

## SOME ISSUES OF INTELLECTUAL PROPERTY RIGHTS REFORM IN BOSNIA AND HERZEGOVINA

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### Abstract:

Legislation in the field of Intellectual Property of Bosnia and Herzegovina (the area of patents, trademarks, industrial designs, geographical origin marks, topographies of integrated circuits, copyright and related rights and collective management of copyright and related rights) came into force on 7 July, or 11 August 2011th year. The main goal is to be achieved by this law is to harmonize national legislation with WTO requirements and EU and strengthening the legal protection granted to the holders of those laws that are so firmly integrated into the international community and become a full member of WTO. The period of few months is short for any thorough analysis of application of the above Act, and the lack of this article consists in the fact that the author was not able in the given explanations and instructions to take into account the issues and dilemmas that will soon open court practice. Also, this is not intended in this paper a comprehensive scientific expertise and comparative analysis of new laws. Such work will be imminent when passed some time in implementing the new law. This paper aims to answer three questions: 1) the reasons for passing the law, 2) the constitutional and legal basis for making laws and 3) the conformity of laws with European practice.

Keywords: Intellectual Property, Copyright and Related Rights Act, the European Union

### 1. REASONS FOR ADOPTION OF LAW

So far, the area of intellectual property protection in Bosnia and Herzegovina was governed by omnibus legislation, the Law on Industrial Property in Bosnia and Herzegovina ("Official Gazette of BiH", no. 3 / 02 i29/02), and the Law on Copyright and Related Rights Bosnia and Herzegovina ("Official Gazette" br.07/02. These laws do not fully comply with all the required standards of protection of various intellectual property rights, which are accepted by the countries of the EU and WTO. It was decided that instead of omnibus legislation creating a whole set of laws that would outline in detail, in accordance with modern international standards, regulating the different areas of intellectual property (the area of patents, trademarks, industrial designs, geographical origin marks, and topographies of integrated circuits, copyright and related rights and collective management of copyright and related rights). In this respect the provisions of the Act are compatible with the basic legal institutes and the standards of EU and WTO. The signing of the Stabilisation and Association Agreement with EU 16.06.2008. and the efforts of Bosnia and Herzegovina to start all processes on the path towards full EU membership, adoption of the so-called, *Acquis communautaire*<sup>443</sup> has become a liability. In addition, one of the areas that today are paying the most attention in the developed countries of Europe and the world is precisely the area of intellectual property rights. It is clearly visible in the number of EEC<sup>444</sup>, and later the EU, which have already started to make since 1991 year onwards, as well as international agreements within the WTO and WIPO<sup>445</sup>. The

level of protection that these laws today provide holders of intellectual property rights should be appropriately incorporated in the legislation of Bosnia and Herzegovina, as this would meet all the commitments in this regard and enable the state to smoothly move forward on the path of development. The main goal is to be achieved by this law is to harmonize national legislation with WTO requirements and the EU and strengthening the legal protection granted to the holders of patent, trademark, industrial design, geographical indication of origin, topography of integrated circuits, copyright and related rights and collective management copyright and related rights through the refinement of certain provisions that have caused dilemmas in practice and different interpretations. In addition, the decision of the Patent Act Trademark Act, industrial designs, geographical designation of origin, topography of integrated circuits, copyright and related rights and collective copyright and related rights are the result of checking the practice of certain institutes previous laws relating to protection of patent, trademark, industrial design, geographical indication of origin, topography of integrated circuits, copyright and related rights and collective management of copyright and related rights. In making the decision is guided by the decisions contained in the Croatian legislation, Serbia, USA, UK, Germany, Sweden, Hungary, Switzerland, Romania, Bulgaria, Slovenia, the Czech Republic and Macedonia, as well as the recommendations of the World Intellectual Property Organization.

**The novelty of the Patent Act** is the ability of the applicant to require the patent, and enforcement of the substantive examination of a patent application or submitted on the basis of accepted results of substantive examination of a patent application, or delay in carrying out the substantive examination of the application and granting of a consensual patent. In accordance with the EPC<sup>446</sup> and the EU practice, was introduced in detail in the Institute of proceeding and the restoration of rights where the applicant or patent owner, or consensual within the patent fails to perform any act which is a direct consequence of loss of rights under a patent application or patent, or consensual patent.

<sup>443</sup> *Acquis communautaire* (French *acquis communautaire*), a name that refers to the overall accumulated so far right of the European Union, or to a set of legal norms and decisions that bind all member countries within the European Union. Each country wishing to accede to the EU must accept the Treaties and other content derived from treaties and harmonize its legislation with the *acquis communautaire*. By signing the Stabilization and Association Bosnia and Herzegovina has assumed responsibility to adapt its legislation with the *acquis*.

<sup>444</sup> EEC-European Economic Community

<sup>445</sup> WIPO- World Intellectual Property Organization

<sup>446</sup> EPC - European Patent Convention

**In addition, the decision of the Law on Trademarks** is the result of checking the practice of certain institute's applicable laws relating to the protection of trademarks. The main goal is to be achieved by this law is to harmonize national legislation with WTO requirements and EU, and strengthening the legal protection granted to the holder of a trademark through the refinement of certain provisions that have caused dilemmas in practice and different interpretations. Besides the fact that brings a special law that governs the protection of trademarks, the main novelty in comparison to the old law is the introduction of an objection (opposition), which resulted in the systematization of law, and certain procedural provisions. It is estimated that the system of complaints with the investigation ex officio only absolute grounds for refusal of a trademark application to speed up the process of solving filed trademark applications, and relative grounds for refusal to surrender to the interested persons or holders of senior rights, this time taking into account the capabilities of the Institute for Intellectual Property of Bosnia and Herzegovina. Moreover, such a system prevails in most EU countries, and was prescribed and the Regulation of EU trademark.

**Industrial Design Act**, unlike the earlier legislation, contains detailed provisions on the international registration of industrial designs, the procedure of registration changes, transfer, license, pledge, and the provisions on the Institute who led the proposal for a declaration of nullity of industrial design. The precise relationship is regulated through the design of protection of industrial designs, as well as industrial property rights, and by copyright law, when the design is copyrighted.

**The big news in the Law on the label of geographic origin** represents the introduction of an objection (opposition) in the process of testing applications for the establishment of a mark and name origin. Detail the procedure for registration of a mark and name origin. Otherwise regulate the ratio of registered marks and names of geographical origin of the previously registered trademark or a company. We fully implemented the relevant provisions of the TRIPS<sup>447</sup> Agreement relating to the protection of geographical indications, enhanced protection from unfair competition, introduced the first inspection and administrative measures and border measures, provisional measures and measures to preserve evidence, and taking collateral. It allows for the protection of traditional, historical and homonymous names and prescribes the procedure for international registration of names of origin and geographical indication. There was a legal venue to determine the generic designations of origin and geographical indications expanded the circle of persons who have active legitimating for filing a complaint for violation of a mark or name, origin, and introduced a measure of seizing goods and articles infringing the registered geographical indication or the registered name of origin.

**Law on the topography of integrated circuits** the legal system of Bah in the field of intellectual property more

approaching the European legal system protecting intellectual property rights, which results in fulfilling the necessary conditions for the integration of BiH into a single system of intellectual property rights of the EU. By adopting the law and the protection of topographies of integrated circuits in BiH must achieve the required degree of compliance with EU Council Directive No. 1987/54/EEZ of 16 December 1986. The legal protection of topographies of integrated circuits. In the process of stabilization and association process, as prescribed in Article 71 Agreement on Stabilization and Association Agreement, Bosnia and Herzegovina must guarantee a level of protection of intellectual property similar to the level that exists in the EU, and thus to harmonize regulations in the field of protection of topographies of integrated circuits.

**The main objective of the new Law on Copyright and Related Rights** was to achieve full compliance of the regulations of Bosnia and Herzegovina with the EU legal order and, simultaneously, and with relevant international conventions and treaties (egg, Barnstorm, Rome, Brussels Convention, the TRIPS-ohm, Contract WIPO Copyright (WCT), WIPO Treaty on the performers and Phonograms Treaty (WPPT). In addition to this main task, attempts at the same time, the new law is nomotechnical and more at the level copyright legal regulations of other developed countries, given However, respect and maintain a certain measure of common linguistic and stylistic modes of regulation that have been applied in other domestic law.

In the previous Law on Copyright and Related Rights in Bosnia and Herzegovina (ZAPSP/2002.) Matters of collective management of copyright and related rights were decorated in a particularly satisfactory way. On this important issue of law have only ten members, if we add all the members of the chapters of which, at least by name, governing the exercise of rights. Of course, that these poor regulation of a large part of the collective management of rights issues remained open, and, thus, is one of the intentions of the enactment of new laws to fill the legislative gaps in this area.

## **2. CONSTITUTIONAL AND LEGAL BASIS FOR THE LAW**

The constitutional basis is contained in Article III, item 5 by which Bosnia and Herzegovina is authorized to assume jurisdiction when it is necessary for the preservation of sovereignty and international personality of Bosnia and Herzegovina.

- **Law on Foreign Trade Policy of BiH** ("Official Gazette" no. 7 / 98 and 35/04) Article 30 (2) of the Act it was found that aspects of intellectual property rights relating to foreign trade under the jurisdiction of the institutions of Bosnia and Herzegovina. The term "aspects of intellectual property rights concerning foreign trade" refers to ensuring adequate standards and principles concerning the availability, scope and use of intellectual property rights relating to foreign trade, as well as ensuring effective and appropriate means to implement intellectual property rights in accordance with obligations under trade agreements with Bosnia and Herzegovina is one of the parties.

- **Law on the Establishment of the Institute for Intellectual Property of Bosnia and Herzegovina** ("Official Gazette" No. 43/04) Article 1 Act was established

<sup>447</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights

to establish the Institute for Intellectual Property of Bosnia and Herzegovina as an independent state administrative organization, and to regulate his position, responsibilities and powers, as well as other issues of importance to the organization, functioning and work of the Institute. Article 7 paragraph (1) point a) of the Act provided that the Institute for Intellectual Property of Bosnia and Herzegovina in the field of industrial property responsible for conducting administrative proceedings for the acquisition, maintenance, transport and termination of the patent rights, trademarks and service mark, industrial designs, geographical tag and the topography of integrated circuits, in accordance with international conventions, treaties and agreements acceded to, or ratified by Bosnia and Herzegovina, and the laws and regulations governing this matter. Article 7 (1) of the Act is determined that the Institute for Intellectual Property of Bosnia and Herzegovina shall be competent to perform professional and administrative activities in the field of copyright and related rights. In the TAC. bb) of the Act was found to be in the field of copyright and related rights of the Institute responsible for conducting administrative and technical tasks relating to the rights of authors in works of literature, science and art, performers' rights, rights of producers of phonograms, the rights of broadcasting organizations, manufacturer video grams and databases, in accordance with international conventions, treaties and agreements acceded to, or ratified by Bosnia and Herzegovina, and the laws and regulations governing this matter. The same article showed that the Institute is responsible for supervising the work of the association for the collective management of copyright and related rights. In the same article, paragraph (1) point cc) of the Act showed that jobs in the field of intellectual property include the preparation of bilateral and multilateral agreements, conventions, arrangements, laws and regulations concerning intellectual property.

### 3. LAW COMPLIANCE WITH EUROPEAN LEGISLATION

**Patent Act** has been prepared in accordance with the practice of legal systems in EU countries and the Uniform Rules for the drafting of legal regulations in BiH institutions. The Act is compliant with the WTO, Agreement on Trade Aspects of Intellectual Property Rights (TRIPS) and with the acquis:

- Regulation (EC) No 1768/92 of the European Parliament and the Council of 18 June 1992., which refers to the introduction of supplementary protection certificates for medicinal products intended for humans or animals, as supplemented,
- Regulation (EC) No 1610/96 of the European Parliament and the Council of 23 July 1996., which refers to the introduction of supplementary protection certificates for plant protection products, as supplemented,
- Directive (EU) No. 44/98 of the European Parliament and the Council of 6 July 1998., the legal protection of biotechnological inventions,
- Regulation (EC) No 816/06 of the European Parliament and the Council of 17 May 2006. the forced licensing of patents relating to the manufacture of pharmaceutical products for export to countries with problems of public health,

- The European Patent Convention in 1973. year, as amended, the implementing regulations, and with international conventions in the field of patents, which is a member of Bosnia and Herzegovina (the Paris Convention for the Protection of Industrial Property, the Agreement on Cooperation in the field of patents (PCT), Budapest Treaty on the International Recognition of the Deposit of Microorganisms Patent for the process) and with the Treaty on Patent Law (Patent Law Treaty), which intends to access.

**Trademark Act** has been prepared in accordance with the practice of legal systems in EU countries and the Uniform Rules for the drafting of legal regulations in BiH institutions. The Act is compliant with the WTO, Agreement on Legal Trade Aspects of Intellectual Property Rights (TRIPS) and with the acquis:

→ solutions prescribed by the WTO to its members on the Agreement on Trade-Related Aspects of Intellectual Property Rights-TRIPS), which entered into force on 01.01.1995. year,

→ European Union Council Directive No. 89/104/EEC, on the harmonization of the laws of the Member States in terms of marks, from 21.12.1988. year,

- European Union Council Regulation on the European Union's trademark No. 40/94 of 20.12.1993. year,

- European Union Council Regulation No. 422/2004 of 19.02.2004. year, amending Decree No. 40/94 on the trademark of the European Union,

- Paris Convention for the Protection of Industrial Property, →

Singapore Treaty on the Trademark Law (Singapore Trademark Law Treaty) of 27.3.2006. year,

- Agreement on the Trademark Law (Trademark Law Treaty) in 1994. year (hereinafter: the Agreement on Trademark Law),

→ Madrid Agreement concerning the International Registration of Marks, Protocol to the Madrid Agreement concerning the International Registration of Marks and - Joint Resolution of the World Organisation for Intellectual Property Protection Judicial Character of 1999. year (hereinafter Joint Resolution WIPO).

When reviewing basic institutes of law relating to industrial design is guided by the following legal achievements of the European Union:

- Directive No. 98/71/EC of the European Parliament and the Council of Ministers of 13 October 1998. year on the legal protection of designs (hereinafter: the EU Directive),

- Council of Ministers Decree No. 6 / 2002 of 12 December 2001. The design of the communitarian (hereinafter: EU Regulation on the communitarian design),

- Regulation EC No 2245/2002 of 21 October 2002. The purpose of implementing the EU Council Regulation No. 6 / 2002 on the communitarian design,

- Council of Ministers Decision No. 2006/954/EC of 18 December 2006. The certifying join the Geneva Act of the Hague Agreement Concerning the International Registration industrial design of the European Union, adopted at Geneva on 2nd July 1999. In addition, the law is in conformity with the solutions that the World Trade Organization to its

members prescribed by the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at a diplomatic conference second July 1999. year, which was ratified by Bosnia and Herzegovina (entered into force in BiH 27.12.2008). When reviewing the previous law that governs the **protection of geographical origin tags** proponent is primarily managed solutions that represent an obligation on the basis of

→ TRIPS Agreement, as well as the solutions of the EU Directive on the enforcement of the Council Regulation (EC) No 510/2006 of 20 March 2006. year relating to the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

→ Special attention is given to defining the basic concepts (designations of origin, geographical designation, name of origin), in accordance with relevant international agreements, which derive from different conditions, how to acquire and scope of rights.

→ The big news is the introduction of an objection (opposition) in the process of testing applications for the establishment of a mark and name origin. Detail the procedure for registration of a mark and name origin. Otherwise regulate the ratio of registered marks and names of geographical origin of the previously registered trademark or a company. We fully implemented the relevant provisions of the TRIPS Agreement relating to the protection of geographical indications, enhanced protection from unfair competition, introduced the first inspection and administrative measures and border measures, provisional measures and measures to preserve evidence, and taking collateral.

→ It allows for the protection of traditional, historical and homonymous names and prescribes the procedure for international registration of names of origin and geographical indication.

→ There was a legal venue to determine the generic designations of origin and geographical indications, expanded the circle of persons who have an active legitimating for filing a complaint for violation of a mark or name, origin, and introduced a measure of seizing goods and articles infringing the registered geographical indication

or the registered name of origin. → The development of solutions were used with the relevant international conventions, EU regulations, Serbia, Portugal, Spain, Italy, Switzerland, France, Czech Republic, Hungary, Bulgaria and recommendations of the World Intellectual Property Organization. Regulations in the field of protection of topographies of integrated circuits, are in accordance with the regulations in the European Union regulated following legal instruments:

- Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products, →

- Directive 2004/48/EC of the European Parliament and the Council on the implementation of intellectual property rights. →

**Law on Copyright and Related Rights and the Law on collective management of copyright and related rights**

is made in accordance with the practice of the legal systems of EU countries and the common rules for the drafting of legal regulations in BiH institutions. The Act is compliant with the *acquis* and the requirements of TRIPS. Conclusion:

The adoption of new laws on intellectual property (area of patents, trademarks, industrial designs, marks the geographical origin, topography of integrated circuits, copyright and related rights and collective copyright and related rights), which recently force on the territory of Bosnia and Herzegovina have already become very topical in our society and are the subject of discussion in many scientific and technical meetings. Among them is generally the dominant question is whether the enactment of new laws was accomplished by aspiration of Bosnia and Herzegovina to the closer integration into the international community and that you have created the conditions for joining the WTO, and whether it fulfilled the formal harmonization of domestic political conditions regulations in the field of intellectual property protection with European Union regulations and the Agreement on Trade Related Aspects of Intellectual Property Rights. My personal opinion which is based on the facts above is that: Bosnia and Herzegovina is making the above-mentioned laws on intellectual property rights to fully fulfill the requirements demanded of it, the EU and TRIPS, and thus produce clear prerequisites for membership in the WTO.

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