

DRAFT

THE PATENT LAW

I. GENERAL PROVISIONS

Application of the Law

Article 1

This Law shall apply to the patent protection system.

A patent

Article 2

A patent is the right protecting its owner as regards the economic exploitation of the invention which is the subject matter of the patent.

Competence of the State Intellectual Property Office

Article 3

The State Intellectual Property Office (hereinafter: the Office) shall carry out the administrative procedure for the grant of a patent and shall perform other administrative works dealing with the patent protection.

National Treatment of Foreign Persons

Article 4

Foreign natural and legal persons shall, under this Law, enjoy in the Republic of Croatia the same rights as are enjoyed by the Croatians and legal entities established in the Republic of Croatia, if it results from international treaties binding the Republic of Croatia or from the application of the principle of reciprocity.

The existence of reciprocity shall be presumed until proved to the contrary.

II. SUBJECT MATTER OF THE PATENT PROTECTION

Patentable Invention

Article 5

- (1) A patent shall be granted for an invention which is new, which involves an inventive step and which is susceptible of industrial application.
- (2) The following in particular shall not be considered to be the inventions within the meaning of paragraph (1):
1. discoveries, scientific theories and mathematical methods,
 2. aesthetic creations,
 3. rules, instructions or methods for performing mental acts, playing games or doing business,
 4. presentations of information,
 5. computer programs.
- (3) The provisions referred to in paragraph (2) of this Article shall apply only to the extent to which the patent application relates to such subject-matter or activity as such.
- (4) The patent protection shall exclude:
1. the inventions relating to animal breeds and plant varieties and to essentially biological processes for the production of a plant or an animal, except for the inventions relating to the microbiological processes and the products resulting from such processes.
 2. the inventions the publication or exploitation of which would be contrary to the public order or morality. The exploitation shall not be deemed to be so contrary merely because it is prohibited by the legal provision.

Novelty of an Invention

Article 6

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) The state of the art shall comprise everything made available to the public on the world level by means of a written or oral description, by use, or in any other way, prior to the filing date of the patent application.
- (3) The state of the art shall also include the content of all patent applications as filed in the Republic of Croatia, the filing date of which are earlier than the date of application referred to in paragraph (2) of this Article, and which were made

available to the public only on, or after the date of filing the patent application, through the publication effected in the manner provided for in this Law.

Article 7

IV PATENT GRANTING PROCEDURE

1. Patent Application

Beginning of the Patent Granting Procedure

Article 13

4. any drawings referred to in the description or the claims,
 5. an abstract
- (2) A request for the grant of a patent shall contain: an express indication that the grant of a patent is applied for, the title of the invention expressing the essence of the invention, the name or the title respectively and address of the applicant, as well as the name and address of the inventor or the indication concerning the written declaration of the inventor stating that he doesn't want to be mentioned as such.
- (3) The declaration referred to in paragraph (2) of this Article shall be filed up to the expiration of the period of four months at the latest, as from the filing date of the application.
- (4) The patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- (5) If the invention relates to the viable biological material which cannot be disclosed in a manner enabling it to be carried out by a person skilled in the art, the application must be supported by the proof to the effect that the sample of such material has been deposited with the competent institution on the filing date of the patent application at the latest.
- (6) The competent institution referred to in paragraph (5) of this Article shall be

Article 20

The applicant desiring to take advantage of priority right referred to in Article 19 of this Law in the Republic of Croatia, shall file with the Office:

1. a priority claim containing the essential data concerning the first application the priority of which is claimed (application number and the filing date, the State in which, or the intergovernmental organization with which the application was filed), up to the expiration of the period of two months at the latest as from the date of filing the application in the Republic of Croatia.
2. the copy of the first application certified by the competent authority of the State in which, or the international organization with which it was filed, up to the expiration of the period of three months at the latest as from the date of filing a priority claim.

Multiple Priority Claim

Article 21

The applicant may, complying with the requirements referred to in Article 20 of this Law, claim multiple priority right on the basis of several earlier applications filed in one or more of the States party to the Paris Union.

Characteristics of the Invention the Priority Claim is Relating to

Article 22

- (1) The priority claim shall relate only to such characteristics of the invention which are contained in the first application or applications whose priority is claimed.
- (2) If certain characteristics of the invention do not appear among the claims contained in the first application or applications respectively for the grant of priority right it shall be sufficient that all such characteristics may be precisely derived from all elements of the application.

Application of the Date of Granted Priority

Article 23

If the right of priority is granted, the date of granted priority shall be applied instead of the date of filing the patent application with the Office for the purposes of provisions referred to in Article 6 paragraphs (2) and (3) and Article 12 paragraph (1) of this Law.

Computation of Time Limits in Cases Where Multiple Priority Right

Article 24

If the multiple priority right is granted, the time limits which run under this Law from the date of granted priority shall be computed as from the earliest date of multiple priority right.

3. Procedure as From the Receipt of the Patent Application up to the Publication Thereof

Examination of the Patent Application After its Receipt

Article 25

(1) After rec - .0 0 Tc 0 Tw83eee thehh :c5o25

date on which the drawings have been received by the Office. Otherwise, any reference to the said drawings shall be considered to be non-existent.

- (6) The Office shall invite the applicant ~~who~~ has not submitted the proof of payment of the prescribed fee or the certified ~~translation~~ of the patent application into the Croatian language, to correct ~~the~~ respective deficiency within sixty days as from the day of receipt of the invitation.
- (7) On the reasoned request of the applicant the Office may extend the time limit referred to in paragraph (5) of this ~~Article~~, for a time period ~~on~~ considered to be justified.

- (5) With the publication of the patent application, the invention which is the subject matter of the said application shall be included in the state of the art.
- (6) The publication of the patent application shall be subject to the payment of the prescribed fee which shall be due within 15 days as from the receipt of the Office invitation.

5. Patent Granting Procedure

Request for the Grant of a Patent

Article 32

- (1) After the publication of the patent application in the Office official gazette, the applicant may, within 6 months as from the date of publication, file one of the requests for the examination of the requirements for the grant of a patent:

2. is the invention which is disclosed in the application in the manner sufficiently clear and precise to be carried out by a person skilled in the art

(2) On the reasoned request of the applicant and the evidence being furnished, the Office may extend the time limit referred to in paragraph (1) up to 3 months at the latest after the termination of the procedure for the substantive examination carried out by the elected office, the results of which shall be filed with the Office.

(3) If the applicant doesn't furnish a certified translation of the results of the substantive examination carried out by the elected office sufficient for the Office to make a decision concerning a request for the grant of a patent, the application shall be considered withdrawn.

005 1c9lf9e app9idr(d).pr(9e api)-70.3(out bwi9(d).Tehdra(r005 wst)-50.3(c)3.2an1(9e
r 0 (d) 7 T J T * 1 (O u c d d w) 1 0 . 4 e r t 7

- (1) A request for the grant of a patent ~~with~~ the substantive examination of the patent application in compliance with Article 32, paragraph (1), subparagraph 3 (hereinafter: the consensual patent) shall be published in the Office official gazette within three months as from its filing date.
- (2) In addition to the request referred to in paragraph (1) of this Article the relevant elements of the patent application shall be published sufficient for:
1. attaining consensus between the applicant and interested parties on the grant of a patent for an incomplete (partially) examined invention,
 2. the filing of the opposition relating to the grant of the consensual patent.
- (3) The manner and the content of the publication in compliance with paragraphs (1) and (2) of this Article shall be prescribed by a special regulation enacted by virtue of this Law.

Opposition to the Grant of a Consensual Patent

Article 39

- (1) After the publication of the request ~~referred~~ to in Article 38, any legal or natural person may, within 6 months, file to the Office the opposition to the grant of a consensual patent.
- (2) The opposition referred to in paragraph (1) of this Article shall be supported by the evidence to the effect that the subject matter of the application doesn't comply with the requirements for the grant of a patent ~~referred~~ to in Article 5 paragraph (1) of this Law.
- (3) The filing of the opposition to the grant of a consensual patent shall be subject to the payment of the prescribed fee.
- (4) The content of the opposition referred in paragraph (1) of this Article shall be defined by a special regulation enacted by virtue of this Law.

Suspension of the Procedure Concerning Opposition to the Grant of a Consensual Patent

Article 40

- (1) If the opposition has been filed on time ~~it is~~ justified and if the prescribed fees have been paid, the procedure for the grant of a consensual patent shall be suspended.
- (2) The justified opposition referred to in paragraph (1) of this Article shall comprise the opposition containing sufficient evidence for a reasonable doubt that the invention

- (2) On the reasoned request of the applicant the Office may extend the time limit referred to in paragraph (1) of this Article.
- (3) If the applicant doesn't comply with the invitation referred to in paragraph (1) of this Article the Office shall issue a decision on the refusal of the request for the grant of a patent.
- (4) The invitation to correct deficiencies and the filing of the request for the extension of the time limit shall be subject to the payment of the prescribed fees.

Decision on the Grant of a Patent

Article 44

- (1) The Office shall communicate to the applicant the text of the patent application it intends to grant a patent for and shall invite him to submit a written consent to the communicated proposal:
 1. if it is established that the subject matter of the patent application complies with all the requirements for the grant of a patent referred to in Article 33, paragraph (1),
 2. if it is established that the subject matter of the patent application complies with the requirements for the grant of a patent referred to in Article 37, and
 3. if the opposition to the grant of a consensual patent in compliance with Article 39 has not been filed.
- (2) If the applicant doesn't comply with the invitation within the time limit referred to in paragraph (1) of this Article, the Office shall issue a decision on the grant of a patent, as if the consent has been submitted.
- (3) If the patent applicant submits in time a written declaration to the effect that he doesn't comply with the proposal referred to in paragraph (1) of this Article, he shall state the reasons therefor, and shall submit to the Office the amended text of the claims.
- (4) If the Office accepts the applicant's reasons and amends the text of the claims referred to in paragraph (3) of this Article it shall issue a decision on the grant of a patent according to the text of the claims proposed by the patent applicant.
- (5) The Office shall issue a decision referred to in paragraphs (2) and (4) subject to the payment of fees for the maintenance of a patent, the publication thereof and the issuance of the patent certificate and patent file.

Patent Register

Article 48

- (1) The applicant shall be issued a patent file within 6 months as from the date of the decision on the grant of a patent, which is ~~over~~ the consensual patent is concerned, designated as the consensual patent file.
- (2) The content and the form of the patent file shall be prescribed by the regulation enacted by virtue of this Law.
- (3) The issuance of a patent file shall ~~subject~~ be subject to the payment of the prescribed fee which shall be due within 15 days as from ~~the~~ receipt of the Office invitation.

Entry of the Amendments into the Registers

Article 49

- (1) At the request of the party all the ~~changes~~ changes occurring after the filing of the application or respectively after the entry of the decision ~~on~~ the grant of a patent into the register (license, transfer, change of the name ~~or~~ of the applicant or the patent owner), shall be also entered into the register ~~of~~ applications or the register of granted patents respectively.
- (2) The registered changes referred to in ~~graph~~ paragraph (1) of this Article shall be published in the Office official gazette.
- (3) The entry of changes into the Office registers shall be prescribed by the regulation enacted by virtue of this Law.
- (4) The entry of changes into the registers ~~referred~~ to in paragraph (1) of this Article, the publication thereof in the official gazette, ~~and~~ furnishing of excerpts at the request of the party shall be subject to ~~the~~ payment of the prescribed fees.

Correction of Deficiencies in the Documents

Article 50

- (1) Linguistic and typing errors as well as the deficiencies in the documents filed with the Office may be corrected on the basis ~~of~~ written request of the person filing the document.
- (2) The filing of the request referred to in ~~graph~~ paragraph (1) of this Article shall be subject to the payment of the prescribed fee.

V EFFECTS OF A PATENT

Exclusive Rights Acquired by a Patent

Article 51

- (1) The owner of a patent shall be the only person entitled to exploit the protected invention.
- (2) Any other person not having the patent owner's consent shall be prohibited from:
 1. making, offering for sale, selling, using, or importing and stocking for such purposes, a product carried out according to the invention,
 2. using a process which is the subject matter of the invention, or offering the use thereof,
 3. offering for sale, selling, using or importing and stocking for such purposes, the product which is obtained directly by a process which is the subject matter of the invention.
- (3) Any other person not having the patent owner's consent shall be prohibited from offering and supplying the product (substance, composition, part of the apparatus)

(6) In the absence of proofs to the contrary, a product shall be considered to have been obtained by a protected process, if the product is new and a substantial likelihood exists that the product was made in a protected process and the patent owner has been unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was obtained in the protected process shall exist, in particular, when the protected process is the only known process.

Scope of the Exclusive Rights

Article 52

The scope of the patent owner's exclusive rights shall be determined by the text of the claims, finally accepted in the patent granting procedure.

-) e (d t h 7 2 . 8 1 1 h 7 J -) e (8 . 0 4 t e a r d i c a l l h t 5 (1 8) 1 . 3 w j (2) - 4 e x s -) 7 2 . 8 J c l (8 . 5 - 1 .) t (8 . 3 -)

extent to which she/he had exploited it or had prepared its exploitation up to the filing date of the application for the said invention.

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

Patent Immunity of Vehicles in International Traffic

Article 55

The use of the products made according to a protected invention in the construction or equipment of a vessel, aircraft or land vehicle belonging to any of the States members of

- (5) In the case of granting a compulsory license, the patent owner shall be entitled to a remuneration, appropriate to the economic value of the license which shall be

- (2) The right to action referred to in paragraph (1) of this Article shall also belong to the inventor of the joint invention who is not mentioned in the patent application.
- (3) To the request referred to in paragraph (1) of this Article a request that the final court decision be published at the expense of the defendant may be added.
- (4) The term for an action referred to in paragraph (2) shall not be limited. After the death of the inventor the right to an action shall be acquired by his heirs.

3. An Action for the Infringement of a Patent

Right to Action

Article 76

- (1) The patent owner shall be entitled to an action before the competent court against any person who infringes a patent by performing any of the actions referred to in Article 51, paragraphs (2) and (3) of this Law.
- (2) The right to action referred to in paragraph (1) of this Article, after the grant of a patent, shall also belong to the owner of the exclusive license.
- (3) The owner of a consensual patent shall have, prior to the action referred to in paragraph (1) of this Article, the results of the substantive examination at his disposal.

Requests Contained in the Action

Article 77

- (1) An action for the infringement of a patent shall contain requests for:
1. the establishment of the existence of the infringement,
 2. the prohibition of actions infringing a patent,
 3. the compensation for damages,

4. the seizure and destruction of the products resulting from or acquired by the infringement of a patent, and articles (implements and tools) predominantly used in the creation of products infringing a patent,
 5. the publication of the court decision at the expense of the defendant.
- (2) The plaintiff shall be entitled to the compensation for damages that he has suffered as from the publication date of the patent application in the manner provided for in Article 31 of this Law, and to the financial gain acquired by the defendant infringing a patent, if such gain has not been included in the compensation of the real financial damage.
- (3) To the matters concerned with the compensation for damages caused by the infringement of a patent not regulated by this Law, the corresponding provisions of the Law on Obligatory Relations shall apply.

Ordering of a Provisional Measure

Article 78

- (1) The action may contain a request for ordering, before the court decision comes into effect, a provisional measure comprising:
1. the desistance from actions infringing a patent, or actions that might infringe a patent,
 2. the seizure or exclusion from circulation respectively of products resulting from or acquired by the infringement of a patent and of articles (implements and tools) predominantly used in the creation of products infringing a patent,
 3. the preservation of evidence.

Article 79

The action for the infringement of a patent ~~may~~ be brought within 3 years as from the day of learning about the infringement and the ~~infringer~~, but not after the expiration of the period of 5 years as from the day the infringement was committed on.

Urgency of the Procedure Concerning the Action for the Infringement of a Patent

Article 80

The procedure concerning the action for the infringement of a patent shall be urgent.

XI INTERNATIONAL PATENT APPLICATION UNDER THE PATENT COOPERATION TREATY

International Patent Application

Article 81

- (1) The international patent application shall be the application filed in compliance with the Patent Cooperation Treaty (hereinafter ~~the~~ Treaty). Any reference in this Law to the Treaty (in Articles 81 to ~~84~~) shall be, at the same time, considered to be the reference to the Regulations ~~under~~ the Patent Cooperation Treaty.
- (2) To the international patent applications filed with the Office as the receiving, designated, or elected office, the provisions of the Treaty, this Law and the regulations enacted by virtue of this Law shall apply.

International Patent Application Filed ~~in~~ The Office as the Receiving Office

Article 82

- (1) International patent application may be ~~filed~~ with the Office as ~~the~~ receiving office if the applicant is the Croatian national, ~~or~~ natural person having the residence in the Republic of Croatia or ~~legal~~ person established ~~in~~ the Republic of Croatia.
- (2) The international applicati~~on~~ referred to in paragraph (1) ~~of~~ this Article shall be filed in the language and in the number of copies ~~de~~termined by the regulation enacted by virtue of this Law.
- (3) The filing of the international patent applicati~~on~~ referred to in paragraph (1) of this Article shall be subject to the payment of the prescribed transmittal fee within the period of one month as of the date ~~of~~ filing of the international application.

International Patent Application Filed with the Office as the Designated or Elected Office

Article 83

- (1) The international patent application in which the Republic of Croatia is designated, in compliance with the provisions of the Treaty, for the grant of a national patent, shall be filed with the Office as the designated office, in the Croatian language, within the time limit and in the number of copies determined by the regulations enacted by virtue of this Law.
- (2) The international application in which the Republic of Croatia is elected, in compliance with the provisions of the Treaty, as the State in which the applicant intends to use the results of the international preliminary examination of that application for the purpose of being granted a national patent, shall be filed with the Office as the elected office, in the Croatian language, within the time limit and in the number of copies determined by the regulations enacted by virtue of this Law.
- (3) The filing of the international patent application referred to in paragraphs (1) and (2) of this Article shall be subject to the payment of a prescribed fee.

Procedure Concerning the International Patent Application Filed with the Office as the Designated or Elected Office

Article 84

- (1) The international patent application filed with the Office as the designated or elected office shall be published in the Office official gazette in the manner provided for in Article 31, paragraph (3) of this Law.
- (2) In respect of the international applications referred to in paragraph (1) of this Law, the time limit within which a request referred to in Article 32 of this Law may be filed shall not expire prior to the time limit prescribed by Articles 22 or 39 of the Treaty, as the case may be.
- (3) The Office shall not carry out a substantive examination of the international application referred to in paragraph (1) of this Article in respect to the inventions which have not been the subject of the international search in the procedure before the International Searching Authority in compliance with Article 17 of the Treaty, or have not been the subject of the international preliminary examination in the procedure before the International Preliminary Examining Authority in compliance with Article 34 of the Treaty.

XII OFFENCES

Article 85

(1) Any legal or natural person shall be punished by a fine amounting from 20.000 up to 200.000 kunas if it, contrary to the provisions of this Law:

1. makes, offers for sale, sells, or imports and stocks for such purposes a product which is manufactured according to the protected inven

The procedures concerning the infringement of a patent or of rights arising from a patent application which are pending on the day of application of this Law shall be completed under provisions being in effect up to the day of application of this Law.

Implementing Provisions Enacted by the Director of the Office

Article 92

The Director of the Office shall enact provisions referred to in: Article 13, paragraph (9); Article 17; Article 26, paragraph (2); Article 27, paragraph (2); Article 31, paragraph (3); Article 36; Article 38, paragraph (3); Article 39, paragraph (4); Article 45, paragraph (3); Article 47, paragraph (2); Article 48, paragraph (2); Article 49, paragraph (3); Article 81, paragraph (2); Article 82, paragraph (2); Article 83, paragraphs (1) and (2).

Implementing Provisions Enacted by the Director of the Office with the Consent of the Minister

Article 93

The Director of the Office, with the consent of the minister competent for the financial matters, shall enact the provision on the amounts of fees provided for by the provisions of: Article 13, paragraph (3); Article 25, paragraph (1), subparagraph 2, and paragraphs (6) and (9); Article 27, paragraph (3); Article 31, paragraph (6); Article 32, paragraph (3); Article 39, paragraph (3); Article 40, paragraph (1); Article 41, paragraph (3); Article 42, paragraph (3); Article 43, paragraph (3); Article 44, paragraph (5); Article 46, paragraph (4); Article 47, paragraph (3); Article 48, paragraph (3); Article 49, paragraph (4); Article 50, paragraph (2); Article 61, paragraphs (1), (2), and (3); Article 62; Article 66, paragraph (3); Article 67, paragraph (3); Article 71, paragraph (3); Article 77, paragraph (1), subparagraph 3; Article 77, paragraphs (2) and (3); Article 82, paragraph (3); Article 83, paragraph (3).

Time Limit for Enacting Implementing Provisions

Article 94

The provisions referred to in Articles 92 and 93 of this Law shall be enacted within 3 months as from the day of entry into force of this Law.

Lapse of the Validity of Other Provisions

Article 95

With the day of application of this Law the following shall lapse:

1. The Industrial Property Law (“Official Gazette of the Republic of Croatia” No. 53/91, 19/92 and 26/93) in the part relating to patents, except for the provisions on the confidential inventions (Articles 104 to 116) and representation (Article 172a) which shall apply up to the enactment of separate laws.
2. The Law Governing Administrative Fees in the Field of Industrial Property (“Official Gazette of the Republic of Croatia” No. 55/96 and 59/96) in the part relating to patents.

Entry into Force and Application

Article 96

This Law shall enter into force on the eighth day as from the day of publication thereof in the Official Gazette of RH, and shall be applied after the expiration of 3 months as from