

INTELLECTUAL PROPERTY

CURRENT SITUATION

In the Republic of Serbia, the following intellectual property rights are regulated and protected: patents, designs, trademarks, indications of geographical origin, topographies of integrated circuits, copyright and related rights, as well as the right of cultivators of herbal sorts.

All these rights are protected by special laws, adopted in the period from 2004 until present time. The institutions competent for managing of IP rights are Intellectual Property Office (hereinafter: Office) and Ministry of Agriculture, Forestry and Waterpower Engineering.

The Proposal of the Law on Trademarks, the Proposal of the Law on Protection of Industrial Design and the Proposal of the Law on Protection of Topography of Integrated Circuits were put forward in parliamentary procedure for adoption.

New Law on Copyright and Related Rights and new Law on Indications of Geographical Origins were proposed and it is expected to be introduced in the parliamentary procedure.

POSITIVE DEVELOPMENTS

Being that the implementation of the regulations on protection of IP rights has started to produce effects in practice, natural and legal persons (both foreign and domestic) enjoy three types of legal protection in the Republic of Serbia, consistent with EU regulations and standards: protection in litigation procedure before commercial courts or courts of general jurisdiction; protection in administrative procedure through the competent inspection bodies, customs and others; and, protection in criminal procedure before criminal courts.

The quality of judicial protection has been improved by establishment of special departments within the district courts, consisting of competent judges with specialized knowledge and experience in issues of protection of IP rights.

Also, by adoption of the Law on Wine, respective provisions of the Law on Indications of Geographical Origin ceased to produce legal effects by which that field was regulated, apart from the provisions on international registration of indications of geographical origin of wine. Management over the Registry of

vintners and Registry of vineyards is in the competence of the Ministry of Agriculture, Forestry and Waterpower Engineering.

Based on above stated, it can be noticed that new regulations goes towards the special regulation and protection of each individual IP right and towards clear division of competences for implementation of such regulations (protection is handed over to the competent bodies in respective fields), with final goal of efficient protection of IP rights.

The Law on Trademarks

The Law on Trademarks which is still on force regulates the manner of acquisition and protection of right on trademark. In accordance to the stated law, trademark is the sign protected by law with which participant on market designates its goods (service) in order for customer to distinguish such goods (service) from the goods (service) offered by other participant on the market. The procedure for the recognition of trademark is regulated by the Decree on Procedure for Recognition of Trademark.

New Law on Trademarks is in the parliamentary procedure and it is expected that it will be adopted in the autumn's session of the Serbian parliament. The reasons for adoption of new law are as follows:

- Adjustments in terminology with the Constitution of the Republic of Serbia and the Law on Ministries, having in mind that the Law on Trademarks was adopted as the law of former State Union of Serbia and Montenegro;
- Harmonization of the Law on Trademarks with trademark regulations of European Union (in accordance to the obligations of the Republic of Serbia from the Transitional Trade Agreement) and the law of World Trade Organization (Agreement on Trade Related Aspects of Intellectual Property Law – TRIPS Agreement);
- Defining certain provisions from current Law on Trademarks which caused different interpretations and constructions in practice.

Concrete improvements stated in the proposal of the Law on Trademarks are as follows:

- Introduction of the right to appeal in administrative procedure on a decision of the Office;

- Excluding the possibility to adopt the decision on partial recognition of trademark. In a case that the conditions for recognition of trademark are only partially fulfilled, the Office will render the decision by which it rejects the recognition of trademark for goods (services) for which the trademark can not be recognized;
- Providing of detailed rules of procedure related to the trademarks;
- Introduction of changes in terminology in comparison with wording of current Law on Trademark which caused confusion in practice;
- Introduction of possibility to register the sign as trademark even if the same trademark for similar goods (service) has been already registered, if it is explicitly approved in written by the holder of trademark which was previously registered. By this provision, the practice of the Office became included in the regulation;
- In the procedure of checking of fulfillment of conditions for registration of trademark, it is possibility for Office to take into consideration the statement of interested party who claims that proposed mark does not fulfill conditions to be recognized as trademark;
- Introduction of provision which regulates and specifies the legal institute of English law, but also adopted in majority of European laws, so called ‘disclaimer’;
- Introduction of possibility for the holder of trademark to prohibit, apart from prohibition of import and export of goods under certain trademark, also the transit of goods under certain trademark;
- Specification of the legal basis for transfer of right on trademark.

REMAINING ISSUES

- Adoption, as soon as possible, of the Law on Legal Protection of Industrial Design, Law on Protection of Topography of Integrated Circuits, Law on Trademarks, Law on Copyright and Related Rights and Law on Indications of Geographical Origin, in order for the total set of laws on intellectual property rights to be harmonized with regulations of European Union;
- Lack of second instance in the administrative procedure before the competent bodies is noticeable. Introduction of the right on the appeal on decision of the competent bodies would make the protection of intellectual property rights more efficient.

FIC RECOMMENDATIONS

- More efficient and prompt implementation of the regulations on protection of IP rights should be conducted through the reorganization of existing inspection department and establishing of new ones as needed;
- To be more decisive in sending of clear messages and altering the public opinion in order for people to understand that IP piracy and forgery are not only unacceptable but also not permissible. To reinforce this message and position through active prosecution and punishment of violators;
- To adopt remaining laws in the field of intellectual property and therefore to complete the set of laws in this field harmonized with international standards (at first place, the Law on Copyright and Related Rights and Law on Indications of Geographic Origin); and
- To adopt the National Strategy on intellectual property.