completed all the studies required in compliance with an agreed paediatric investigation plan, provided that the authorization was issued in all member states of the European Union.

(4) Paragraph 3 of this article shall not apply to medicinal products designated as orphan medicinal products and if the applicant applies for, and obtains, a one-year extension of the period of marketing protection for the medicinal product concerned, on the grounds that this new paediatric indication brings a significant clinical benefit in comparison with existing therapies.

(5) Extension of certificates recognized for protection of medicines for paediatric use is not possible to medicine with the applicable one-year extension of the ten-year period, as well as for medicines intended to treat serious and rare diseases, in accordance with special regulations.

Expiry of the Certificate
Article 96

The certificate shall lapse:

1) upon expiry of the period for which it was granted;

2) if the holder of the certificate surrenders it, in which case the certificate shall lapse on the day following the day on which a certified written declaration of surrender is furnished to the competent authority;

3) upon the withdrawal of the authorization for placement of the product on the market, in accordance with a special regulation,

4) if the administrative fee for the maintenance of the certificate has not been paid in accordance with Article 97 of this Law.

Maintenance of the Certificate
Article 97

(1) Prescribed fees shall be payable for the maintenance of the certificate due at the beginning of each year of the validity of the certificate.
(2) The fee referred to in paragraph 1 of this article refers to the period of one year commencing on the date and month of filing the application for the basic patent, starting from the date of termination of its validity.
(3) If the final period of the certificate is less than a year, the annual fee is paid for the entire year.
(4) Where an applicant or a patent holder fails to pay the fees referred to in paragraph 2 of this Article, the fee may be validly paid within an additional time period of six months, provided a prescribed additional fee is paid at the same time**.**
(5) The certificate holder shall pay an annual fee for the first time within 60 days from the date of the invitation of the competent authority.

Publication
Article 98

(1) Information on the application for the grant of the certificate, on the grant of the certificate, on the rejection or refusal of the application for the grant of a certificate, on the termination of the certificate, as well as information on extending the duration of the certificate for the protection of medicines for paediatric use or rejection of an application for an extension of the certificates, shall be published in the Official Gazette.

(2) The particulars referred to in paragraph 1 of this Article shall be regulated by a specific regulation of the Ministry.

Appropriate application
Article 99

The provisions of the Law on legal protection of inventions shall apply *mutatis mutandis* to the protection of certificates, unless otherwise provided for by the provision of articles 87 to 98 this Law.

IX. NULLIFICATION
1. Declaration of Nullity of a Patent

Grounds for the Declaration of Nullity
Article 100

(1) Any interested natural or legal person and the Attorney General may submit the request for the patent annulment in whole or in part, to the competent authority.
(2) At any time during the term of a patent, upon request of an interested person, the competent authority shall declare a patent null, if it establishes that:

1) the subject matter of protection is not an invention within the meaning of Articles 5 paragraph 5 of this Law;
2) the invention falls under the category of inventions excluded from the protection as defined in Article 6 and 7 of this Law;
3) the invention was not new within the meaning of Articles 8 and 9 on the date of the filing of the patent application or on the date of priority, or did not involve an inventive step pursuant Article 10 or was not industrially applicable pursuant to Article 11 of this Law;
4) the invention is not described in a manner sufficiently clear and complete as defined in Article 25 of this Law;
5) the subject-matter of the patent as published extends beyond the content of the application as filed, or if patent was granted on a divisional application, the subject matter of which extends beyond the basic application as filed, in which case only the specific part of the decision granting protection that extends beyond the permissible scope shall be annulled.

(3) If the grounds for nullification affect the patent only in part, the patent shall be limited by a corresponding amendment of the claims and annulled in part.
(4) In proceedings before the competent authority relating to the validity of the patent, the holder of the patent shall have the right to limit the patent by amending the claims. The patent thus limited shall form the basis for the proceedings.
(5) The competent authority shall conduct the procedure for patent annulment through one of the State Patent Bureaus of the state with which it has concluded a cooperation agreement.

Request for Nullification of a Patent
Article 101

(1) An application under Article 100, paragraph 1 above shall include details of the applicant and the holder of the patent, a statement requesting the declaration of the nullity of a patent, registration number of the patent to be invalidated, the reasons for seeking the nullification, necessary evidence and proof of payment of administrative fees and special procedural charges.
(2) If the application for the declaration of nullity of a patent is not drafted in accordance with paragraph 1 of this Article, the competent authority shall invite the applicant to remedy these deficiencies within two months from the receipt of the invitation.
(3) Should the applicant fail to remedy the deficiencies within the period referred to in paragraph 2 of this Article, the competent authority shall reject the application.
(4) The competent authority shall communicate the valid application to the patent holder and invite him to submit his response within 30 days of the receipt of the invitation.
(5) Where appropriate, the competent authority shall invite the patent holder to submit the description, patent claims and drawings in an amended form, provided that the subject of protection does not extend beyond the content of the patent as granted.
(6) Based on the results of the procedure conducted, the competent authority may declare the patent nullified, in whole or in part, or refuse the request for declaration of nullity of a patent.
(7) If the competent authority finds that a patent modified in the process of declaration of nullification may remain in force, before issuing the decision, it shall notify the parties to the

proceedings and invite them to, within the deadline under paragraph 2 of this Article, submit reasoned observations if they fail to agree with the text in which the competent authority intends to maintain the patent in force.
(8) Should the parties agree with the text on the basis of which the authority intends to maintain the patent in force or fail to submit the required documentation referred to in paragraph 5 of this Article, the competent authority shall invite the patent holder to pay an administrative fee and special charges for printing new patent specification within 60 days from the day of the receipt of the invitation.
(9) Should the administrative fee and special charges under paragraph 8 of this Article not be paid, the competent authority shall nullify the patent within the scope of the application.
(10) The Ministry shall regulate the particulars of the declaration of nullity of a patent, which the competent authority shall publish in the Official Gazette.

2. Nullification of the Certificate

Grounds for Nullification
Article 102

(1) A certificate shall be nullified:

1) if it was granted contrary to the conditions set out by this Law;
2) if the basic patent covering the subject matter protected by the certificate terminated within the meaning of Articles 82, 83 and 84 of this Law;
3) if the basic patent covering the subject matter protected by the certificate has been annulled, in whole or partially, to the extent that the product for which the certificate was granted is no longer protected by the patent claims or, after the basic patent has expired, if justifiable grounds for nullification exist.

(2) An extension of the duration of the certificate recognized for protection of medicines for paediatric use may be nullified if it was granted contrary to the provision of Article 95 paragraph 3 and 4 of this Law.

(3) Provisions of this Law applicable to nullification of a patent shall apply *mutatis mutandis* to the nullification of a certificate and an extension of the duration of the certificate recognized for protection of medicines for paediatric use.

X. PROTECTION OF RIGHTS UNDER THE CIVIL LAW

An Action to Establish the Right to the Patent
Article 103

(1) If, contrary to the provisions of Article 12 of this Law, a patent application has been filed by an unauthorized person or the patent was granted and entered in the Register of Patents in the name of an unauthorized person, the inventor, his successor in rights or employer and his legal successor within the meaning of this Law, shall be entitled to file an action and instigate a litigation requesting the court to establish his right to the protection of a given invention in place of or, as joint holder, together with the person who has already filed an application for the invention.

(2) The action shall be filed against the person who has been entered into the Register of Patent Applications or into the Register of Patents without authorization as the applicant of a patent application or the holder of a patent in the.
(3) The action referred to in paragraph 1 of this Article may be filed within three years from the date of publication of the patent in the Official Gazette.
(4) If the plaintiff proves that an unauthorized person acted intentionally, the action may be submitted for the entire duration of patent protection.

Obligations of the Court, the Competent Authorities, Prosecutors and Interested Parties Regarding the Action for Establishing the Patent Rights
Article 104

(1) The court shall notice the competent authority of the action under Article 103, paragraph 1 of this Law without delay, for the purpose of registration of this fact in the Register of Patent Applications and the Register of Patents.
(2) The plaintiff shall, upon the invitation of the competent authority, pay an administrative fee for the registration of the facts referred to in paragraph 1 of this Article in the Register of Patent Applications and the Register of Patents.
(3) The Court shall deliver the final judgment on the action under Article 103, paragraph 1 of this Law to the competent authority and the parties, without delay.
(4) If the Plaintiff was successful in his action under Article 103, paragraph 1 of this Law, the competent authority shall enter the change in the Register of Patent Applications and Register of Patents and publish it in the Official Gazette.
(5) The Plaintiff is obliged, upon the invitation of the competent authority, to pay the administrative fee and the procedural charges for the registration of the change referred to in paragraph 4 of this Article in the Register of Patent Applications and Register of Patents and of the publication.
(6) In the event referred to in paragraphs 3 and 4 of this Article, licenses and other rights in favour of third persons entered in the Register of Patent Applications and Register of Patents shall cease from the date of registration of changes in the Register of Patent Applications and Register of Patents.
(7) The competent authority shall immediately inform in writing the licensee and third parties on the termination of the license and other rights referred to in paragraph 6 of this Article.
(8) The licensee and third parties, who, in good faith, exercised their right or done serious preparations for the use of their rights may, within 3 months of receipt of the notification referred to in paragraph 7 of this Article require of the new applicant for a patent or patent holder, acquiring of non-exclusive license or other right under market conditions, if it is not contrary to its legitimate interests.
(9) The detailed content of the data to be entered in the Register of Patent Applications and Register of Patents and published in accordance with paragraphs 1 and 4 of this Article shall be determined by a regulation of the Ministry.

An Action for the Indication (recognition) of the Inventor
Article 105

(1) An inventor shall have the right to file an action and request the court to establish his inventorship and order the entry of his name in the patent application and in other relevant documents and registers kept by the competent authority in accordance with the provisions of this Law, if in contravention to Article 13 of the Law, he has not been indicated, or other person has been indicated as the inventor in the application for a patent.

(2) The action referred to in paragraph 1 of this Article shall be brought against a person who is in contravention of Article 13 of this Law indicated as the inventor.
(3) There shall be no time limit for filing the action under paragraph 1 of this Article.

(4) In the event of the death of the inventor, his heirs shall be entitled to file an action referred to in paragraph 1 of this Article.

Obligation of the Court, the Competent Authorities, Prosecutors and Interested Parties Regarding the Action for the Indication of the Inventor
Article 106

(1) The Court shall send a notice of the action under Article 105, paragraph 1 of this Law without delay to the competent authority, for the purpose of registration of this fact in the Register of Patent Applications and Register of Patents.
(2) The Plaintiff shall, upon the invitation of the competent authority pay an administrative fee for the registration of the facts referred to in paragraph 1 of this Article in the Register of Patent Applications and Register of Patents.
(3) The Court shall deliver the final judgment on the action under Article 105, paragraph 1 of this Law to the competent authority and the parties, without delay.
(4) If the Plaintiff was successful in his action under Article 105, paragraph 1 of this Law, the competent authority shall change the inventors entered in the Register of Patent Applications and Register of Patents and publish the change in the Official Gazette.
(5) The Plaintiff is obliged upon the invitation of the competent authority, to pay the administrative fee as well as the procedural charges for the registration of the change referred to in paragraph 4 of this Article in the Register of Patent Applications and Register of Patents and of the publication.
(6) The detailed content of the data to be entered in the Register of Patent Applications and Register of Patents and published in accordance with paragraphs 1 and 4 of this Article shall be determined by the regulation of the Ministry.

An Action for Determination and Termination of Infringement
Article 107

(1) The patent holder shall be entitled to instigate an action against any person infringing his patent by performing unauthorized any of the acts referred to in Articles 49 and 50 of this Law.
(2) The patent holder can sue the persons referred to in paragraph 1 of this Article to demand termination of infringement and the prohibition of such or similar infringement in the future, subject to the payment of fines.
(3) The patent holder may file an action against a person who has by performing an action caused a serious threat that his patent might be infringed within the meaning of Articles 49 and 50, for a termination of that action and the prohibition of patent infringement, subject to the payment of fines.
(4) The actions referred to in paragraphs 1, 2 and 3 of this Article may be placed against a person who in the course of its business activities provides services that are used in operations in breach of the patent or threatening with patent infringement.
(5) Actions referred to in paragraphs 1 and 2 of this Article may be filed within five years from the date of patent infringement.
(6) If the Plaintiff proves that the person referred to in paragraph 1 of this Article acted intentionally, actions referred to in paragraphs 1 and 2 of this Article may be submitted for the entire duration of patent protection.
(7) The action referred to in paragraph 3 of this Article may be filed within five years from the date the action threatening the patent infringement has been taken.

An Action for the Seizure and Destruction of Objects
Article 108

(1) Where a person performing without the authorization any of the activities referred to in Articles 49 and 50 of this Law infringed the patent, the patent holder shall be entitled to instigate an action requesting that the products infringing the patent be removed from the market, seized or destroyed
(2) The patent holder may require uptake of measures referred to in paragraph 1 of this Article, against the tools, equipment and other items mainly used for manufacturing or creating a product that infringes the patent.
(3) The Court shall order the measures referred to in paragraphs 1 and 2 of this Article, at the expense of the defendant, unless there are special reasons not to decide so.
(4) In determining the measures referred to in paragraphs 1 and 2 of this Article, the court shall take into account all the circumstances of the case, and pay particular attention that they are proportionate to the nature and intensity of the infringement, as well as the interests of third parties.
(5) Actions under paragraphs 1 and 2 of this Article may be filed within five years from the date of infringement.

Claim for Damages, Compensation and Restitution of Acquired Right without Merit
Article 109

(1) The patent holder shall be entitled to take an action claiming damages from the person who by unauthorized performing of any of the acts referred to in Articles 49 and 50 of this law has caused him damage, under the general rules on damages determined by the law governing contractual relations.

(2) Instead of the action claiming damages referred to in paragraph 1 of this Article, given the circumstances, and if the defendant acted without authorization, the patent holder can take an action claiming the payment of an amount, which, under the circumstances, could have been required on the basis of a license agreement, if concluded.

(3) If an infringement of rights was committed intentionally or out of gross negligence, the plaintiff may claim triple amount of license remuneration under paragraph 2 above.

(4) Where a person without having grounds for it in any legal transaction or the law by performing any of the activities referred to in Articles 49 and 50 of this Law infringed the patent and thus gained benefit, the patent holder may, regardless of the guilt of the defendant, claim the return or compensation of such benefit under the general rules of benefit acquired without merit in accordance with the law governing contractual relations.

(5) The actions under paragraphs 1 and 4 of this Article may be filed within the time limits prescribed by the law governing contractual relations.

(6) The actions under paragraphs 2 and 3 of this Article may be filed within three years from the date the claimant became aware of the violation and the offender, and not later than 5 years from the date the violation occurred.

The Burden of Proof
Article 110

In the civil proceedings conducted for the infringement of the patent -protected process for the production of new substances, it shall be considered that every equal substance or a substance of equal composition is obtained by a protected process, until proven to the contrary by the person producing such a substance or composition.

The Request for Publication of the Judgment
Article 111

(1) In the cases under Articles 103 to 109 of this Law, the patent holder may take an action claiming that a final judgment partially or fully adopting the claim shall be published in printed or electronic media at the expense of the defendant.

(2) The court shall, within the limits of the claim, decide in which media the judgment from paragraph 1 of this Article shall be published, as well as the scope of the publication (in whole or in part) of the judgment.

(3) If the court determines that only a portion of the judgment shall be published, it shall order, within the limits of the claim, that at least wording and where necessary part of the judgment from which the type of injury and the person who has committed a violation of the patent is visible, shall be published.

(4) The action referred to in paragraph 1 of this Article shall be filed within five years of patent infringement.

(5) If the plaintiff proves that the defendant acted intentionally, the claim referred to in paragraph 1 of this Article may be submitted for the entire duration of patent protection.

Infringement of Patent in respect of which a Declaratory Decision in not Issued
Article 112

(1) Where the holder of a patent initiated litigation proceedings for the protection of the patent infringement in respect of which the competent authority has not issued a declaratory decision under Article 48 of this Law, the court shall suspend the proceedings until the issuance of such a decision.

(2) In the case of patent infringement in respect of which the competent authority has not issued a declaratory decision, during the interval between the granting of the patent and the issuance of the declaratory decision under Article 48 of this Law, the court shall order a person who caused the damage to the patent holder by unauthorized actions referred to in Articles 49 and 50 of this Law, to pay compensation taking into account all the circumstances of the case.

Provisional Measures due to the Patent Infringement
Section 113

(1) On request of the person who proves reasonable probability that his right arising from the patent is infringed or threatened to be infringed, the court may order the provisional measure to suspend or prevent the infringement, and order:

1) opponent of protection to cease and desist from doing the act that infringes the patent, and the court may also issue the order against intermediaries whose services are used by third parties to infringe patent;

2) temporarily seizure or removal from the market of the goods that infringe patent or tools, equipment and other items which are mainly used for manufacturing or creating a product that infringes the patent.

(2) At the request of the holder of a patent who proves reasonable probability that the patent infringement has occurred when conducting business activities in order to gain economic or financial benefits, and that, because of such injury irreparable damage has been caused, in addition to the provisional measures referred to in paragraph 1 of this Article, the court may order:

1) seizure of movable and immovable property owned by opponents of protection that are not directly related to the infringement;

2) the prohibition on disposal of assets from financial institutions and disposal of other assets of the opponent of the protection.

(3) For the determination and enforcement of provisional measures referred to in paragraph 2 of this Article, the court may order the opponent of protection or other person who disposes of banking, financial and other economic data, to deliver such information, or to provide access to other necessary information and documentation.

(4) The court shall preserve the confidentiality of information and documents referred to in paragraph 3 of this Article, and prohibit their misuse.

Determination of Provisional Measures without Notice
Article 114

(1) The court may order provisional measures under Article 113, paragraph 1 of this Law without notifying the opponent of protection, provided that the patent holder gives reasonable grounds that in the case of notification to the opponent of protection the provisional measure will be ineffective or that there is danger of irreparable harm.

(2) The court may order provisional measures under Article 113, paragraph 2 of this Law, without notifying the opponent of protection, provided that the patent holder proves reasonable probability that the provisional measure will be ineffective, or that due to the particularly difficult circumstances of infringement such measure shall be necessary.

(3) In the cases referred to in paragraphs 1 and 2 of this Article, the court shall issue a decision on a provisional measure to opponent of protection immediately after its execution.

(4) If a claim has not been filed, the time limit for filing a claim in order to justify provisional measures cannot be longer than 20 working days or 31 calendar days from the date of submission of the provisional measure to the patent holder, whichever is later.

(5) The provisions of Article 113 of this Law and this Article shall not exclude the possibility of

ordering the provisional measures in accordance with the other provisions of this law and the law governing enforcement proceedings.

Provisional Measures for the Preservation of Evidence
Article 115

(1) On the request of the holder of a patent who proves reasonable probability that his patent has been infringed or is threatened with imminent patent infringement, the court may order provisional measure to preserve the evidence, and in particular order:

1) opponents of protection to develop a detailed description of the goods for which the patent holder gives credible evidence of patent infringement, with or without taking the samples of these objects;
2) seizure of the goods for which the patent holder makes it credible that it infringes the patent;
3) seizure of products, tools, equipment and other items that were used for the production and distribution of objects for which the patent holder makes it credible that they infringe the patent, as well as business documents that refer to it.

(2) The court may order provisional measures referred to in paragraph 1 of this Article in emergency situations without informing opponents of protection if the patent holder makes it probable that in the case of notification to the opponents of protection the provisional measures will be ineffective or that the danger of irreparable harm threatens.

(3) In the cases referred to in paragraph 2 of this Article, the court shall issue a decision on provisional measure to the opponent of protection immediately after its execution.

(4) If a claim is not filed, the time limit for filing a claim in order to justify provisional measures cannot be longer than 20 working days or 31 calendar days from the date of submission of the decision on provisional measures to the patent holder, with the deadline for filing a claim being the one which expires later.

(5) The provisions of paragraphs 1 to 4 of this Article shall not exclude the possibility of ordering the provisional measures in accordance with the provisions of this Law and the law governing enforcement proceedings, as well as measures for securing evidence in accordance with the law governing civil proceedings.

Obtaining Evidence in Civil Proceedings
Article 116

(1) When a party in a civil action for infringement of patent in accordance with the provisions of Articles 103 to 120 of this Law calls for specific evidence, and claims that the patent is in the possession of a party or under its control, the court shall invite that party to submit such evidence within a specified period.

(2) Where the patent holder as a plaintiff in the lawsuit to protect patent from infringement in accordance with the provisions of Articles 103 to 120 of this Law proves reasonable probability of patent infringement when conducting business activities in order to obtain economic or financial benefits, the court shall at his request invite the defendant to submit within specified time the

banking, finance or similar business documents, and other evidence in his possession or under his control.

(3) When a party invited to submit evidence under paragraphs 1 and 2 of this Article denies having evidence in its possession or control, the court may order the preservation of evidence to establish the facts.

(4) The provisions to deny the testimony of the law governing civil proceedings shall apply *mutadis mutandis* with respect to the rights of the parties to withhold submission of evidence.

(5) The court, taking in consideration all circumstances, at own free will, shall decide on the importance of the fact that the party in possession of evidence or in control of the evidence, refuses to act upon the decision of the court ordering it to submit the proof or opposite to the belief of the court denies to have evidence in its possession or control.

The Obligation to Provide Information
Article 117

(1) The holder of a patent which has launched a civil action for the protection of the patent from infringement may require the submission of data on the origin and distribution channels of the product which infringes the patent.

(2) The request referred to in paragraph 1 may be made against:

1) the defendant in a civil action under paragraph 1 of this Article;
2) a person who in the course of its commercial activities has products for which the rights-holder proves reasonable probability that they infringe the patent;
3) a person who in the course of its business activities provides services of which the rights-holder proves reasonable probability to infringe the patent;
4) a person who, in the course of his business activities provides services that are used in operations for which rights-holder proves reasonable probability to infringe the paten;
5) a person who was, by the persons referred to in items 1 to 4 of this paragraph, designated as the person involved in the production or distribution of products or rendering of services for which the rights-holder proves reasonable probability that they infringe the patent.

(3) The request referred to in paragraph 1 of this Article may be filed as a claim in a lawsuit, complaint or request for provisional measure.

(4) The request under paragraph 1 of this Article shall in particular contain the following information:
1) the name or names and addresses of manufacturers and distributors, suppliers and other previous holders of the goods, as well as wholesalers and retailers where the goods are intended;
2) the quantities produced, manufactured, delivered, received or ordered, as well as the prices obtained for these products.

(5) The person against whom the request is made under paragraph 1 of this Article may refuse to provide such information as, on the basis of the provisions of the law governing civil proceedings, he may refuse to testify.

(6) If a person referred to in paragraph 5 above shall refuse to provide data without justified reason, he shall be liable for damages in accordance with the provisions of the law governing contractual relations.

(7) The provisions of this Article shall not preclude the application of Articles 115 and 116 of this Law, the regulations on the use of classified information in civil and criminal procedures, rules governing liability for misuse of the right to obtain information, and enforcement of regulations governing the processing and protection of personal data.

Alternative Measures
Article 118

At the request of the defendant in civil proceedings under Articles 103 to 120 of this Law, who proves that he acted intentionally, the court may, instead of measures demanded by the patent holder determine the payment of a fee to the patent holder, if the execution of the measures against the defendant would cause disproportionate harm and if pecuniary compensation, considering all the circumstances of the case, would be considered reasonable and satisfactory compensation for patent infringement.

Persons Entitled to Apply for Protection of the Rights
Article 119

In addition to the patent holder, or a person authorized in accordance with the general regulations on representation, protection of patent from infringement in accordance with the provisions of Articles 103 to 120 of this Law may be required by the holder of an exclusive license to the extent to which it obtained the right to exploit the patent, as well as the professional organization for the protection of the rights which has the right to represent holders of intellectual property rights in accordance with the law.

Urgency and Application of the Provisions of Other Laws
Article 120

(1) Proceedings under Articles 103 to 120 of this Law are urgent.
(2) The provisions of the law governing civil, or enforcement proceedings shall apply in proceedings for violation of Articles 102 to 120 of this Law in all matters not regulated by this Law.
(3) The costs of proceedings under Articles 103 to 120 of this Law shall be reimbursable in accordance with the provisions of the law governing litigation or enforcement proceedings.

XI. TRANSFER OF RIGHTS

License Agreement and Assignment of Rights
Article 121

(1) The holder of a patent or patent application may assign the right to exploit a patent or a patent application by a license agreement.
(2) The holder of a patent or patent applicant can, by contract, transfer a patent or the rights under a patent application in whole or in part.
(3) Agreements under paragraphs 1 and 2 above are valid only if made in writing.

(4) The conclusion of a license agreement or agreement for the transfer of a joint patent requires the consent of all patent holders or the applicants of the patent.
(5) Agreement under paragraphs 1 and 2 of this Article which is not registered in the appropriate Register shall have no legal effect against third parties.
(6) The provisions of the law governing contractual relations shall apply to the issues relating to agreements under paragraphs 1 and 2 of this Article not regulated by this Law.
(7) The provisions of this Article shall apply to the conclusion of the license agreements and agreements on the transfer of the rights from the supplementary protection certificate.

Pledge, Levy of Execution and the Bankruptcy
Article 122

(1) The patent, or the right conferred by a patent application, as well as the right conferred by a supplementary protection certificate may be the subject of a pledge on the basis of a pledge contract, and court executing decision.

(2) At the request of pledgee or pledger, the pledge shall be entered in the Register of Patent Applications, or Register of Patents or the Register of Supplementary Protection Certificates.

(3) The court conducting the execution shall without delay inform the competent authority of the initiated execution of the patent for the purpose of the entry in the register referred to in paragraph 2 of this Article.

(4) Entry of the execution in the Register referred to in paragraph 2 of this Article shall be paid by the pledgee.

(5) Where the patent, the right conferred by a patent application, or supplementary protection certificate forms part of the bankruptcy estate, the competent court shall inform the competent authority of the bankruptcy proceedings for the bankruptcy for the entry into the Register referred to in paragraph 2 of this Article.

Entry into the registries
Article 123

(1) The rights conferred by a patent application, patent and supplementary protection certificate can be transferred to another person or may be the subject of a license agreement or pledge, subject to bankruptcy, etc.

(2) On request of a party, the competent authority shall take a decision on registration of changes in the Register of Patent Applications and Register of Patents which occurred after the filing of the patent application or after the grant of the patent.

(3) The changes referred to in paragraph 2 of this Article shall be published in the Official Gazette of the competent authority.

(4) The procedure for registration in the Register of Patent Applications or the Register of Patents of contracts referred to in paragraph 1 of this Article, as well as other changes relating to the applicant,

or the patent holder, their publication in the official gazette, and the payment of fees and reimbursement of specific costs of the proceedings shall be regulated by the regulation of the Ministry.

XII. SECRET INVENTIONS

Secret Patent Application
Article 124

(1) An application filed by a national or a person with residing address in Montenegro shall be considered to be secret if it concerns an invention of significance for the defence and security of Montenegro.

(2) Applications referred to in paragraph 1 of this Article shall be filed with the authority competent for national defence.

Procedure in Respect of the Application
Article 125

(1) If the state administrative authority competent for national defence establishes in its examination of an application filed that it has ceased to have elements of secrecy, it shall forward the application to the competent authority.

(2) Such application submitted to the competent authority under Article 1 above, shall retain the filing date accorded to it by the state administrative authority competent for national defence.

Procedure Following the Grant of a Patent
Article 126

(1) If the state administrative authority competent for national defence establishes, subsequent to the grant of a patent for a secret invention, that the invention has ceased to have elements of secrecy, it shall forward the file concerning the invention to the competent authority.

(2) In the case referred to under paragraph 1 above the competent authority shall enter the patent in the appropriate Register, publish the information on the granted right and issue an appropriate certificate to the rights-holder, in accordance with the provisions of this Law.

Right to Exploitation
Article 127

(1) The state administrative authority competent for national defence or state administrative authority competent for internal affairs shall have the exclusive right to use and dispose of a secret invention.

(2) The inventor shall be entitled to a single lump sum compensation for the protected secret invention, regardless of whether or not the invention is used.

Publication of a Secret Invention and Its Protection Abroad

Article 128

(1) A secret invention shall not be published.

(2) A natural person with residence or a legal entity with the registered office in Montenegro may claim protection for a secret invention abroad only subject to approval of the state administrative authority competent for national defence.

XIII. INVENTIONS MADE IN THE COURSE OF EMPLOYMENT

Definition of the Invention made in the Course of Employment
Article 129

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

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

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

3) an invention made by an employee within a period of one year from the termination of his employment, which would have constituted an invention under items 1 and 2 of this Article had it been made in the course of employment.

Right to Protection
Article 130

(1) The right to protection of an invention pursuant to Article 129, paragraph 1 shall belong to the employer, unless otherwise provided by contract between the inventor and employer.

(2) If an invention made in the course of employment has been protected in the name of the employer, the inventor shall have moral rights in relation with this invention and shall be entitled to remuneration subject to the results of the commercial use of the invention.

(3) The right to remuneration referred to in paragraph 2 of this Article shall belong to the inventor even if the employer assigns his rights or grants a licence for the use of the invention to a third party.

Additional Rights
Article 131

(1) The right to protection of an invention under Article 129, paragraph 2, shall belong to the employee, whereas the employer shall be entitled to commercial use of the invention and shall be obligated to pay remuneration to the employee in accordance with a contract concluded with respect to specific invention.

(2) Notwithstanding paragraph 1 of this Article, if the invention includes any trade secret of the employer, such employer shall be entitled to prohibit the disclosure of the invention, but shall be

required to pay remuneration to the employee. The employee shall not be entitled to apply for the protection of such invention.

Remuneration to an Employee
Article 132

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

(2) The court shall decide in case of a dispute regarding the amount, method and time of payment of the remuneration, upon request of the inventor or employer, taking into accounts the extent to which the invention contributed to the increase of profits or savings within the company.

(3) The employee may not renounce his right to remuneration in advance.

Action by the employee
Article 133

(1) An inventor who comes up with an invention in the course of employment shall submit a written report to the employer immediately upon the creation of the invention, informing him thereof.

(2) If the report referred to in paragraph 1 of this Article does not contain required elements, the employer shall determine the appropriate time limit for the employee to remedy the deficiencies therein.

(3) The content of the report referred to in paragraph 1 of this Law shall be regulated by specific regulation.

Notice
Article 134

(1) Within a period of two months from the day of the receipt of the valid report referred to in Article 133 of this Law, the employer shall be required to communicate to the employee in writing whether he considers the invention to be an invention within the meaning of Article 129, items 1 and 2 of this Law.

(2) If the employee fails to deliver the report within the meaning of Article 133 of this Law to the employer, the time limit under paragraph 1 of this Article shall run from the date on which the employer has obtained information of the invention.

Application
Article 135

(1) When dealing with an invention referred to in Article 192, item 1 of this Law, the employer shall be required to inform the employee in the communication referred to in Article 134 of this Law whether he shall file an application.

(2) If the employer states, pursuant to paragraph 1 of this Article, that he shall file an application, he shall be required to inform the inventor of the content of the application prior to its filing, of all the actions taken by the competent authority in the proceedings upon the application and of the content of all documents filed with the competent authority prior to their filing.

(3) The inventor shall be required to provide the employer with all information needed in the procedure for the protection of the invention.

(4) If the employer does not wish to file an application for a patent and finds that the invention contains no trade secrets within the meaning of Article 131 of this Law, he shall communicate this in writing, within the time limit referred to Article 134 of this Law, to the inventor who shall be entitled to protect such invention in his own name.

(5) If the employer decides to withdraw a filed application, he shall communicate this to the inventor in writing and shall assign to him rights conferred by the application.

(6) The provisions of Articles 131 and 138 of this Law shall apply mutadis mutandis with respect to the economic exploitation of inventions from paragraphs 4 and 5 of this Article.

The Rights of the Employee in the Event of the Failure to Observe the Time Limit
Article 136

In the event of failure to observe the time limit referred to in Article 134 of this Law, the inventor shall be entitled to protect the invention in his own name.

Employee's commitments
Article 137

(1) An employee who creates an invention referred to Article 129, item 2 of this Law cannot file an application with the competent authority before he receives the communication referred to in Article 134 of this Law from the employer or before the expiry of the time limit for such communication.

(2) If the employee referred to in paragraph 1 of this Article decides to withdraw an application filed, he shall communicate this to the employer in writing and shall assign to him rights conferred by the application.

Employer's notice
Article 138

(1) With regard to the use of an invention protected in the name of the inventor, the employer shall be required to state, within a period of six months from the receipt of the valid report on the invention under Article 133 of this Law, whether he is interested in obtaining an exclusive licence from the inventor.

(2) Until the expiry of the time limit referred to in paragraph 1 of this Article, the inventor shall not be entitled to assign the right to the invention to any third party or to grant a licence for the use of the invention.

Use of Invention
Article 139

The use of an invention made in the course of employment cannot start before the issue of remuneration under Article 132 of this Law is settled or before the court takes a final decision.

Confidentiality Requirement
Article 140

(1) The employer and inventor shall maintain the confidentiality of an invention made within the course of employment until the publication of the patent application or until the invention becomes available for public in some other manner.

(2) If the employer displays justifiable interest for the invention not being published, the obligation of the employee to keep it confidential shall continue upon the termination of his employment with that employer.

XIV. THE EUROPEAN PATENT APPLICATION AND THE EUROPEAN PATENT

Extension of the Effect of the European Patent
Article 141

(1) European patent application and a European patent extended to Montenegro shall, under the conditions established by this Law, have the same effect and be subject to the same conditions as a national patent application and a national patent.

(2) In terms of paragraph 1 above and Article 142 to Article 150 and Article 153 above:

1) *"*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 Patent Cooperation Treaty (hereinafter referred to as the PCT), for which the European Patent Office (hereinafter referred to as the EPO) acts as a designated or elected office and in which Montenegro is designated;

2) "Extended European patent" shall mean a patent granted by the EPO upon European patent application for which extension to Montenegro has been requested;

3) "National patent application" shall mean a patent application filed under this Law with the competent authority;

4) "National patent" shall mean a patent granted upon a national patent application.

Request for Extension
Article 142

(1) European patent application and a European patent granted upon such application shall be extended to Montenegro at the request of the applicant.

(2) The request for extension under paragraph 1 above shall be deemed to be filed with any European patent application filed on or after the date on which the Agreement between the

Government of Montenegro and the European Patent Organisation on Extension of European Patents (hereinafter: "Extension Agreement") enters into force.

(2) Every request for extension shall be published in the *Official Gazette* by the competent authority, as soon as possible after it has been informed by the EPO on the payment of the prescribed extension fee, but not before the expiry of 18 months from the filing date or, if priority has been claimed, from the earliest priority date.

(4) A request for extension may be withdrawn at any time.

(5) The request shall be deemed to be withdrawn if the prescribed extension fee has not been paid in due time or if the European patent application has been ultimately refused, withdrawn or deemed to be withdrawn.

(6) The competent authority shall publish a notice in the Official Gazette concerning these changes under paragraphs 4 and 5, as soon as possible, if the request for extension has already been published in accordance with paragraph 3 of this Article.

(7) The content of the publication under paragraphs 3 to 6 of this Article shall be regulated by a specific regulation of the Ministry.

Extension Fee
Article 143

(1) The extension fee under Article 142 of this Law shall be paid to the EPO within six months of the date on which the European Patent Bulletin mentions the publication of the European search report, or, where applicable, in the period of execution of the actions for the entry into the European phase of the international application under Article 141, Paragraph 2, Item 1 of this Law.

(2) The extension fee may also be validly paid within an additional period of two months of expiry of the period referred to in paragraph 1 above, provided that a 50% surcharge is paid within this additional period.

(3) EPO Rules relating to fees under paragraph 1 above shall apply *mutatis mutandis* to the payment of extension fees.

(4) Validly paid extension fees under paragraph 3 above cannot be refunded.

Effects of European Patent Applications
Article 144

(1) European patent application, which has been accorded a filing date, shall be equivalent to a regular national patent application, with priority claimed for a European patent application, if such claim has been made, whatever the outcome of proceedings relating to the application may be.

(2) A published European patent application shall confer upon the applicant the equal rights as the one conferred by a national patent application, from the date on which a translation of the claims of

the published European patent application into the Montenegrin language in is communicated by the applicant to the person using the invention in Montenegro.

(3) European patent application shall be deemed not to have had the effect referred to in paragraph 2 of this Article *ab initio*, if the request for extension has been withdrawn or is deemed to have been withdrawn.

Effects of Extended European Patents
Article 145

(1) Subject to paragraphs 2 to 6 of this Article, an extended European patent shall, from the date of publication of the mention of the grant of the European patent by the EPO, confer the rights identical to those conferred by a national patent under this Law.

(2) Within 3 months from the date on which the mention of the grant of the European patent has been published, the holder of the patent shall furnish the competent authority with a translation of the claims of the European patent into Montenegrin language and shall pay the prescribed publication fee and the costs of the printing of the translation of patent claims of the granted European patent.

(3) Where, as a result of an opposition or request for limitation filed with the EPO, a European patent is maintained with amended claims, the holder of the patent shall furnish the competent authority with a translation of the amended claims into Montenegrin language in Montenegro and shall pay the prescribed publication fee, within three months from the date on which notice on the decision to maintain the amended European patent has been published.

(4) Where the text of claims contains reference signs used in the drawings, such drawings shall be attached to the translation referred to in paragraph 2 and 3.

(5) The competent authority shall publish any translation filed in a timely manner under paragraphs 2 and 3 of this Article.

(6) If the translation specified in paragraphs 2 and 3 of this Article is not filed in a timely manner or if the prescribed fee has not been paid in due time, the extended European patent shall be deemed void *ab initio*.

(7) An extended European patent and the European patent application on which it is based shall be deemed not to have had *ab initio* effects referred to in paragraph 1 of this Article and in Article 144, paragraph 2 of this Law, to the extent that the patent has been revoked in opposition or in central revocation proceedings or limited in limitation proceedings before the EPO.

(8) A decision to enter the extended European patent in the Register of Patents shall be taken by the competent authority.

(9) Data to be disclosed in accordance with paragraphs 2 and 3 of this Article shall be prescribed by the Ministry.

Authentic Text of European Patent Applications or European Patents
Article 146

(1) The text of the European patent application or the European patent in the language of the proceedings before the EPO, shall be the authentic text in any proceedings conducted in Montenegro.

(2) Notwithstanding the provisions of paragraph 1 above, a translation furnished in accordance with Article 144, paragraph 2 or Article 145, paragraph 2 and 3 of this Law, shall be regarded as authentic, except in revocation proceedings, where the application or the patent in the language of the translation confers narrower protection than that conferred by it in the language of the proceedings.

(3) The applicant for or holder of an extended European patent may file at any time a corrected translation of patent claims of European patent applications or European patent.

(4) The corrected translation of the claims of a published European patent application shall have no legal effect until it has been communicated to the person using the invention in Montenegro.

(5) The corrected translation of the specification of an extended European patent shall not have any legal effects until mention of it has been published by the competent authority as soon as possible after payment of the prescribed fee for the publication.

(6) Any person who, in good faith, uses or has made effective and serious preparations for the use of an invention, where such use does not constitute an infringement of the rights deriving from 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 any remuneration.

Rights of Prior Date
Article 147

(1) With respect to national patent application and a national patent, a European patent application, for which the extension fee has been paid, and an extended European patent shall have the same effect on the state of art, as the national patent application and the national patent.

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

Simultaneous Protection
Article 148

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

Renewal Fees for Extended European Patents
Article 149

(1) Renewal fees for an extended European patent shall be paid to the competent authority for the years following the year in which the mention of the grant of the European patent has been published.
(2) Article 141, paragraph 2 of EPC shall apply *mutatis mutandis* to the payment of renewal fees under paragraph 1 above.

Applicability of the EPC
Article 150

The provisions of the EPC and its Implementing Regulations shall not apply to the European patent application and extended European patent unless otherwise provided under the provisions of this Law.

XV. INTERNATIONAL PATENT APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Applicability of the Patent Cooperation Treaty

Article 151

(1) An "international application" shall mean a patent application filed under the Treaty.

(2) Any reference to the Treaty in this Law shall also be construed as a reference to the Regulations under the PCT.

The Receiving Office for the International Applications
Article 152

(1) International applications may be filed with the International Bureau of the World Intellectual Property Organization, as receiving office under the Treaty.

(2) The international application may be filed with the competent authority as receiving office if the applicant is a citizen of Montenegro or natural person in Montenegro who has been granted permanent residence or legal person that has its head office in Montenegro.

(3) The filing of an international application under paragraph 2 of this Article shall be subject to the payment of the administrative fee and the cost of the special procedure for forwarding to the International Bureau referred to in paragraph 1 of this Article, within the time limits prescribed by the Regulations for the implementation of the Agreement and the Administrative Instructions under the Contract.

(4) Method of filing the application referred to in paragraph 2 of this Article shall be prescribed by the Ministry.

The European Patent Office as Designated or Elected Office
Article 153

Any international application in which Montenegro, pursuant to the provisions of the Treaty, has been designated or elected for the granting of a national patent, shall be deemed to be the request for extension of the European patent to Montenegro, within the meaning of this Law, and the European Patent Office shall act as designated or elected Office under the Treaty.

The European Patent Office as International Searching Authority and International Preliminary Examination Authority
Article 154

The European Patent Office shall act as the authority competent for the searching and international preliminary examination of international applications filed under Article 152 of the Law.

XVI. THE REGISTER OF REPRESENTATIVES

Conditions for the Representation and Entering in the Register of Representatives
Article 155

(1) Natural persons who are nationals and residents of Montenegro, who have command of one language of international communication and who represent clients as their profession, may be entered into the Register of Representatives if they meet one of the following requirements:

1) they are law faculty graduates or graduates of any technical faculty, having passed a special professional examination with the competent authority;
2) they are law faculty graduates or graduates of any technical faculty, having at least 5 years of working experience in the field of intellectual property with the competent authority.

(2) Legal persons having corporate headquarters in Montenegro and employing at least one law faculty graduate and one graduate of any technical faculty, meeting conditions referred to in paragraph 1 of this Article, may also be entered into the Register of Representatives

(3) Entry into the Register of representatives shall be subject to payment of the prescribed administrative fee.

(4) Professional examination referred to in paragraph 1 of this Article shall be taken before a committee of the competent authority.

(5) Program and the professional exam, the composition of the commission, the amount of compensation for the costs of professional exam and the content of the Register of Representatives shall be determined by the Ministry.

Deletion from the Register of Representatives
Article 156

A representative shall be deleted from the register of representatives:
1) on his own request;
2) if the final decision of the court has been passed prohibiting its representation activities, and
3)if sentenced to unconditional imprisonment for more than six months, of which he is obliged to inform the competent authority.

XVII. SUPERVISION

The Bodies Responsible for Inspection
Article 157

(1) The inspection over the implementation of this Law and regulations adopted pursuant to this Law shall be performed by the Ministry.

(2) Inspection of the implementation of this Law shall be performed by the administrative authority in charge of the inspection.

The Inspection Procedure
Article 158

(1) The provisions of the law governing the inspection shall be applied to questions of inspection that are not specifically regulated by this law.

(2) The inspection procedure is initiated ex officio or at the written application of the holder of a patent (hereinafter: the application) or a person who has his authority to file a claim under the general rules of representation.

(3) An application referred to in paragraph 2 of this Article may be individual, when it refers to a specific type and quantity of goods, or general, when applied to all quantities of certain goods for a certain period of time.

(4) An application under paragraph 1 of this Article shall in particular contain data which can be used to identify goods that infringe the patent, as well as evidence that the applicant is the holder of a patent, and if it is a general requirement and a time period to which application relates.

Security, Procedural Costs and Damages
Article 159

(1) When in the process of inspection it is found that the patent has been infringed, the competent inspector shall take administrative measures and actions which are regulated by the law governing inspection.

(2) If the competent inspector finds that based on the circumstances of the case it is justified, he may, in the proceedings initiated by the request, determine the measures referred to in paragraph 1 of this Article conditional on provision of adequate security of the applicant in order to reimburse the costs of storage of the seized goods, or damages incurred due to the failure of the applicant or an improper seizure of items.

(3) The costs of proceedings initiated at the request of the holder of a patent which is resolved in favour of the controlled entity shall be borne by the applicant.

(4) The authorized inspector shall not be liable for damages incurred due to unjust temporary seizure of goods at the request of rights-holder.

(5) If it is determined that the goods upon the request of the right-holder were wrongfully seized, the applicant shall pay damages for the temporary seizure of goods to the owner of the goods, or to the person from whom the goods were seized.

XVIII. PENAL PROVISIONS

Misdemeanours
Article 160

(1) Legal entity shall be fined for the misdemeanour in the amount equal to 1,500 to 20,000 euros, if without authorisation:

1) make, use, offer for sale, place into circulation, export, import or store for those purposes a product that is made by means of the protected invention (Article 49, item 1);
2) use the patented process (Article 49, item 2);
3) offer the patented process (Article 49, item 3);
4) make, offer, place into circulation, use, export, import or store for these purposes the product directly obtained by the patented process (Article 49, item 4);
5) offer for sale or supply products that constitute essential elements of the invention to parties unauthorized to use the invention, if the offerer or supplier knows or has demonstrable grounds to know that such product is intended for the use of an invention owned by someone else (Article 49, item 5) .

(2) For any activities referred to in paragraph 1 of this Article, entrepreneur shall be fined with the amount equal to EUR 1,300 - 6,000.

(3) For the offense referred to in paragraph 1 of this Article, a natural person, and the responsible person in the legal entity shall be fined with EUR 500 to EUR 2,000.

(4) Products predominantly intended or used for the commitment of misdemeanours or products resulting from the commitment of misdemeanours under paragraphs 1, 2 and 3 of this Article shall be seized and destroyed, regardless of whether they are the property of the infringer.

XIX. FINAL AND TRANSITIONAL PROVISIONS

Recognized rights
Article 161

(1) Patents that were registered and entered into the Register of Patents of the Office for Intellectual Property of Serbia and Montenegro (hereinafter SCG Office) until 3rd June 2006, i.e. into the Register of Patents of the Office for the Intellectual Property of Serbia (Hereinafter: Serbian Office) before 28th May 2008, for which the competent authority has issued a certificate of the validity of the patent in the form of note on a copy of a certificate issued by the SCG Office, i.e. Serbian Office, as well as patents for which their holders paid only renewal fee in Montenegro, the competent authority shall enter into the Register of Patents, without filing a special request, within six months from the date of entry into force of this Law and issue a decision on it to the patent holder.

(2) The patent referred to in paragraph 1 of this Article, for which the right-holders have not been paying renewal fees in Montenegro shall be valid in Montenegro if their holders file the request for

entering the patent in the Register of Patents within six months from the date of entry into force of this Law and pay the prescribed renewal fee in accordance with the regulations governing administrative fees.

(3) Patents referred to in paragraph 2 of this Article, shall be entered into the Register of Patents by the competent authority within six months from the date of the filing of the request, provided that the prescribed administrative fee has been paid and the patent holder shall be issued a decision on the entry.

(4) The right to a patent under paragraphs 1 and 2 of this Article shall be determined on the basis of the certificate from the Serbian office.

Recognized Rights Based on European Patent Applications and European Patents
Article 162

(1) European patents with effect in the State Union of Serbia and Montenegro, and in the Republic of Serbia, registered on the basis of a European patent application filed by 3rd June 2006 or later, but before the entry into force of the Agreement on Cooperation and Extension between Montenegro and the European Patent Organization, for which their holders pay renewal fees to the competent authority, shall be valid in Montenegro, without filing a special request for entry into the Register of Patents.

(2) European patents with effect in the State Union of Serbia and Montenegro, and the Republic of Serbia, registered on the basis of the European patent application filed by 3rd June 2006 or later, but before the entry into force of the Agreement on Cooperation and Extension between Montenegro and the European Patent Organization, for which the competent authority received request for entering into the Register of Patents pending the entry into force of this Law and for which the renewal fee has been paid shall be entered in the Register of Patents in accordance with the Law.

(3) The European Patents under paragraphs 1 and 2 of this Article, shall be entered into the Register of Patents by the competent authority within six months from the date of entry into force of this Law and issue a decision on the entry to the patent holder.

(4) European patents with effect in the State Union of Serbia and Montenegro, and the Republic of Serbia, registered on the basis of a European patent application filed by 3rd June 2006 or later, but before the entry into force of the Agreement on Cooperation and Extension between Montenegro and the European Patent Organization, for which their holders have not filed the request to the competent authority or paid renewal fee until the entry into force of this Law, shall be valid in Montenegro, provided that their holders within six months from the date of entry into force of this Law file the request for entering into the Register of Patents and pay the renewal fee.

(5) The request referred to in paragraph 4 of this Article shall be accompanied by a translation of claims filed to the SCG Office, i.e. Serbian Office, and the original certificate of the Serbian Office, as well as proof of payment of fees in accordance with the regulation on administrative fees.

(6) The right to a European patent shall be determined on the basis of the decision on registration of patents in the SCG Office, or Serbian Office and the certificate of Serbian Office.

Valid Patents
Article 163

Registered patents valid until the date of entry into force of this Law, shall remain in force and will be subject to the provisions of this Law.

Initiated Actions
Article 164

Proceedings initiated under the Law of Patents ("Official Gazette of Montenegro" Number 66/08), to the date of entry into force of this Law shall be completed according to the law.

The Deadline for the Adoption of Implementing Regulations
Article 165

(1) Implementing regulations for this Law shall be passed within six months from the entry into force of this Law.

(2) The Regulation on the Procedure for the legal protection of inventions shall apply on the adoption of the regulations referred to in paragraph 1 of this Article, ("Official Gazette", No. 62/04) if not in contravention of the law.

Deferred Application
Article 166

The provisions of Article 54, paragraph 2, Art. 62 to 76, Art. 87 to 99, and Article 102 of this Law shall apply from the date of accession of Montenegro to the European Union.

Repealing
Article 167

(1) Upon the entry into force of this Law, the Patent Law ("Official Gazette", No. 66 / 08) shall cease to be valid.

(2) With the date of entry into force of this Law, the Article 4, paragraph 1, item 7 and Article 24 of the Law on the implementation of regulations governing the protection of intellectual property rights ("Official Gazette of RM", No. 45/05), Article 45 of the Law on Changes and amendments to the Law prescribing penalties for violations ("Official Gazette", No. 40/11), and Articles 3 to 5 and

Articles 15 to 20 of the Regulation on the Enforcement of Intellectual Property Rights ("Official Gazette of RM" 61/ 07 and "Official Gazette of Montenegro", No. 70/08) shall cease to be valid.

Entry into force

Article 168

This Law shall enter into force on the day of its publication in the "Official Gazette of Montenegro".