

OFFICIAL GAZETTE OF THE REPUBLIC OF MONTENEGRO

No.: 61

Year: LXIII

Podgorica, 12 October 2007

657.

Pursuant Items 2, 3, 4 and 5 of the Resolution on Declaration of Independence of the Republic of Montenegro (Official Gazette of the RoM, No. 36/06), the Government of the Republic of Montenegro, at its session held on 20 September 2007, has passed the following

D E C R E E

SECURING THE IMPLEMENTATION OF INTELLECTUAL PROPERTY RIGHTS IN MONTENEGRO

Article 1

The present Decree governs the issue of implementation of intellectual property rights registered with the Office of Intellectual Property of Serbia and Montenegro (hereinafter referred to as: the Office of SCG), i.e. with the Office of Intellectual Property of Serbia (hereinafter referred to as: the Office of Serbia), as well as the rights from the applications filed with these Offices, rights relating to the works subject to the protection of copyrights and other related rights, rights of intellectual property registered by means of international registrations, including also the rights from international applications.

Article 2

The rights of intellectual property referred to in Article 1 of the present Decree are the rights laid down by laws and international treaties governing the issue of copyrights and other related rights, patents, petty patents, designs, integrated circuit topography, marks and appellations of geographical origin applied in the Republic of Montenegro (hereinafter referred to as: Montenegro).

1. PATENTS, PETTY PATENTS, DESIGNS AND INTEGRATED CIRCUIT TOPOGRAPHY

Article 3

Patents, petty patents, designs or topography of integrated circuits registered and entered into the relevant registry of the Office of SCG, including all modifications and amendments, by 3 June 2006 being the date of coming into effect of the Resolution on Declaration of Independence, shall be valid in Montenegro until the expiry of the term thereof, i.e. until the expiry of the time period for which a relevant fee has been paid to the Office of Serbia for the maintenance of rights in conformity with law, without any additional registration and without payment of any additional fees.

Article 4

Provisions of Article 3 of this Decree shall also apply to the patents, petty patents, designs or integrated circuits topography registered with the Office of SCG, i.e. with the Office of Serbia, from 3 June 2006 to the start-up of the Office of Intellectual Property of the Republic of Montenegro (hereinafter referred to as: the Office of Montenegro).

Article 5

The rights stemming from the applications for registration of patents, petty patents, designs or integrated circuit topography which have not been decided upon in the Office of Serbia until the start-up of the Office of Montenegro, shall be valid in Montenegro from the date of filing an application with the Office of SCG or the Office of Serbia or, in the event of international applications entered into the national stage before the Office of SCG or the Office of Serbia, being a designated office in conformity with the Patent Cooperation Treaty (hereinafter referred to as: the PCT), from the date of lodging an international application, i.e. from the date of priority, should such an applicant:

- 1) apply with the Office of Montenegro for the registration of rights within six months from the date of start-up of the Office of Montenegro,
- 2) furnish, together with his application for the registration of rights, a copy of his application filed with the Office of SCG or the Office of Serbia, including the acknowledgment of receipt thereof as well as all annexes, and in the event of an international application entered into the national stage before the Office of SCG or the Office of Serbia being a designated Office in conformity with the PCT, submit the acknowledgement of receipt of his application issued by the office to which the application was originally submitted, and
- 3) pay a prescribed fee.

The Office of Montenegro shall continue the procedure on the basis of applications duly filed and referred to in par. 1 of this Article, fully in conformity with law.

2. MARKS AND APPELLATIONS OF GEOGRAPHICAL ORIGIN

Article 6

Provisions of Article 3, 4 and 5 of the present Decree shall also apply to the marks registered with the Office of SCG or the Office of Serbia, as well as to the applications for registration of marks that have not been decided upon in the Office of Serbia by the date of start-up of the Office of Montenegro.

Article 7

Renewal of validity of a mark on the basis of an application filed with, i.e. entered into the relevant registry of the Office of Serbia as of 3 June 2006 or on a later date, but prior to the start-up of the Office of Montenegro, shall be valid in Montenegro.

The procedure upon the application for renewal of a mark that has not been decided upon at the time of start-up of the Office of Montenegro, may be completed before the Office of Serbia and such a renewal shall be valid in Montenegro pursuant to Article 6 of this Decree.

It is from the date of start-up of the Office of Montenegro that all applications for renewal of marks shall be filed and registered with the relevant registry of the Office of Montenegro fully in conformity with law. The existence of a mark the renewal of which is requested, shall be verified by the Office of Montenegro on the basis of the data on entry into the relevant registry of the Office of Serbia, i.e. on the basis of the mark certificate issued by the Office of Serbia, which are to be presented together with the application for renewal of a mark registration.

Article 8

Titles of origin or geographical appellations registered directly with the Office of SCG, i.e. the Office of Serbia, prior to the start-up of the Office of Montenegro, shall remain valid in Montenegro with effect as of the date of filing a relevant application with the Office of SCG or the Office of Serbia.

It is after the start-up of the Office of Montenegro that amendments to the registration of titles of origin or geographical appellations referred to in par. 1 of this Article shall be made by the Office of Montenegro on the basis of a relevant certificate issued by the Office of Serbia and against the payment of a prescribed fee.

3. COPYRIGHT AND RELATED RIGHTS

Article 9

The rights stemming from the deposition of authors' works and objects of related rights with the Office of SCG, i.e. the Office of Serbia prior to the start-up of the Office of Montenegro, shall be valid in Montenegro.

Copyrights and other related rights accrued prior to 3 June 2006 in conformity with the legislation of the State Union of Serbia and Montenegro (SCG), i.e. pursuant to the international treaties binding for Montenegro, shall remain valid in Montenegro until the expiry of the protection period in conformity with law.

4. INTERNATIONAL REGISTRATION UNDER THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Article 10

International registrations in conformity with the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as: the Madrid Agreement) or the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as: the Protocol) completed before 3

June 2006, with the territorial effect in the State Union of Serbia and Montenegro (SCG), shall be valid in Montenegro, should the procedure be executed according to the Rule No. 39 of Common Regulations under the Madrid Agreement and Protocol.

Article 11

A mark registered in conformity with the Madrid Agreement or Protocol with the territorial effect in the Republic of Serbia, as of 3 June 2006 or on a later date but prior to 4 December 2006, shall be entered into the registry by the Office of Montenegro, should the holder of such an international registration:

- 1) file an application for the mark registration with the Office of Montenegro at latest within six months of the date of start-up of the Office of Montenegro,
- 2) furnish, together with the application for a mark registration, an evidence of the international mark registration with the territorial effect in Serbia and issued by the International Bureau of the World Organization of Intellectual Property (hereinafter referred to as: the International Bureau), and
- 3) pay a prescribed fee.

Mark registrations in conformity with the provisions of par. 1 of this Article shall have effect as of the date of the territorial effect for Serbia, and a mark existence shall be deemed to commence from that date, as well.

When registering a mark, all the rights acquired by third persons prior to the registration relating to the use and exploitation of a trademark similar to the protected mark, shall be taken into consideration.

The scope of rights, maintenance and validity of a mark registered in conformity with the Madrid Agreement or Protocol shall be subject to the legislation governing the issue of marks.

5. INTERNATIONAL REGISTRATION UNDER THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

Article 12

International registrations in conformity with the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as: the Hague Agreement), with the designated effect in the state union of Serbia and Montenegro (SCG), which have become valid before 3 June 2006, shall have effect in Montenegro in conformity with the Hague Agreement.

Article 13

Designs registered in conformity with the Hague Agreement and with the designated effect in the Republic of Serbia as of 3 June 2006 or on a later date, but prior to 4 December 2006, shall be entered into the registry by the Office of Montenegro, should the holder of the international registration:

- 1) file an application for the design registration with the Office of Montenegro at latest within six months of the date of start-up of the Office of Montenegro,
- 2) furnish, together with the application for a design registration, an evidence of the international design registration with effect in the Republic of Serbia and issued by the International Bureau, and
- 3) pay a prescribed fee.

Design registrations in conformity with the provisions of par.1 of this Article shall have effect as of the date of international registration, and the protection shall be deemed to commence from that date, as well.

When registering a design, all the rights acquired by third persons prior to the registration relating to the use and exploitation of a design, shall be taken into consideration.

The scope of rights, maintenance and validity of a design registered in conformity with the Hague Agreement shall be subject to the legislation governing the issue of legal protection of designs.

6. INTERNATIONAL REGISTRATION UNDER THE LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Article 14

International registrations in conformity with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration with effect in the state union of Serbia and Montenegro (SCG) before 3 June 2006, shall have effect in Montenegro in conformity with that Agreement.

7. INTERNATIONAL REGISTRATION UNDER THE PATENT COOPERATION TREATY

Article 15

Rights from the applications for European patents and international applications filed in conformity with the PCT which have entered into the European stage (hereinafter referred to as: European Patent Application), as well as European patents with effect in the State Union of Serbia and Montenegro (SCG), i.e. in the Republic of Serbia in conformity with the Treaty between the Federal Government of the Federal Republic of Yugoslavia and the European Patent Organization on cooperation in the domain of patents ratified on 15 June 2004, shall have effect in Montenegro.

Article 16

Provisions of Articles 120 to 129 of the Law on Patents (Official Gazette of SCG, No. 32/04 and 35/04), shall be applied accordingly to the applications for European

patents and European patents, solely if the present Decree refers to the implementation of specific provisions.

Article 17

A European patent with effect in the state union of Serbia and Montenegro (SCG), i.e. in the Republic of Serbia, registered on the basis of an application for European patents filed before 3 June 2006, shall be valid in Montenegro until the expiry of the period for which a fee for the maintenance thereof has been paid to the Office of Serbia, without any additional registration or payment of any additional fees.

A European patent with effect in the State Union of Serbia and Montenegro (SCG), i.e. Republic of Serbia, registered on the basis of an application for European patents filed on 3 June 2006 or on a later date, but before coming into effect of the Agreement on Cooperation and Extension between the Republic of Montenegro and European Patent Organization, shall be valid in Montenegro until the expiry of the period for which a maintenance fee has been paid to the Office of Serbia, without any additional registration or payment of additional fees.

Upon expiry of the period for which a due maintenance fee has been paid to the Office of Serbia referred to in par. 1 and 2 of this Article, a subsequent extension of the period of protection shall be approved by the Office of Montenegro which shall then charge a relevant maintenance fee.

Article 18

The effect of a European patent recognized in conformity with the provisions of this Decree, as well as modifications thereof, shall be equivalent to the effect or modifications of such a patent in the Republic of Serbia.

Provisions of Article 125 of the Law on Patents shall be applied accordingly to the application for a European patent and European patent recognized in conformity with the present Decree. Translations referred to in Article 125, par. 2 and 3 of the Law on Patents, are translations presented to the Office of Serbia.

Provisions of Articles 126, 127 and 128 of the Law on Patents shall be applied accordingly to the European patents recognized in conformity with this Decree.

Article 19

The effect of the application for a European patent requested by which is extension to the Republic of Serbia, as well as modifications of the effect, shall be equivalent to the effect or modifications of the effect of such an application in the Republic of Serbia.

Provisions of Article 123 of the Law on Patents shall be applied accordingly to the applications referred to in par. 1 of this Article, which have not been decided upon. The translation referred to in Article 123, par. 2 of the Law on Patents shall be made in the language which is officially used in Montenegro, and the person who files the application shall submit it to the person who uses the patent in Montenegro.

Article 20

Nationals, i.e. residents of Montenegro may file international applications to the International Bureau as a receiving office in conformity with the provisions of the Rule No. 19.1.(a)(iii) of the PCT, from 3 June 2006 and to the Office of Montenegro from the date of start-up of that Office.

International applications filed in conformity with par. 1 of this Article shall have effect pursuant to the provisions of Article 11 (3) and (4) of the PCT.

International applications filed before 3 June 2006, if the patent protection has been requested for the territory of Montenegro, shall enter into the national stage before the Office of Montenegro, within:

- 1) the term referred to in Article 22 or 39 (1) of the PCT, or
- 2) six months after the start-up of the Office of Montenegro.

In the event referred to in par. 3 of this Article, a term expiring on a later date shall be applied.

8. ISSUANCE OF CERTIFICATES

Article 21

Holders of the right of intellectual property may request from the Office of Montenegro to issue a certificate on validity of the intellectual property right pursuant to the provisions of this Decree.

Holders of the right of intellectual property shall furnish, together with their requests referred to in par. 1 of this Article, a copy of the application and all other annexes presented to the Office of SCG, i.e. to the Office of Serbia, or a notarized copy of the application for a European patent relating to the state union of Serbia and Montenegro (SCG) or the Republic of Serbia including all pertaining annexes, i.e. a notarized copy of the certificate on the intellectual property right recognized by the Office of SCG, i.e. of the Office of Serbia with effect in the state union of Serbia and Montenegro (SCG) or the Republic of Serbia, as well as an evidence on the payment of relevant fees.

Article 22

The date of start-up of the Office of Montenegro shall be publicized in the Official Gazette of the RoM at least in one daily printed medium distributed in the territory of Montenegro, as well as on the website of the Government of the Republic of Montenegro.

Article 23

The present Decree shall come into effect on the eighth day after being published in the Official Gazette of the RoM.

No.: 03/7062

Podgorica, 20 September 2007

Government of the Republic of Montenegro
Zeljko Sturanovic, Prime Minister