

The Law of Ukraine

On Amendments to Certain Legislative Acts of Ukraine on Legal Protection of Intellectual Property

The Verkhovna Rada resolves:

I. To amend the following legislative acts of Ukraine:

1. In the Civil Procedural Code of Ukraine:

- 1) Part One of Article 4 shall be added with the following wording: "as well as performance of activities provided hereunder and aimed at offenses prevention";
- 2) Part One of Article 10, after the word "state" shall be added with the words: "or other protected by the law";
- 3) in Part One of Article 48, the wording "in the amount of one before-tax minimum" shall be replaced with "up to ten before-tax minimum amounts";
- 4) to add Chapter 4-A reading as follows:

Chapter 4-A. Preventive Measures

Article 62¹. Grounds for Using Preventive Measures

The person having valid grounds to believe that his/her rights have been violated or that there is a real threat of their violation, has the right to refer to court with an application requesting preventive measures prior to a lawsuit presentation.

Article 62². Types of Preventive Measures

The preventive measures shall include the following

- 1) inspection of premises where actions related to violations of rights allegedly take place;
- 2) seizure of property owned by the person against whom preventive measures have been applied, and which is held by such a person or other persons.

Article 62³. Motion Requesting Application of Preventive Measures

A motion requesting application of preventive measures shall contain:

- 1) the name of the court with which a motion is filed;
- 2) the exact name of a claimant and the person against whom preventive measures have been requested, their residence or location, as well as the name of the claimant's representative when a motion is filed by a representative;
- 3) the type and essence of a preventive measure;
- 4) circumstances by which the claimant substantiates the necessity to take preventive measures;
- 5) a list of documents and other evidence that are attached to the motion;
- 6) the signature of the claimant or his representative, when the motion is filed by the representative.

A motion requesting application of preventive measures shall be accompanied by documents evidencing payment of a state duty in the legally prescribed manner and amount. Along with the motion requesting application of preventive measures, its copies shall be furnished. Such copies shall be prepared in the number being equal to the number of persons against whom the preventive measures are requested.

The claimant shall file a respective lawsuit within ten days from the date of issuance of the ruling to the effect of preventive measures application. Upon the filing of a lawsuit by the claimant, the preventive measures shall serve as means of securing the evidence or lawsuit.

Article 62⁴. Procedure for Reviewing Motions Requesting Application of Preventive Measures

A motion requesting application of preventive measures shall be reviewed pursuant to the procedure set out in Article 38 of this Code within the most of two days following the date of its filing.

In case of a substantiated demand of a claimant, the motion requesting application of preventive measures shall be reviewed exclusively with the participation of the claimant without serving a notice to the person against whom the preventive measures are requested.

The court may require that the claimant furnish, along with the motion, any evidence available to him/her of the violation or threat of violation of his/her rights.

The court may obligate the claimant to secure its claim with a bond sufficient to prevent the abuse of preventive measures, which bond is deposited with the court. An amount of the bond shall be determined by the court with account for the circumstances of a case, though it may not exceed the amount of claimed damages.

The court shall issue a ruling to the effect of preventive measures application that specifies the selected preventive measures and grounds for their selection, a procedure and manner of their implementation, an amount of the bond, if any. Copies of the ruling shall be given to the claimant and the person against whom the preventive measures are to be applied immediately after they have been issued. In the event that the ruling was issued with the participation of the claimant only and without notice to the person against whom the preventive measures are requested, copies of the ruling shall be sent to the person against whom the preventive measures have been applied immediately after its implementation.

In the absence of grounds for preventive measures application, or in case of failure to meet the requirements set forth in part three of this Article, the court shall issue a ruling dismissing the motion requesting application of preventive measures.

Article 62⁵. Consequences of Filing a Motion Requesting Application of Preventive Measures Failing to Meet Requirements of Law

Having found that a motion requesting application of preventive measures is filed in violation of the requirements specified in Article 623 of this Code, or that the state duty has not been paid for it, the judge shall issue a ruling on suspending the motion review notifying the claimant of such decision, and setting a deadline for rectification of faults.

When a claimant fails to meet all the requirements listed in Article 623 of this Code within the specified term and fails to pay the state duty, the motion shall be deemed as not filed and shall be returned to the claimant, whereas the judge shall issue a motivated ruling to this effect.

Article 62⁶. Enforcement of the Motion Requesting Application of Preventive Measures

A ruling to the effect of preventive measures application shall be enforced immediately in the manner established for the enforcement of court decisions.

Article 62⁷. Responsibility for Failure to Comply with the Ruling to the Effect of Preventive Measures Application

Persons found guilty of failure to comply with the ruling to take preventive measures or of impeding its enforcement may, by the court ruling, be fined up to the amount of one non-taxed minimum income if such actions do not qualify as a criminal offence under law. Besides, the claimant may recover from such persons damages incurred due to the failure to comply with the ruling to take preventive measures.

Article 62⁸. Cancellation of a Ruling to the Effect of Preventive Measures Application

In response to a ruling to the effect of preventive measures application issued with the participation of the claimant only and without notice to the person against whom preventive measures have been applied, the latter may, within a ten-day period from the date of receipt of a copy of such ruling, file a request for repeal of such ruling.

The filing of a motion to cancel the application of preventive measures does not suspend the ruling to take preventive measures.

An issue of preventive measures cancellation shall be resolved within three days by the court or a judge that issued a ruling on their application. Failure of the concerned parties to appear in court shall not impede the review of a motion.

Following the review, the court rules either to leave the ruling to take preventive measures unchanged, or to modify or repeal it.

Article 62⁹. Appeal of Rulings to Take Preventive Measures

A ruling to take preventive measures, a ruling to dismiss the motion requesting application of preventive measures, as well as a ruling to leave the ruling to take preventive measures unchanged or to have it modified or canceled may be appealed.

The filing of a complaint with respect to the undertaking of preventive measures shall not suspend the performance of a respective motion. The filing of a complaint against a ruling to cancel or modify preventive measures shall suspend the respective ruling.

Article 62¹⁰. Termination of Preventive Measures

Preventive measures shall be immediately terminated in the event that:

- 1) the claimant has not filed a respective lawsuit within the term established by part three of Article 623 of this Code;
- 2) the court has dismissed the lawsuit on the grounds set forth in part two of Article 136 of this Code;
- 3) the claimant has failed to comply with the requirements set out in Article 139 of this Code;
- 4) the court ruled to cancel the ruling to take preventive measures.

Article 62¹¹. Compensation for Damages Caused by the Application of Preventive Measures

In case the preventive measures have been terminated, or the claimant has refused to file a lawsuit, or a decision to dismiss the lawsuit has taken effect, the person against whom the preventive measures have been taken shall be entitled to compensation for damages caused by the application of these measures.

In case the claimant posted the bond, damages caused by the application of preventive measures shall be compensated primarily at the expense of this bond.

The bond shall be returned to the claimant in full in the event that the court satisfied the lawsuit of a claimant or the respondent acknowledged the lawsuit or the court approved an amicable agreement between the parties.

In cases specified in Sections 2 - 4 of Article 6210 of this Code and during the consideration of a case on the merits, the court or a judge may rule on the compensation for damages caused by the application of preventive measures”;

5) to add Article 67¹ as follows:

“Article 67¹. Calculation of a State Duty in case of Application of Preventive Measures

For a lawsuit filed after the filing of a motion requesting application of preventive measures in a manner set forth in Article 62³ of this Code the state duty shall be paid in the amount prescribed and reduced by an amount of the state duty paid for the motion requesting application of preventive measures”;

6) section six shall be added to part one of Article 69:

“6) the claimant’s failure to file a respective lawsuit within the term established by part three of Article 62³ of this Code”;

7) figure “62⁷” shall be added to part one of Article 82 after the figure “48”;

8) in Article 126:

part one shall be worded as follows:

“in part one the words “copyright, right to invention, utility model, industrial design or innovation” shall be replaced with the following wording: “author’s rights to a copyright or related rights object, invention, utility model, industrial design, innovations and other results of intellectual creative activity”;

to add a new part to follow part four reading as follows:

“Lawsuits related to violations of property rights that arise out of copyright and related rights, the right to an invention, utility model, industrial design, a sign for goods and services, indication of the origin of goods, topography of an integrated circuit, a plant variety may be also filed at the location where a violation took place”;

In connection herewith, parts five through twelve shall be considered parts six through thirteen respectively.

9) part four shall be added to Article 137 after part three as follows:

“A lawsuit, if a ruling to take preventive measures was issued prior to its filing, shall contain, in addition to what is specified in sections 1 – 7 of part two of this Article, information on the application of preventive measures pursuant to Chapter 4-A of this Code”;

In connection herewith, part four shall be considered part five;

10) section one of part one of Article 218 shall be removed;

11) section two of part one of Article 291, after the figure “39”, figure “69” shall be added;

12) in part one of Article 422 words “on collection of remuneration for the use of copyright, the right to a discovery, invention for which a copyright certificate has been issued, improvement suggestion and industrial design” shall be removed.

2. In the Code of Commercial Procedure of Ukraine (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1992, #6, p56, 1993, #33, p. 347; 1995, #14, p.90; 1996, #9, p.44; 1997, #25, p. 171; 1999, #42-43, p. 378; 2000, #30, p.233, #50, p. 436; 2001, #10, p. 44, #11, p. 56, #31, p. 147, #36, p. 188; 2002, #17, p. 117, #32, p. 221:

1) part one of Article 1 shall be supplemented with the words “as well as for the purpose of application of measures provided hereunder and aimed at offenses prevention”;

2) Article 16 after part two shall be supplemented with a new part to read as follows:

“Cases dealing with disputes over issues of intellectual property rights violation shall be reviewed by a commercial court at the place where violation has been committed”;

In connection herewith, part three shall be considered part four.

3) Article 38 after part one shall be supplemented with a new part reading as follows:
“A commercial court may also request evidence prior to the filing of a lawsuit as a preventive measure in the manner set out in Articles 43¹ – 43¹⁰ of this Code”;

In connection herewith, parts two and three shall be considered parts three and four respectively;

4) to add Part V¹ as follows:

“Part V¹. Preventive Measures

Article 43¹. Grounds for Taking Preventive Measures

Persons who have grounds to fear that presentation of necessary evidence will later become difficult or impossible as well as grounds to believe that his rights have been violated or there is a real threat of such violations, shall have the right to file with the commercial court a motion requesting application preventive measures prior to the filing of a lawsuit.

Article 43². Types of Preventive Measures

Preventive measures shall include:

- 1) request of evidence;
- 2) inspection of premises where actions related to violations of rights allegedly take place;
- 3) seizure of property which is owned by the person against whom preventive measures have been applied and which is held by such a person or other persons.

Article 43³. Motion Requesting Application of Preventive Measures

A motion requesting application of preventive measures shall contain:

- 1) the name of the commercial court with which the motion is filed;
- 2) the name of a claimant and the person against whom the preventive measures are requested, their postal addresses, names of the parties and their bank accounts, documents evidencing the status of a claimant-citizen as a subject of entrepreneurial activity;
- 3) the type and essence of a preventive measure;
- 4) circumstances by which the claimant substantiates the necessity of using preventive measures;
- 5) a list of documents and other evidence that are attached to the motion;
- 6) the signature of a claimant or his/her representative, when the motion is filed by the representative.

A motion requesting application of preventive measures shall be accompanied by documents evidencing the payment of a state duty in the legally prescribed manner and amount. Along with a motion requesting application of preventive measures its copies shall be furnished in the number corresponding to the number of persons against whom the preventive measures have been applied.

The claimant shall file a respective lawsuit within ten days from the date of issuance of the ruling to take preventive measures. Upon the filing of a lawsuit by the claimant, the preventive measures shall serve as means of securing the lawsuit.

Article 43⁴. Procedure for Reviewing Motions Requesting Application of Preventive Measures

A motion requesting application of preventive measures shall be reviewed within the most of two days following its submission by the commercial court having jurisdiction over the area where such procedural actions must be taken with notification of concerned parties. However, their failure to appear in court shall not impede the review of a motion.

In case of a substantiated demand of a claimant, a motion requesting application of preventive measures shall be reviewed in sole presence of the claimant without notice to the person against whom the preventive measures have been applied, with the participation of the claimant only.

The commercial court may request that the claimant furnish, along with the motion, any evidence attesting to the fact or threat of his/fact rights violation.

The commercial court may obligate a claimant to secure its claim with a bond sufficient to prevent the abuse of preventive measures, which bond is deposited with the commercial court. An amount of the bond shall be determined by the commercial court with account for the circumstances of the case, though it may not exceed the amount of claimed damages.

The commercial court issues a ruling to the effect of preventive measures application specifying the selected preventive measures and grounds for their selection, the procedure and manner of their implementation, an amount of the bond, if any. Copies of rulings shall be given to the claimant and the person against whom the preventive measures are to be applied immediately after they have been issued. In the event that the ruling was issued with the participation of the claimant only and without notice to the person against whom the preventive measures have been applied, copies of the ruling shall be sent to the person against whom the preventive measures have been applied immediately after its implementation.

In the absence of grounds established by Article 43¹ of this Code and in case of failure to meet the requirements set forth in part three of this Article have not been complied with, the commercial court shall issue a ruling that dismisses the motion requesting application of preventive measures.

Article 43⁵. Consequences of the Filing a Motion Requesting Application of Preventive Measures Failing to Meet the Requirements of Law

Having found that a motion requesting application of preventive measures is filed in violation of the requirements specified in Article 43³ of this Code, or that the state duty has not been paid for it, the judge shall issue a ruling to leave a motion unconsidered, shall notify the claimant thereof, and specify a term for rectification of faults.

When a claimant fails to meet all the requirements listed in Article 43³ of this Code within the specified deadlines and failing to pay the state duty pursuant to the judge's instruction, the motion shall be deemed as not filed and shall be returned to the claimant, whereas the judge shall issue a motivated ruling to this effect.

Article 43⁶. Enforcement of the Motion Requesting Application of Preventive Measures

A ruling to take preventive measures shall be enforced immediately in the manner established for the enforcement of court decisions.

In the event that demands of the claimant have been secured by a bond, the ruling to take preventive measures shall be enforced immediately after the bond is posted in full.

Article 43⁷. Cancellation of a Ruling to Take Preventive Measures

In response to the ruling to take preventive measures issued with the participation of the claimant only and without notice to the person against whom preventive measures have been applied, the latter may file a request for repeal of such ruling within a ten-day period from the date of receipt of a copy of the ruling.

The filing of a motion to cancel the application of preventive measures does not suspend the ruling to take preventive measures.

An issue of preventive measures cancellation shall be resolved within three days by the commercial court that ruled on their application. Failure of the concerned parties to appear in court shall not impede the review of a motion.

Following the review, the commercial court rules either to leave the ruling to take preventive measures unchanged, or to modify or repeal it.

Article 43⁸. Appeal of Rulings to Take Preventive Measures

In response to a ruling to the effect of preventive measures application, a ruling to dismiss the motion requesting application of preventive measures, as well as a ruling to leave the ruling to take preventive measures unchanged or to have it modified or canceled, an appeal may be filed.

The filing of the appeal against the undertaking of preventive measures shall not suspend the performance of a respective motion. The filing of an appeal against a ruling to cancel or modify preventive measures shall suspend the respective ruling.

Article 43⁹. Termination of Preventive Measures

Preventive measures shall be immediately terminated in the event that:

- 1) the claimant has not filed a respective lawsuit within the term established by part three of Article 43³ of this Code;
- 2) the commercial court has dismissed the lawsuit on the grounds set forth in part one of Article 62 of this Code;
- 3) the claimant has failed to comply with the requirements set out in Article 63 of this Code;
- 4) the commercial court ruled to cancel the ruling to take preventive measures.

Article 43¹⁰. Compensation for Damages Caused by the Application of Preventive Measures

In case that preventive measures have been terminated, or the claimant has refused to file a lawsuit, or a decision to dismiss the lawsuit has taken effect, the person against whom the preventive measures have been taken shall be entitled to compensation for damages caused by the application of these measures.

In case the claimant posted the bond, damages caused by the application of preventive measures shall be compensated primarily out of this bond.

The bond shall be returned to the claimant in full in the event that the court has satisfied the lawsuit of a claimant or the respondent recognized the lawsuit, or the commercial court has approved an amicable agreement between the parties.

In cases specified in sections 2 - 4 of Article 43⁹ of this Code and during the consideration of a case on the merits, the commercial court may rule on the compensation for damages caused by the application of preventive measures”;

5) Article 45 after the words “lawsuits” shall be supplemented with the words “and motions requesting application of preventive measures”;

6) part two of Article 54 shall be supplemented with section 6¹ to read as follows:
“6¹) data on application of preventive measures pursuant to Part V¹ of this Code”;

7) Article 87 shall be supplemented with the words “unless otherwise provided for by this Code.”

3. Articles 176, 177 and 229 of the Criminal Code of Ukraine shall be reworded to read:

Article 176. Violation of Copyrights and Related Rights:

1. Illegal reproduction, dissemination of works of science, literature and arts, software programs and databases, as well as illegal reproduction, dissemination of performances, phonograms, videograms and broadcasts, their illegal duplication and dissemination on audio- and video-cassettes, other media, or other willful infringements upon the copyright and related rights, if such have resulted in financial losses in large amounts, -

shall be punishable by a penalty in the amount ranging from two hundred to one thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for the same period, with confiscation of all copies of works, software material media, databases, performances, phonograms, videograms, broadcasts, and tools and materials that have been specifically used for their production.

2. The same actions, if they are committed for a second time, or in prior collusion of a group of persons, or have resulted in financial losses in especially large amounts, -

shall be punishable by a penalty in the amount ranging from one thousand to two thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for a period ranging from two to five years, with confiscation of all copies of works, software material media, databases, performances, phonograms, videograms, broadcasts, and tools and materials that have been specifically used for their production”;

3. Actions covered by parts one or two of this Article committed by an official in abuse of his/her official capacity in relation to a subordinated person, -

shall be punishable by fine in the amount ranging from five hundred to one thousand non-taxed minimum amounts of individual income, or by imprisonment for the period of up to six months, or by freedom restriction for the period of up to two years with a withdrawal of the right to occupy certain offices or engage in certain types of activities for the period of up to three years.

“N o t e. In Articles 176 and 177 of this Code, financial losses shall be deemed to have been inflicted in large amounts if the amount of such losses exceeds a non-taxed minimum income amount by two hundred and more times, and financial losses shall be deemed to have been

inflicted in especially large amounts if the amount of such losses exceed a non-taxed minimum income amount by one thousand and more times”.

Article 177. Violation of Rights to Inventions, Utility Models, Industrial Designs, Topography of Integrated Circuit, Plants Varieties, Innovations

1. Illegal use of an invention, a utility model, an industrial design, an integrated circuits design, a plant variety or innovation, misappropriation of the authorship thereto, or other willful infringement upon the right thereto, if such have resulted in financial losses in large amounts, - shall be punishable by a penalty in the amount ranging from two hundred to one thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for the same period, with confiscation of the given products and tools and materials that have been specifically used for their production.

2. The same actions, if they are committed for a second time, or in prior collusion of a group of persons, or have resulted in financial losses in especially large amounts, - shall be punishable by a penalty in the amount ranging from one thousand to two thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for a period ranging from two to five years, with confiscation of the given products and tools and materials that have been specifically used for their production.

3. Actions specified in parts one or two of this Article that have been committed by an officer with the use of his official position with respect to a subordinated person, - shall be punishable by a penalty in the amount ranging from five hundred to one thousand non-taxed minimum incomes, or by an arrest for a period up to six months, or by restriction of freedom for a period of up to two years, with deprivation of a right to hold certain offices or engage in certain activities for a period of up to three years.

Article 229. Illegal Use of a Mark to Goods and Services, a Trademark, a Qualified Indication of Origin of a Good

1. Illegal use of a mark to goods and services, a trademark, a qualified indication of origin of a good, or other willful infringements upon the right thereto, if such have resulted in financial losses in large amounts, - shall be punishable by a penalty in the amount ranging from two hundred to one thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for the same period, with confiscation of the given products and tools and materials that have primarily been used for their production.

2. The same actions, if they are committed for a second time, or in prior collusion of a group of persons, or have resulted in financial losses in especially large amounts, - shall be punishable by a penalty in the amount ranging from one thousand to two thousand non-taxed minimum incomes, by correctional labor for a period of up to two years, or by imprisonment for a period ranging from two to five years with confiscation of the given products and tools and materials that have been specifically used for their production.

3. Actions specified in parts one or two of this Article that have been committed by an officer with the use of his official position with respect to a subordinated person, -

shall be punishable by a penalty in the amount ranging from five hundred to one thousand non-taxed minimum incomes, or by an arrest for a period up to six months, or by restriction of freedom for a period of up to two years, with deprivation of a right to hold certain offices or engage in certain activities for a period of up to three years.

Note. financial losses shall be deemed to have been inflicted in large amounts if the amount of such losses exceeds a non-taxed minimum income amount by two hundred and more times, and financial losses shall be deemed to have been inflicted in especially large amounts if the amount of such losses exceed a non-taxed minimum income amount by one thousand and more times.”

4. In the Code of Criminal procedure of Ukraine:

1) To supplement Part one of Article 20 with the word “or other legislatively protected” after the word “state”;

2) in Article 112:

in part one, the following wording shall be added after the words and figures “by part three of Article 176”: “by part three of Article 177”, while after the figure “211”, the following words and figures shall be added: “by part 3 of Article 229”;

in part two, the words and figure “by Articles 177” shall be replaced with “by parts 1 and 2 of Article 177, by Articles”, while the figure “229” shall be replaced with “parts 1 and 2 of Article 229, Articles”.

5. In Law On Protection of Rights to Industrial Designs (*Vidomosty Verkhovnoi Rady* (Newsletter of the Verkhovna Rada) of Ukraine, 1994, No.7, page 34, 2001, No.8, p.37; 2002, No. 16, p. 114, No. 35, p. 256):

1) In Article 1:

in paragraph 7 to replace the word “citizen” with the word "natural";

in paragraph 9, after the word “application”, the following wording shall be added: “or having otherwise obtained applicant’s rights through a legal procedure”;

in paragraph 14, after the word “ownership”, the following wording shall be added: “as well as other matters vested into its competence hereunder”;

2) in Article 5:

in clause 1, the words "public interests" shall be replaced with words "public order";

In paragraph 4 of clause 3, the word “them” shall be replaced with “to them”;

Clause 4 shall be deleted;

Clause 6 shall be worded to read as follows:

“6. The scope of legal protection to be provided shall be defined by the entirety of essential features of the industrial design reflected on the image(s) of the product as entered in the Register, and attested to by a patent with an attached copy of the product image as entered in the Register. In the event of a dispute over the content of the product image, the prevalence shall be given to the image entered in the Registered.”

The industrial design features shall be interpreted within the scope of its description.”;

3) in Article 6:

in Clause 1 the words "capable of industrial application" shall be deleted;
in clause 2, the words "applications previously filed with the Institution" shall be replaced with "applications previously received by the Institution except for those which, as at the indicated date, are deemed revoked, are revoked or in regard of which final decisions on patents denial have been made by the Institution and possibilities for appealing against such decisions have been exhausted";
Clause 4 shall be deleted;

4) in Article 10 words "not rejected" should be replaced with words "where a decision has not been taken to reject the application for a patent"

5) in Article 11:

Paragraph 3 of Clause 4 shall be worded to read as follows:

"a set of images of the product (a product per se, or in the form of its model or drawing), making it possible to imagine its exterior in full detail";

Clause 8 should be added with a sentence reading as follows: "The term may be prolonged but for no longer than six months provided that a respective petition is filed prior to such deadline expiration and a petition filing fee has been fully paid";

6) Clauses 2, 3 and 4 of Article 12 shall be replaced with Clause 2 reading as follows:

"2. The application submission date shall be established in accordance with Clauses 9, 10 and 11 of Article 14 hereof";

7) Article 13 shall be added with clause 7 reading as follows:

"7. The industrial design priority may be established on the grounds of the date of receipt by the examination institution of additional materials executed in line with Clause 7 of Article 14 hereof as a separate application insofar as this application has been submitted within three months after the receipt by the applicant of the notification of the Institution saying that additional materials cannot be taken into consideration in the course of the application review prior to which such materials were filed;

8) Article 14 shall be worded to read as follows:

"Article 14. Application Examination

1. The application examination shall have the status of a scientific development examination and shall be performed by the examination institution in compliance with requirements hereof and the rules established by the Institution hereunder.

2. The examination institution shall perform information support activities necessary for the applications examination and shall serve a center for international publications exchange in conformity with the Convention On International Exchange of Publications as approved on 3 December 1958 by the UN General Conference On Education, Science and Culture.

3. The outcomes of examination of the application that is not deemed revoked or is not revoked shall be reflected in a grounded conclusion of the examination entering into effect upon its approval by the Institution. Based on such a conclusion, the Institution shall decide upon the patent issue or denial. The Institution's decision shall be communicated to the Applicant.

The applicant shall have the right to, within a month's term following his/her receipt of the Institution's decision, demand that copies of materials confronting the application be made available to him/her. Such copies shall be furnished to the applicant within the period of one month.

4. The applicant shall have the right to, on his/her behalf or on the examination institution's invitation, participate, following the procedure set by the Institution, personally or through representative in the consideration of issues having arisen in the course of examination.

5. The applicant shall have the right to insert in the application corrections in errors and changes in their name and address, mailing address, name and address of his/her representative.

The applicant may enter modifications in the application connected with the change in the applicant's identity subject to a consent of other applicants mentioned in the application. Such modifications may also be entered by a person willing to be an applicant, subject to all applicants' consent.

Said modifications and corrections shall be taken into account in the application materials so long as they have been received not later than on the date of the Institution's receipt of document attesting to the payment of the patent issuance fee.

A fee shall be collected for filing an application requesting errors correction or entering any of the modifications described above provided that the error is not obvious or technical while the modification is necessitated for reasons beyond the applicant's control.

6. An examination institution may require that the applicant submit to it of any additional materials inasmuch as examination appears to be impracticable without those materials, or to the extent that such institution has grounded doubts concerning the credibility of any data or elements contained in the application materials.

An applicant shall have the right to, within a month's period following the date of receipt of a notice or conclusion of the examination institution containing the requirement to provide additional materials, demand the presentation from said institution of copies of materials confronting the application.

The additional materials shall be provided by an applicant within two months following the date of receipt of a notice or conclusions of the examination institution or of copies of materials confronting the application. The deadline for additional materials provision shall be extended for additional at most six-month period so long as a respective petition has been filed and a filing fee has been paid prior to such period expiration. This deadline if missed for valid reasons shall be extended provided that a respective petition has been filed and a filing fee has been paid. The applicant's failure to file additional materials within set deadlines shall make the application revoked of which a proper notice shall be served to the applicant.

7. If the applicant has submitted additional materials, the examination shall consider whether they go beyond the essence of the industrial design as described in the application.

Additional materials shall be deemed beyond the essence of the industrial design as described in the application if they contain new essential features.

The part of additional materials going beyond industrial design as described in the application shall be disregarded during the application examination and may, upon a receipt of a proper notice of an examination institution, be processed as a separate application.

8. The following actions shall be performed during the examination procedure:
the application filing date as per Article 12 hereof shall be determined;
the pertinence of the claimed object to objects referred to in Clause 2 of Article 5 hereof shall be verified;
the application shall be reviewed to check its conformance with formal requirements attached to them by Article 11 hereof and with rules set by the Institution hereunder;
the document attesting to the application filing fee payment shall be reviewed to check its conformity with set requirements.

9. In the event that the application materials do not run counter to Article 12 hereof and subject to availability of a document attesting to the application filing fee payment, a notice of the established application filing date shall be furnished to the applicant.

10. In the event of inconsistency of the materials with Article 12 hereof, a respective notification thereof shall be immediately communicated to the applicant. To the extent that such inconsistency has been rectified within two months following the receipt by the applicant of the said notification, the date of receipt by the examination institution of the corrected materials shall be regarded as the application filing date. Otherwise, the application shall not be considered as duly filed, of which a proper notice shall be served to the applicant.

11. If materials of the application conformant with Article 12 hereof contains references to drawings (figures, maps) while such drawings (figures, maps) appear unavailable, the applicant shall be advised of it, complete with a request to, at his/her discretion, either to provide said drawings (figures, maps) or to delete a reference to them. In the event that the drawings (figures, maps) in question have been made available within two months following the date of the applicant's receipt of the notice, the date of receipt by the examination institution of the drawings (figures, maps) shall be considered to be the application filing date. In case that the applicant fails to make the choice proposed to him/her, the application shall be deemed not filed of which a proper notice shall be served to the applicant.

12. In case of detection of violations of Clause 8 of Article 11 hereof, the application shall be deemed revoked of which a proper notice shall be served to the applicant.

13. As long as there are reasonable grounds to believe that the claimed object is inconsistent with requirements of clause 2 of Article 5, or if the application fails to meet formal requirements as set by Article 11 hereof and the rules set by the Institution hereunder, or the document attesting to the payment of a fee for the application submission is incompatible with formal requirements, the examination institution shall furnish a grounded preliminary conclusion to this effect proposing to submit a motivated response with concurrent rectification, if necessary, of the shortcomings indicated in it.

The applicant's response shall be furnished following in compliance of deadlines as established under Clause 6 of this Article for additional materials, and shall be taken into account during the preparation of conclusions of the application examination.

In case of violation of the integrity requirement as provided in Clause 3 of Article 11 hereof, the applicant shall be obliged to indicate in his/her response an industrial design with respect to which application examination must be conducted and enter clarifications in the application if needed. Alongside that, separate applications may be filed in regard to other industrial designs.

Unless the integrity requirement contained in the examination institution's proposal is met, the examination institution shall perform its examination of the application covering the industrial design being the first in the description.”;

9) In Article 15, words “receipt by them of a decision on” shall be replaced with words “payment of the state duty for”;

Article 16. Publication of Patent Issuance

Based on a decision to the effect of the patent issuance and subject to availability of documents attesting to payment of the state duty for the patent issuance and a fee for the patent issuance publication, a publication shall be made in an official newsletter of patents issuance following the due procedure. The aforementioned duty and fee shall be payable upon the receipt by the applicant of a decision to the effect of the patent issuance.

In the event that, within three months following the receipt by an applicant of a decision on patent issuance, no documents attesting to payment of the state duty for the patent issuance and a fee for the patent issuance publication have been submitted to the examination institution within the scope and in line of the legal procedure, no publication shall be made while the application shall be deemed revoked.

The deadline for such documents provision shall be extended for additional at most six-month period so long as a respective petition has been filed and a filing fee has been paid prior to such period expiration. This deadline if missed for valid reasons shall be extended provided that a respective petition has been filed and a filing fee has been paid.

2. Upon the publication of the patent issuance notice, any person shall have the right to have the application materials available according to the due procedure. A fee shall be collected for the access to the application materials.

11) In Article 17:

Clause 2, after the word “Institution” shall be supplemented with words “, and receive, as per his/her petition, an excerpt from a Registry in regard of data concerning a certain patent subject to payment of a fee for filing such petition”;

paragraph 1 of clause 3 shall be reworded to read as follows:

3. Errors in data entered in the Register shall be corrected on the patent holder's or Institution's initiative;

12) Article 18 shall be supplemented with clause 4 reading as follows:

“4. In the event of loss or damage of a patent, a duplicate patent shall be issued to its holder subject to the procedure set by the Institution. A fee shall be charged for the duplicate issuance.”;

13) Article 19 shall be amended to read as follows:

Article 19. Appealing the Decision On Application

1. An Applicant may appeal the Institution's decision rendered on their application in a due course of law or to an Appellate Chamber within two months following the date of receipt of the Institution's decision or copies of the materials required under Clause 3 of Article 14 hereof.

2. To the extent that the Institution's decision on the application has been appealed in a due course of law following the patent state registration, the court than shall at a time decide upon the respective patent validity.

The right to appeal the Institution's decision to the Appellate Chamber shall be withdrawn in case of payment of the state duty for the patent issuance.

4. Decisions of the Institution shall be appealed at the Appellate Chamber by means of submission thereto of an objection against the decision following the procedure established hereunder and under the Regulation of the Appellate Chamber adopted thereunder and approved by the Institution. A fee shall be collected for filing an objection. The failure to meet the deadline for the fee payment specified in clause 1 of this Article shall entail the invalidation of the objection of which a proper notice shall be furnished to the applicant.

5. In the event that the Appellate Chamber receives an objection and a document attesting to the payment of a fee for filing an objection, the case processing shall be suspended until the time of the Appellate Chamber's decision approval.

6. Objections against the Institution's decision on the application shall be considered in accordance with the Appellate Chamber's Regulation within the period of two months following the date of receipt of the objection and a document attesting to the payment of a fee for filing an objection within the scope of motives as expressed by the applicant in the objection and during the course of its review. The term for the objection review shall be extended on the applicant's initiative, however for not more than two months inasmuch as a respective request has been filed and fee has been collected prior to such term termination.

7. Based on the review results, the Appellate Chamber shall make a grounded decision subject to approval by the Institution order and thereafter forwarded to the applicant.

In case of the full or partial satisfaction of the objection, the fee for the objection submission shall be refunded in full.

8. Prior to the approval of the Appellate Chamber's decision a Head of the Institution may, within a month's term following the decision date, file a grounded written objection against such decision which must be considered within a one-month's term. A decision made by the Appellate Chamber following such objection shall be final and may only be cancelled by court.

9. The applicant may appeal against the Appellate Chamber's decision as approved by the Institution in due course of law within two months following the receipt of said decision.“;

14) In Article 20:

paragraph 3 of section 2 shall be worded as follows:

"The use of an industrial design shall include the product manufacturing using the patented industrial design, its use, offer for sale including same through the Internet, sale, import, export, other means of its introduction into the civil circulation or such product storage for the above purposes";

Paragraph 2 of section 6 shall be replaced with two paragraphs reading as follows:

“A party to an agreement shall have the right to informing the indefinite number of persons on the transfer of ownership to an industrial design or issue of a license authorizing the industrial design use. Such notification shall be carried out by means of publishing in an official newsletter of data, in the amount and following the procedure as set by the Institution with their concurrent entering into the Register.

A fee shall be collected for the publication of said data and of modifications in data on license issue as proposed by a party to the agreement.

15) Article 21 shall be deleted.

16) In Article 22:

the last paragraph of Clause 2 shall be supplemented with words “communicating a notice of such use to a patent holder immediately after it has become practicable with payment to him/her of respective compensation”,

in Clause 3, the words “commercial” and “product” shall be replaced with the words “civil” and “article” respectively;

17) In Clause 1 of Article 23 words “(of the court of arbitration)” and “(the court of arbitration)” shall be deleted;

18) In Article 25:

Sub-clause “c” of Clause 1 shall be amended to read as follows:

“c) patent issue as a result of filing an application in violation of other persons’ rights.”;

Clause 2 shall be deleted.

19) Paragraph 2 of Article 26 shall be amended to read as follows: “A person having purchased a license shall also have the right to demand the patent holder’s rights restoration.”;

20) Article 27 shall be amended to read as follows:

“Article 27. Means of Rights Protection

1. The rights to industrial designs shall be protected in due course of law and following other procedures as provided by applicable laws.

2. The courts jurisdiction shall extend to cover all legal relations arising in connection with application hereof.

Within their respective jurisdictions, the courts shall hear disputes involving the following:

authorship to an industrial design;

determination of the fact of the industrial design use;

determination of a patent holder;

patent holder’s rights violation;

the right to previous use;

compensation.

21) Clause 2 of Article 29 shall be deleted.

6. The Law of Ukraine On Protection of Rights to Trademarks for Goods and Services

(Vidomosti Verkhovnoi Rady (Newsletter of the Verkhovna Rada) of Ukraine, 1994, No. 7, page 36; 1999, No. 32, page 266; 2001, No. 8, page 37; 2002, No. 7, page 51; 2002, No. 16, page 114; 2002, No. 35, page 256) shall be amended as follows:

1). In Article 1:

To change in paragraph 3 the word “a citizen” with the word “natural”;

To delete in paragraph 4 the word “homogeneous”;

To supplement paragraph 8 after the word “application” with the words “or acquired the rights of applicant according to another procedure established by law”;

To supplement paragraph 12 with the words “and other matters relegated to the competence thereof by this Law”;

To supplement the Article with the paragraph as follows:

“ICGSRM: the International Classification of Goods and Services for Registration of Marks”;

2). To restate Articles 5 and 6 as follows:

“Article 5. Conditions for the Provision of Legal Protection

1. Legal protection shall be provided to a mark that does not conflict with public order, the principles of humanity and morality, and does not fall under grounds for refusal of legal protection as established by this Law.

2. The subject of a mark may be any indication or any combination of indications. Such indications may be, in particular: words including proper names; letters; numerals; graphic elements; colors and combinations thereof; as well as any combinations of such indications.

3. The right of ownership in respect of a mark shall be attested to by a certificate. The certificate validity term shall be 10 years from the date of filing of application with the Institution, and shall be prolonged by the Institution, upon the request of the owner of the certificate, for another 10 years at a time, conditional on payment of duty according to the procedure set forth in paragraph 2 of Article 18 of this Law. The procedure for the extension of the term of validity of a certificate shall be established by the Institution.

The certificate validity shall be terminated before time on grounds as set forth in Article 18 hereof.

4. The extent of provided legal protection shall be determined by the image of the mark concerned and by the specification of goods and services entered in the Register, and shall be attested by certificate containing the replica of the mark image entered in the Register and the specification of goods and services. Should any dispute arise concerning the content of the image of a mark, the image entered in the Register shall have preference.

5. Any person, association of persons, or legal successors thereof shall be granted the right to be issued with the certificate in accordance with the procedure established hereunder.

6. The applicant whose date of filing of the application with the Institution is earlier shall be eligible to the certificate issuance; or if priority is claimed, the applicant with the earlier date of priority shall have such right, provided that the application in question will have not been deemed recalled, will have not been recalled, or no final decision has been taken by the Institution to refuse the registration of mark the possibilities of challenging which have been exhausted.

Article 6. Grounds for Refusal to Provide Legal Protection

1. According to this Law, no legal protection may be provided for indications that represent or are any imitation of:

National emblems, flags, and other national symbols (emblems);

Official names of states;

Emblems and full or abbreviated names of international intergovernmental organizations;

Official countermarks, warranty marks and marks of assay, stamps and seals; and

Official decorations and other marks of recompense.

Such indications may be included in a mark as elements that are not protected, on provision of obtaining the appropriate consent of the relevant competent body or of owners thereof. The competent body in respect of state symbols of Ukraine, state decorations, and the name of the State, shall be the collective body formed by the Institution.

2. According to this Law, no legal protection may also be acquired in respect of indications that:

As a matter of fact, have no differentiating capacity and have not acquired such as a result of use thereof;

Consist solely of indications that are in general use as indications of goods and services of a definite kind;

Consist solely of indications or data that are descriptive as applied to the goods and services specified in the application or in connection thereof, in particular, indicating the appearance, quality, composition, quantity, properties, purpose, or value of goods and services; or time and place of manufacture or sale of goods or provision of services;

Are or may be misleading with respect to a good, a service or a person who produces the good or provides the service;

Consist solely of indications that are commonly used symbols and terms; and

Represent solely the form of a good that is determined by the natural state of the good or by the necessity to achieve the required technical result, or that imparts the essential value to the good.

Indications listed in paragraphs 2,3,4,6, and 7 of this Section may be included in the mark as elements that are not protected, on provision that such indications do not take a predominant position in the image of the mark.

3. Indications may not be registered as marks which are identical or similar to such an extent that they may be confused with:

Registered marks or marks filed for registration in Ukraine in the name of other persons for similar or kindred goods and services;

Marks of other persons when such marks are protected without registration on the basis of international agreements and treaties, to which Ukraine is a party, in particular, marks that are recognized as well known according to Article 6 bis of the Paris Convention on Protection of Industrial Property;

Company names which are known in Ukraine and belong to other persons who acquired the right to such names prior to the date of filing with the Institution of an application in respect of similar or kindred goods and services;

Qualified indications of the place of origin of goods (including spirits and alcoholic beverages), which are protected in accordance with the Law of Ukraine *On Protection of Rights to Indications of Places of Origin of Goods*. Such indications may only be elements that are not protected in marks of persons who have the right to use such indications; and

Marks of conformity (certification marks) that are registered in the prescribed manner.

4. Indications may not be registered as marks insofar as they reproduce:

Industrial samples the right to which belongs in Ukraine to other persons;

Names of scientific, literary, and artistic works known in Ukraine or quotations and characters therefrom; artistic works and fragments thereof without consent of copyright holders or legal successors thereof; and

Last names, first names, pseudonyms and derivatives thereof, portraits and facsimiles of persons known in Ukraine, without their consent.

3). In Article 7:

To change in paragraph 4 of Section 4 the words “the International Classification of Goods and Services for Registration of Marks” with the word “ICGS”.

To restate Section 8 as follows:

“8. A fee shall be paid for the filing of application the amount of which shall be set taking into account the number of ICGS classes covering the goods and services indicated in the application. The document certifying the payment of fee must be enclosed to the application or must arrive within a period of two months from the date of filing of the application. The period may be

prolonged, however not in excess of six months, if prior to expiration thereof an appropriate petition is filed and fees are paid for the filing of it”.

4). To restate Article 8 as follows:

“Article 8. The Date of Filing of an Application

1. The date of filing of an application shall be the date of receipt by the Institution of the materials containing at least the following:

Written request for the mark registration executed in an optional form, in Ukrainian,;

Data on the applicant and the applicant’s address set forth in Ukrainian; and

An adequately clear image of the indication being filed;

A specification of goods and services in respect of which the applicant requests the mark to be registered.

2. The date of filing shall be established in accordance with Sections 10 and 11 of Article 10 herein.

3. Upon the establishment of the date of filing, any person shall have the right to peruse the application materials in accordance with the procedure established by the Institution. A fee shall be payable for the perusal of application materials”.

5). To restate Article 10 as follows:

“Article 10. Examination of Application

1. The examination of applications shall have the status of scientific-technical examination, shall consist of a formal examination and qualification examination, and shall be performed by an examination institution in accordance with the requirements of this Law and with the regulations prescribed by the Institution on the basis of this Law.

2. Examination institution shall conduct information activities as required for the purpose of performing examination of applications, and shall be a center of international exchange of publications in accordance with the Convention on International Exchange of Publications approved on December 3, 1958 by the General Conference of UNESCO.

3. The outcomes of examination of the application that is not deemed revoked or is not revoked shall be reflected in a grounded conclusion of the examination entering into effect upon its approval by the Institution. Based on such a conclusion, the Institution shall decide upon the patent issue or denial. The Institution’s decision shall be communicated to the Applicant.

The applicant shall have the right to, within a month’s term following his/her receipt of the Institution’s decision, demand that copies of materials confronting the application be made available to him/her. Such copies shall be furnished to the applicant within the period of one month.

4. An applicant shall have the right, of that applicant’s own initiative or in response to the invitation of the examination institution, in the applicant’s own person or in the person of the applicant’s representative, to take part according to the established procedure, in the consideration of issues arising in the course of expert examination.

5. An applicant shall have the right to introduce rectification of errors and amendments to the applicant’s name (appellation) and address, mailing address, name and address of the applicant’s representative, as well as amendments constituting the reduction of the list of specified goods and services, to the application.

An applicant may introduce amendments to the application related to the change of the person of the applicant, conditional on consent of other applicants specified in the application. Any person wishing to become an applicant may, subject to consent of all applicants, also introduce such amendments.

Such rectifications and amendments shall only be taken into account in application materials if received no later than on the date of receipt by such examination institution of a document attesting to the payment of the state duty for the certificate issue.

A fee shall be paid for the filing of any petition requesting the rectification of an error or the introduction of any of the amendments indicated heretofore, unless the error is trivial or technical, and the amendment arises from circumstances other than those brought about by the applicant him/herself.

6. The examination institution may demand that the applicant provide additional materials to it if the examination appears impracticable without them or if reasonable doubts arise regarding the veracity of any information or elements contained in application materials.

The applicant shall have the right to, within a month from the date of receipt of a notice or a conclusion from the examination institution, containing a requirement of additional materials provision, request a copy of materials confronting the application to be furnished to the applicant.

The applicant must provide additional materials within two months from the date of receipt thereby of the notice or an examination institution's conclusion, or of the copies of materials confronting the application. The period established for the filing of additional materials shall be prolonged, however for no more than by six months, if an appropriate petition is filed and the filing fee is paid before the expiration of the period. Should such deadline be missed for valid reasons, the period shall be renewed subject to filing of an appropriate petition and payment of the filing fee. Upon failure on the part of applicant to furnish the requested additional materials within the fixed period, the application shall be deemed recalled, and the appropriate notice shall be provided to the applicant.

7. If the applicant has furnished additional materials, it shall be verified in the course of the expert examination whether such additional materials do not go beyond the essence of the indication disclosed in the application and in the list of goods and services specified in the application.

Additional materials are considered going beyond the essence of the indication disclosed in the application if such materials contain features that must be included in the indication filed as a mark.

The part of additional materials that goes beyond the essence of the indication disclosed in the application or constitutes an addition to the list of goods and services specified in the application, shall not be taken into account in the course of the expert examination; upon receipt by the applicant of the proper notice from the examination institution, the applicant may file such materials as an independent application.

8. Any person shall have the right to furnish to the examination institution a reasoned objection against an application on the basis of non-compliance of the indication contained in the application, with the requirements established by this Law for the provision of legal protection.

A fee shall be paid for the filing of an objection.

The objection shall be subject to consideration if received by the examination institution no later than five days before the date of adoption by the Institution of a decision on the application.

The examination institution shall provide a copy of the objection to the applicant.

The applicant shall have the right to inform the examination institution of the applicant's opinion of the objection within a period of two months from the date of receipt thereof. The applicant may disprove the objection and leave the application unchanged, or amend, or recall it.

The results of the consideration of an objection shall be reflected in the decision of the Institution on the application. A copy of such decision shall be provided to the filer of the objection.

9. In the course of the formal examination:

The date of filing of the application is established on the basis of Article 8 of this Law;

The compliance of the application with the requirements of Article 7 of this Law with Rules established by the Institution hereunder is verified; and

The compliance of the document attesting to the application fee payment with applicable requirements is verified.

10. If the application materials comply with the requirements of Article 8 of this Law and the document on payment of application fee is present, the applicant shall be provided a notice indicating the established date of filing of the application.

11. In case of non-compliance of the application materials with the requirements of Article 8 of this Law, the applicant shall be notified thereof without delay. To the extent that said inconsistency has been rectified within two months from the date of the applicant's receipt of the notice, the date of receipt by the examination institution of the appropriately rectified materials shall be deemed the date of filing. Otherwise the application shall be considered non-filed, and the applicant shall be notified thereof.

12. If the application meets the requirements of Article 7 of this Law while the document on the application fee payment conforms to applicable requirements, the applicant shall be provided a notice thereof.

13. In case of any failure to comply with the requirements of Section 8 of Article 7 of this Law, the application shall be considered recalled, and the applicant shall be notified thereof.

14. In case of non-compliance of the application with the requirements of Article 7 of this Law or Rules set by the Institution hereunder, or inconsistency of the document on the application fee payment, the applicant shall be provided a notice containing suggestions on eliminating the deficiencies.

If such deficiencies relate to the grouping of goods and services, the notice shall contain the list of goods and services as grouped by the examination institution and, if necessary, the indication of the amount of fee for the filing of application subject to be paid in addition. In case a good or service is indicated in the application by a term that makes it impossible to relegate the good or service to a definite ICGS class, the applicant shall receive a suggestion to replace or delete the term. If the applicant fails to carry out the suggestion, the term in question shall not be included in the list of goods and services grouped by the examination institution.

The deficiencies indicated in the notice shall be rectified according to the deadlines set by Clause 6 of this Article for additional materials.

15. In the course of qualification examination of an application, conformity of the claimed indication with the conditions for the provision of legal protection as prescribed by this Law shall be verified. For this purpose, the examination institution's information base shall be used including the application materials, as well as the reference and search means and the appropriate official publications.

16. If there are grounds to consider that the filed indication fails to comply with the conditions for the provision of legal protection, in full or in part, the examination institution shall provide to the applicant a reasoned preliminary conclusion complete with a proposal to furnish a motivated answer with arguments in favor of the registration of the mark.

Such answer shall be provided in meeting deadlines set under Clause 6 of this Article for additional materials and shall be taken into consideration in the course of drawing up the expert conclusion on the application”.

6). To substitute in Article 11 the words “the receipt thereby of a decision to register the mark” with the words “the payment of state duty for the issuance of the certificate”;

7). To supplement the Law with Article 11¹ as follows:

“Article 11¹. Application Division

1. The applicant shall have the right to divide the application into two or more applications (separated applications) by way of apportioning the goods and services specified in the application in such a manner that each of the separated applications no longer contains any goods and services kindred to goods and services specified in other applications.

2. The application shall be divided by means of filing the applicant's petition requesting the introduction to the application and separated application (s) of the appropriate amendments, conditional on payment of fees for the filing of the heretofore indicated petition and application.

3. The application separated in such a manner shall preserve the date of filing of the initial application subjected to separation. The priority date of a separated application shall if there are sufficient grounds for this, preserve the date of priority of the application subjected to separation”;

8). To restate Article 12 as follows:

“Article 12. Publication on the Issuance of Certificate

On grounds of the decision to register a mark and in the presence of documents on payment of the state duty for the issuance of certificate and of the fee for the publication on the issuance of certificate, publication shall be effectuated in the Official Bulletin of information on the issuance of the certificate drawn up in a prescribed manner. The aforementioned duty and fee shall be payable upon the applicant's receipt of a decision to the effect of the mark registration.

If within a period of three months after the date of receipt by the applicant of the decision to register the mark, the documents on payment of the state duty for the issuance of the certificate and of the fee for the publication on the issuance of the certificate, in the amount and in the manner prescribed by law, shall have failed to be received by the examination institution, such publication shall not be effectuated, and the application concerned shall be deemed recalled.

The period specified for the receipt of such documents may be prolonged, but not more than by 6 months, if an appropriate petition is filed and the fee is paid for the filing of the petition before the expiration of such period. If missed for valid reasons, the period for such payment may be renewed, on condition of existence of valid reasons for the failure to pay, if within six months after the expiration an appropriate petition is filed and the fee is paid for the filing thereof”;

9). In Article 13:

In the Article heading, to change the word “mark” with “of the mark”;

To supplement Section 2 after the word “Institution” with the words “and receive in accordance with the petition an extract from the Registry regarding the information on a specific registered mark, on condition of payment of fee for the filing of this petition”;

To restate paragraph 1 of clause 3 to read as follows:

“Errors in data entered into the Registry shall be rectified on the certificate holder’s or the Institution’s initiative;

10). To supplement Article 14 with Section 4 as follows:

“4. In the event of loss of a certificate or damage to it, a duplicate certificate shall be issued to the certificate owner in the prescribed manner. A fee shall be paid for the issuance of a duplicate certificate”.

11). To restate Article 15 as follows:

“Article 15. Appeals against Decisions on Applications

1. An applicant shall have the right to appeal against the Institution’s decision on an application in a due course of law or with the Appellate Chamber within a period of two months from the date of receipt of the Institution’s decision or of the copies of materials requested in accordance with the provisions of clause 3 of Article 10 of this Law.

2. To the extent that the Institution’s decision has been appealed in a due course of law following the mark’s state registration, the court then shall make a concurrent decision on the respective certificate’s validity.

3. The right to appeal the Institution’s decision to the Appellate Chamber shall be withdrawn in case of payment of the state duty for the certificate issuance

4. An appeal of a decision of the Institution with the Appellate Chamber shall be accomplished by way of filing with the Appellate Chamber of an objection against the decision in a manner prescribed by this Law and the Appellate Chamber’s Rules as approved by the Institution. A fee shall be paid for the filing of objection. In the event of failure to make such payment within a period specified in paragraph 1 of this section, the appeal shall be deemed not filed and a notice thereof shall be provided to the applicant.

5. In the event of receipt by the Appellate Chamber of an objection and of a document on payment of fee for the filing of objection, the procedure on the application shall be suspended until the Appellate Chamber approves the decision.

6. An objection against a decision of the Institution on an application shall be considered in accordance with the Appellate Chamber's Rules within a period of two months from the date of receipt of the objection and of the document on payment of fee for the filing of objection, within the framework of motives set forth by the applicant in the objection and in the course of consideration thereof. The period established for the consideration of an objection may be prolonged on an applicant's initiative, but not more than by two months, if an appropriate petition is filed and the fee is paid for the filing of the petition before the expiration of such period.

7. The Appellate Chamber shall take a reasoned decision on the basis of the results of the consideration of an objection, subject to approval by order of the Institution, and the decision is provided to the applicant.

In case of the full or partial satisfaction of the objection, the fee for the objection submission shall be refunded in full.

8. Prior to the approval of the decision of the Appellate Chamber, within a period of one month from the date of adoption thereof, the Head of the Institution may enter a motivated objection against such decision subject to consideration within a period of one month. A decision taken by the Appellate Chamber on such an objection shall be final and may only be overturned by court.

9. The applicant may appeal an Appellate Chamber's decision approved by the Institution, in court within a period of two months from the date of receipt of the decision";

12). To restate Articles 16 and 17 as follows:

"Article 16. Rights Resulting from Certificate

1. Rights resulting from a certificate shall assume validity on the date of filing of application. The term of validity of a certificate may be prolonged on condition of payment of the prescribed fee.

2. Certificate shall vest the owner thereof with the right to use the mark and with other rights as established by this Law.

3. The relations arising in the course of using a mark the certificate to which is jointly owned by several persons shall be determined by agreement between the persons. In the absence of such an agreement each owner of the certificate may use the mark at his/her discretion; however, none of them shall have the right to give permission (issue a license) for the use of the mark and transfer the right to use the mark to another person without consent of the other owners of the certificate.

4. The following shall be recognized as use of a mark:

The application of the mark on any good in respect to which the mark was registered, on packaging of the good, on a sign related to the good, on a label, tab, tag, or any other object associated with the good; the storing of a good bearing the mark with the intention to offer the good for sale; the offering of such good for sale; the sale of such good, the import and export thereof;

The offering and rendering of any service in respect to which the mark was registered; and

The application of the mark in commercial documentation or in advertisements and in the world information network Internet including domain names.

A mark shall be recognized as used if applied in the form of the registered mark, as well as in a form different from the registered shape in certain separate elements if this does not affect the differentiating nature of the mark as a whole.

5. A certificate shall grant to the owner thereof an exclusive right to prohibit to other persons the use without the owner's consent, unless otherwise determined by this Law:

Of the registered mark in respect of goods and services specified in the certificate,

Of the registered mark in respect of goods and services kindred to goods and services specified in the certificate if such use may result in wrong belief regarding the person who produces the goods or renders the services;

Of indication resembling the registered mark in respect of goods and services specified in the certificate if such use may result in confusion between such indication and the mark; and

Of indication resembling the registered mark in respect of goods and services kindred to goods and services specified in the certificate if such use may result in wrong belief regarding the person who produces the goods or renders the services, or in confusion between such indication and the mark.

6. The exclusive right of a certificate owner to prohibit to other persons the use without the owner's consent of the registered mark shall not extend to:

The exercise of any right that emerged prior to the date of filing of the application or, if priority was claimed, prior to the date of priority;

The use of the mark in respect of a good introduced in the civil circulation by the owner of the certificate or by the owner's consent, on condition that the owner of the certificate has no reasonable grounds to prohibit such use in connection with the further sale of the good, in particular in the event of any change or deterioration of the state of the good following the introduction thereof in commercial circulation;

The use of a qualified indication of the place of origin of a good which is protected in accordance with the Law of Ukraine *On Protection of Rights to Indications of Places of Origin of Goods*;

Non-commercial use of the mark;

All forms of news coverage and news commentaries; and

Bona fide use by them of their own names or addresses.

7. An owner of a certificate may transfer to any person the right of ownership to a mark in full or with respect to a part of goods and services specified in the certificate, on a contractual basis.

Such transfer of the right of ownership to a mark shall not be tolerated if it may mislead the consumer regarding the good and the service or regarding the person that produces the good or renders the service.

8. An owner of a certificate shall have the right to give permission (grant a license) to use a mark under a licensing agreement.

A licensing agreement must contain a stipulation providing that the quality of goods and services produced or rendered under the licensing agreement shall not be inferior to the quality of goods and services produced or rendered by the owner of the certificate, and that the latter shall exercise supervision over the compliance with this stipulation.

9. An agreement on the transfer of the right of ownership to a mark and a licensing agreement shall be considered valid if concluded in written form and signed by the parties.

A party to an agreement shall have the right to informing the indefinite number of persons on the transfer of ownership to an industrial design or issue of a license authorizing the industrial design use. Such notification shall be carried out by means of publishing in an official newsletter of data, in the amount and following the procedure as set by the Institution with their concurrent entering into the Register.

A fee shall be collected for the publication of said data and of modifications in data on license issue as proposed by a party to the agreement.

In the event of entering in the Register of information on a transfer of the right of ownership to a mark with respect to a part of goods and services specified in the certificate, the Institution shall issue a new certificate in the name of the person transferred the right, conditional on the presence of a document on payment of the state duty for the issuance of certificate.

10. An owner of a certificate shall have the right to place alongside the mark a warning marking indicating that the mark is registered in Ukraine.

11. An owner of a certificate that is engaged in agency activities shall have the right, under an agreement with the producer of a good or a person rendering services, to use the owned mark alongside the marks of the indicated persons or entities, as well as in lieu of their marks.

Article 17. Duties and Obligations Ensuing from Certificate

1. An owner of a certificate must exercise the rights ensuing from the certificate in good faith.

13) in Article 18:

in paragraph one of Clause 2, the word “two” shall be replaced with “six”;

in clause 3 the words “(court of arbitration)” shall be deleted;

to add clause 4 reading as follows:

4. In the event the mark is not at all used in Ukraine, or is not used for a part of the goods and services specified in the certificate, during a period of three years from the date of publication of information on the issuance of the certificate or from another date after such publication, any person shall have the right to lodge an appeal with a court of general jurisdiction demanding the early termination of validity of the certificate, in full or in part.

In such case, the validity of the certificate may be terminated in full or in part solely if the owner of the certificate fails to indicate good reasons for such non-use. Such good reasons are, among others:

Circumstances that prevent the use of the mark irrespective of the willingness of the owner of the certificate to do so, such as any limitations imposed on imports or other requirements in respect of goods and services established by law; and

The possibility of misleading with respect to a person producing the goods or rendering the services, in the course of use by the person that lodged an appeal with court or by another person in respect of goods and services that are the object of a demand to terminate the validity of the certificate.

Within the purpose of this clause, the use of the mark by another person under control of the owner of the certificate shall be also recognized as use of a mark by the owner of a certificate”;

14) To restate subparagraph “c” in Section 1 of Article 19 as follows:

“issuance of a certificate in consequence of an application filed in violation of other persons’ rights”;

15) In Article 20:

To supplement Section 1 after the word “Law” with the following passage: “including the performance, without the consent of the owner of the certificate, of actions that require such consent, and preparations for the performance of such actions”;

To restate paragraph 3 of section 2 as follows:

“The person that acquired the license may also demand the restoration of the violated rights of the owner of the certificate, subject to the owner’s consent”;

16). To restate Article 21 as follows:

“Article 21. Means for Protection of Rights

1. The rights to a mark shall be protected in a due course of law or in accordance with other procedure established by law.

2. The jurisdiction of courts shall extend to all legal relationships arising in connection with the application of this Law.

Within their competence, courts shall consider cases involving, in particular, disputes on:

Identification of the owner of a certificate;

Execution and performance of licensing agreements; and

Violations of rights of certificate owner.

17) in Article 22, the word “Article” shall be replaced with words and figures: “clauses 1 -3 of Article”

18). To restate Section 2 in Article 24 as follows:

“2. In the event of registration of a mark in foreign states in accordance with the Madrid Agreement on International Registration of Trademarks and/or the Protocol attached to the Madrid Agreement on International Registration of Trademarks, the application for international registration and the appropriate applications for territorial expansion and for extension of international registration shall be filed through the Institution on provision of payment of the national fee for the filing of each of the applications.”;

19). To supplement this Law with Article 25 as follows:

“Article 25. Protection of Rights to a Well Known Mark

1. Protection of rights to a well known mark shall be provided in accordance with Article 6 bis of the Paris Convention on Protection of Industrial Property and with this Law on the basis of recognition of the mark as well-known by the Appellate Chamber or by a court of general jurisdiction.

2. In determining whether a mark is well known in Ukraine, the following factors may, among other things, be considered, if appropriate:

The degree of renown or recognition of the mark concerned in the appropriate sector of society;

The duration, extent, and geographical area of any promotion of the mark including advertising or publicity and presentation at exhibitions or fairs of goods and/or services in respect of which the mark is applied;

The duration and geographical area of any registrations and/or filed applications for registration of the mark, on provision that the mark is used or is recognized;

The evidence of successful assertion of rights to the mark, in particular, the territory where the mark is recognized as well known by competent authorities; and

The value associated with the mark.

3. The procedure of the Appellate Chamber's recognition of the mark as well known in Ukraine shall be set forth by the Institution. A fee shall be collected for the filing of an application requesting the recognition of the mark well known.

The Appellate Chamber's decision to recognize a mark as well known in Ukraine may be disputed in court.

4. Beginning from the date on which a mark becomes well known in Ukraine by determination of the Appellate Chamber or court, the mark shall be provided with legal protection identical to such as would be due if the mark has been filed for registration in Ukraine. At that, the protection shall extend also to such goods and services as are not kindred to those in respect to which the mark has been recognized as well known in Ukraine, on condition that the use of the mark by another person in respect to such goods and services points to a connection between such goods and services and the owner of the well known mark, and there exists a probability that the interests of the owner will be compromised by such use."

7. In Law of Ukraine "On the protection of rights to lay-out designs of integrated circuits" (*Vidomosti Verkhovnoyi Rady Ukrayiny* (Newsletter of the Verkhovna Rada/, 1998, #8, page 28; 1999, #34, page 274; 2001, #8, page 37; 2002, #16, page 114; 2002, #35, page 256):

1) in Article 1:

the words "and other issues which the present Law included to its competence" shall be added to paragraph 3;

the words "or acquired an applicant's rights under any other procedure established by the law" should be added to paragraph 12 after the words "topography of integrated circuit";

2)in Article 4:

in clause 3, in paragraph 1, the words "provided that the period between this date and the date of application submission is not over two years" shall be deleted;

the last sentence shall be deleted from paragraph 2;

3) Article 6 shall be supplemented with clause 4 reading as follows:

"4. In case the agreement's terms as to the composition of authors are reviewed, the Institution, based on the joint application by persons stated in the application as authors, and also by authors not stated in the application as such, shall make amendments to the appropriate documents in accordance with the procedure to be established by the Institution."

4) in Article 8, the words "not rejected" should be replaced with the words "the final decision to refuse the registration of a integrated circuit topography the possibilities of challenging which have been exhausted has not been made by the Institution with regard to it".

5) in Article 9:

clause 3 shall be reworded to read as follows:

“the application requesting an integrated circuit topography registration may only refer to one integrated circuit topography;

clause 11 shall be worded as follows:

“11. A fee shall be paid for the submission of an application. The fee payment document must be sent in to the Institution either along with the application or within two months upon the date of the application’s submission. This time period shall be prolonged with up to six months provided that prior to its expiry, the appropriate request has been submitted and paid for with the fee.”;

6) Articles 10, 11 and 12 shall be worded as follows:

“Article 10. Date of Application Submission”

1. The application submission date shall be the date on which the Institution receives the application meeting requirements stated in 4-6 of Article 9 of the present Law.

2. The application submission date shall be established in accordance with 8 and 9 of Article 11 of the present Law.

Article 11. Examination of application

1. The examination of the application shall have the status of a scientific and technical examination, and be carried out by an examination institution in accordance with the present Law and rules set by the Institution hereunder.

2. The examination institution shall carry out informational activities necessary to give an expert opinion on applications, and shall be a centre for international exchange of publications in accordance with the Convention on international exchange of publications, adopted on 3 December 1958 by the United Nations General Conference on Education, Science and Culture.

3. The outcomes of examination of the application that is not deemed revoked or is not revoked shall be reflected in a grounded conclusion of the examination entering into effect upon its approval by the Institution. Based on such a conclusion, the Institution shall decide upon the patent issue or denial. The Institution’s decision shall be communicated to the Applicant.

The applicant shall have the right to, within a month’s term following his/her receipt of the Institution’s decision, demand that copies of materials confronting the application be made available to him/her. Such copies shall be furnished to the applicant within the period of one month.

4. The applicant shall be entitled, on their own initiative or at the examination institution’s invitation, in person or through their representative, to take part, in accordance with the established procedure, in the consideration of issues which have arisen in the course of the examination.

5. The applicant shall be entitled to correct errors, change their name and address, correspondence address, and their representative’s name and address.

The applicant may amend the application in connection with the changed person of the applicant, provided the other applicants stated in the application give their consent. At all the applicants’ consent, such amendments may also be made by a person wishing to become the applicant.

These corrections and changes shall be taken into account in the application materials provided they are obtained by the examination institution not later than on the date of receipt of a document attesting to the payment of the state fee for the integrated circuit topography registration.

A fee shall be paid for submitting an application requesting the correction of errors or any amendments stated above, provided that the error is not evident or technical, and the change is caused by circumstances within the applicant's control.

6. The examination institution may demand that the applicant provide additional materials to it if the examination appears impracticable without them or if reasonable doubts arise regarding the veracity of any information or elements contained in application materials.

Within a month of the date on which the applicant has obtained the examination institution's notice or conclusion containing the requirement to provide additional materials, the applicant shall be entitled to demand from the examination institution copies of the documents confronting the application.

Additional materials must be submitted by the applicant within two months of the date on which the applicant has received the examination institution's notice or conclusion or copies of the documents confronting the application. The deadline for the submission of additional materials shall be prolonged by up to six months, provided that the appropriate request is submitted and the fee is paid for the submission of the request, prior to its expiry. This deadline, if missed for valid reasons, shall be renewed inasmuch as a respective petition has been filed and a fee for its filing has been paid within six months following the deadline expiration. If the applicant fails to submit additional materials on due time, the application shall be deemed revoked, notice of which shall be sent to the applicant.

7. In the course of expert examination:

the date of application submission shall be established in accordance with Article 10 of the present Law;

the determination on whether the subject of the application is an integrated circuits topography is made;

the application's compliance with formal requirements of Article 9 of the present Law, and with those set by the Institution hereunder shall be verified;

the document on the payment of the fee for submitting an application shall be verified as to the compliance with the set requirements.

8. The applicant shall be sent notice of the established application submission date, provided that the application's materials comply with requirements under Article 10 of the present Law, and the document on the payment of the application submission fee is enclosed.

9. In case the application materials fail to comply with the requirements of Article 10 hereof, the applicant shall be given immediate notice. To the extent that non-compliance is rectified within two months of the date on which the applicant has received the notice, the date on which the examination institution has obtained corrected materials, shall be deemed the application submission date. Otherwise, the application shall be deemed not submitted, the notice of which shall be sent to the applicant.

10. In case of the failure to comply with requirements under 11 of Article 9 of the present Law, the application shall be deemed revoked, the notice of which shall be sent to the applicant.

11. As long as there are reasonable grounds to believe that the claimed object refers to objects covered in clause 2 of Article 4 hereof, or if the application documents fail to meet formal requirements as set by Article 9 hereof and the rules set by the Institution hereunder, or the document attesting to the payment of a fee for the application submission is incompatible with formal requirements, the examination institution shall furnish a grounded preliminary conclusion to this effect to the applicant proposing to submit a motivated response with concurrent rectification, if necessary, of the shortcomings indicated in it.

The applicant's response shall be furnished following in compliance of deadlines as established under Clause 6 of this Article for additional materials, and shall be taken into account during the preparation of conclusions of the application examination.

12. In case the registration of the integrated circuits topography is refused, applicant's materials identifying the integrated circuits topography, and IC samples, which include that topography, shall be kept within a year of the date of decision to refuse the registration of the integrated circuits topography. Upon the expiry of this time period, the stated materials shall be returned to the applicant at the applicant's request. In case the applicant fails to make such a request, they shall be destroyed.

Article 12. Registration of the Integrated Circuits Topography

1. Upon the decision to register the submitted integrated circuits topography, the Institution (Agency) shall carry out the registration of the submitted integrated circuits topography, and for that purpose enter the appropriate data into the Register.

The Institution shall determine the form of the Register and the procedure for keeping the Register.

2. The state registration of the integrated circuits topography shall be carried out, provided the documents on the payment of state duty for integrated circuits topography registration and of fee for the publication of integrated circuits topography announcement, are present. The above duty and fee shall be payable upon the applicant's receipt of a decision to the effect of the integrated circuit topography registration.

The application shall be deemed revoked if the examination institution does not receive, within three months of the date on which the applicant has obtained the decision to register the submitted integrated circuits topography, documents on the payment of state duty for the registration of integrated circuits topography or of fee for the publication of integrated circuits topography registration announcement in the amount and according to the procedure set by legislation.

The deadline for the documents submission shall be prolonged by up to six months, provided the appropriate request is submitted and the fee for its submission is paid, prior to the expiry of this period. The deadline, if missed for valid reasons, shall be resumed, provided the appropriate request is submitted and the fee for its submission is paid within six months of the expiry of this period.

3. Upon the entry of integrated circuits topography registration data into the Register, any person shall be entitled to be informed of the data in accordance with the procedure set by the Institution, and to obtain, in accordance with their request, an excerpt (statement) from the Register as to the data on a certain integrated circuits topography, provided the fee for the submission of the request is paid.

4. Errors in the Register data shall be corrected at the certificate holder's or the Institution's initiative.

At the certificate holder's initiative, changes may be made in the Register, in accordance with the set list of possible changes. A fee shall be paid for making in the Register changes as to integrated circuits topography registration.

5. During the registration of integrated circuits topography, the applicant shall be responsible for its protectability”

7) in Article 13:

Clause 1 shall be worded as follows:

“1. Integrated circuits topography registration data, determined in accordance with the established procedure, shall be published in the Official Bulletin, simultaneously with the state registration of integrated circuits topography.”;

Clause 2 shall be added in with the following sentence:

“A fee shall be paid for the receipt of information about the application materials”

8) Article 14 should be added with Clause 4 reading as follows:

“4. In case of the loss or defacement of the certificate, its duplicate copy shall be issued to the certificate holder in accordance with the procedure set by the Institution. A fee shall be paid for the issuance of the certificate's duplicate copy. ”;

9) Article 15 should be worded as follows:

“Article 15. Appeal Against Decision on Application

1. The applicant may appeal against the Institution's decision in court or the Appellate Chamber within two months of the date of the receipt of the Institution's decision or copies of the materials requested according to clause 3 of Article 11 hereof.

2. In the event that the Institution on the application is appealed in the due course of law following the integrated circuit topography state registration, the court shall make a concurrent decision on the respective certificate's validity.

3. The right to appeal against the Institution's decision in the Appellate Chamber shall be withdrawn in case the state duty for the registration of integrated circuits topography is paid.

4. The Institution's decision shall be appealed in the Appellate Chamber by submitting to it an objection against the decision in accordance with the procedure established by the present Law, and by the Rules of the Appellate Chamber as approved by the Institution. A fee shall be paid for the submission of an objection. If the fee is not paid within the time period stated in 1 of the present Article, the objection shall be deemed not submitted, notice of which shall be sent to the applicant.

5. In case the Appellate Chamber receives the objection and the document on paid fee, the application processing is suspended until the Appellate Chamber's decision is approved.

6. The objection against the Institution's decision shall be considered in accordance with the Appellate Chamber's Rules within two months of the date of receipt of the objection and the

document on paid fee, within the limits of motives stated by the applicant in the objection and at the hearing (during the consideration) of the objection. The time period for the consideration of the objection may, on the applicant's initiative, be prolonged by up to two months provided the appropriate request is submitted and the fee for its submission is paid prior to its expiry.

7. On the basis of results of the objection's consideration, the appellate Chamber shall adopt a grounded decision, which shall be approved by the Institution's Order and sent to the applicant.

In case of the full or partial satisfaction of the objection, the fee for the objection submission shall be refunded in full.

8. Prior to the approval of Appellate Chamber's decision and within a month of its adoption, the head of the Institution may submit a grounded written objection against the decision. The objection must be considered within a month. The Appellate Chamber's decision shall be final and may be cancelled only in the court.

9. The Appellate Chamber's decision may be appealed against in court by the applicant within two months of the date of receipt of the decision.

10) In Article 16:

paragraph 10 of 3 shall be worded as follows:

"offer for sale, including through the Internet, sale of and other launch into civil circulation or storage of integrated microcircuit for stated purposes, produced on the basis of integrated circuits topography, and of any products containing such integrated circuits."

paragraph 2 of 5 shall be replaced with the paragraphs reading as follows:

A party to an agreement shall have the right to informing the indefinite number of persons on the transfer of ownership to an integrated circuit topography or issue of a license authorizing the integrated circuit topography use. Such notification shall be carried out by means of publishing in an official newsletter of data, in the amount and following the procedure as set by the Institution with their concurrent entering into the Register.

A fee shall be collected for the publication of said data and of modifications in data on license issue as proposed by a party to the agreement.

11) paragraph 5 of 1 of Article 17 after the word "etc." shall be added in with the words "with notification of the owner of rights to integrated circuits topography about such use as soon as it becomes practically possible, and with payment of the appropriate compensation to him".

12) Article 19 shall be worded as follows:

"Article 19. Use of Registered Integrated Circuits Topography Without Consent from the Owner of Rights to It

1. In order to ensure the public health, environmental safety and other interests of the society, the Cabinet of Ministers of Ukraine may allow the person, identified by the former, to use a registered integrated circuits topography without consent of the owner of rights to the integrated circuits topography in case of the owner's unsubstantiated refusal to issue a license for its use. In so doing:

1) permission for such use shall be given proceeding from the specific circumstances;

- 2) the scope and length of such use shall be determined on the basis of the granted permission, it may be only non-commercial (not-for-profit) use by governmental bodies or rectification of anti-competition (unfair business) practices in accordance with the decision by the appropriate governmental body;
- 3) permission to such use shall not deprive the owner of rights to the registered integrated circuits topography of the right to grant permits for its use;
- 4) "the right to such use shall not be transferable, except when it is transferred together with that part of enterprise (business) or business practice in which that use is carried out;
- 5) the use is primarily allowed to satisfy the domestic market's needs;
- 6) as soon as it becomes practically possible, the owner of rights to integrated circuits topography shall be informed that permission to use the registered integrated circuits topography has been granted;
- 7) permission to use shall be cancelled if circumstances, which caused it to be issued, cease to exist;
- 8) the owner of rights to registered integrated circuits topography shall be paid an adequate compensation based on the economic value of the integrated circuits topography.

2. Decisions by the Cabinet of Ministers of Ukraine on permission to use registered integrated circuit, time period and terms of permission, cancellation of permission, amount and procedure for payment of remuneration to the owner of rights to registered integrated circuits topography may be appealed in the court."

13) in Article 20:

Clause 1 should be added in with subclause "c)" reading as follows:

"c) of the integrated circuit registration because the submitted application violated other persons' rights ."

Clause 2 shall be deleted;

14) Articles 21 and 22 shall be worded as follows:

“Article 21. Violations of Registered Integrated Microcircuit Owner's Rights

1. Any attempt to infringe on the registered integrated circuits topography owner's rights, provided for by Article 16 of the present Law, shall be deemed a violation of his rights, which ensues liability in accordance with current legislation of Ukraine.

2. At the request of the owner of rights to the registered integrated circuits topography, such a violation must be terminated, and the violator shall be obliged to compensate the rights owner for inflicted losses.

A person having obtained a license, may also, at the consent of the of registered integrated circuits topography owner, demand that violated rights be restored.

Article 22. Methods of Rights Protection

1. Rights to integrated circuits topography shall be protected in the court and in accordance with other procedure established by law.

2. The court jurisdiction shall extend to all legal relations arising from application of this present Law.

The courts, within their competence, shall resolve, in particular, disputes on:

Integrated circuits topography's authorship

establishing the fact of use of integrated circuits topography

establishing the certificate owner

violations of the certificate owner's rights

conclusion and performance of license agreements

compensation.

15) In the text of the Law, the word "turnover" shall be replaced with the word "circulation".

8. In the Law of Ukraine On Protection of Rights to Indications of Origin of Goods (*Vidomosti Verkhovnoi Rady* (Newsletter of the Verkhovna Rada of Ukraine), 1999, No. 31, page 267; 2001, No. 8, page 37; 2002, #16, page 114):

1) In Article 1:

Paragraph three after, after the word "property" shall be supplemented with words "and other matters vested in its competence hereunder";

Paragraph seven shall be supplemented with the sentence as follows: "It may also be a geographic name used to indicate a good, or a part thereof";

To replace in paragraphs 11 and 12 the words "as an indication in the name of a good" by the words "for indication of a good";

2) in part one of Article 5, the words "save for those established by international agreements to which Ukraine is a party" shall be replaced with the words "in compliance with international agreements of Ukraine the binding nature of which has been approved by the Verkhovna Rada of Ukraine."

3) part two of Article 7 shall be deleted;

4) In Article 8:

In subclause (b) of Section 1 to replace words "public interests" with words "public order";

In part three, the words "trade mark" shall be replaced with "sign for goods and services";

5) In Article 11:

To reword Part I to read as follows:

"1. The expert examination of the application shall have a status of scientific-technical examination and shall be carried out by an examination institution pursuant to requirements hereof and rules established by the Institution hereunder.

The examination institution shall perform information activities required for conducting applications examination and shall serve as a center of international exchange of publications in conformity with the Convention On International Exchange of Publications as approved on 3 December 1958 by the UN General Conference On Education, Science and Culture";

To supplement part 9 with the sentence as follows: "Fees shall be paid for the review of the application materials";

6) to word Article 13 to read as follows:

"Article 13. Appealing Decisions On the Application

1. An Applicant shall have the right to appeal a decision rendered on their application in a due course of law, as well as to an Appellate Chamber within two months following the date of receipt of the Institution's decision.

2. In the event that the Institution on the application is appealed in the due course of law following the state registration of a qualified indication of a good and/or the right to use the qualified indication of origin of a good, the court shall make a concurrent decision on the validity of a respective registration.

3. The right to appeal an institution's decision to the Appellate Chamber shall be revoked in the event of the state duty payment for the certificate issuance.

4. Decisions of the Institution shall be appealed at the Appellate Chamber by means of submission thereto of an objection against the decision following the procedure established hereunder and under the Regulation of the Appellate Chamber as approved by the Institution. A fee shall be collected for filing an objection. The failure to meet the deadline for the fee payment specified in Part I of this Article shall entail the invalidation of the objection of which a proper notice shall be furnished to the applicant.

5. In the event that the Appellate Chamber receives an objection and a document attesting to the payment of a fee for filing an objection, the case processing shall be suspended until the time of the Appellate Chamber's decision approval.

6. Objections against the Institution's decision on the application shall be considered in accordance with the provisions of the Appellate Chamber's Regulation within the period of two months following the date of receipt of the objection and a document attesting to the payment of a fee for filing an objection within the scope of motives as expressed by the applicant in the objection and during the course of its review. The term for the objection review shall, on the applicant's initiative, be extended for not more than two months inasmuch as a respective request has been filed and fee has been collected prior to such term termination.

7. Based on the review results, the Appellate Chamber shall make a grounded decision subject to approval by the Institution order and thereafter forwarded to the applicant.

In case of the full or partial satisfaction of the objection, the fee for the objection submission shall be refunded in full.

8. Prior to the approval of the Appellate Chamber's decision a Head of the Institution may, within a month's term following the decision date, file a grounded written objection against such decision which must be considered within a one-month's term. A decision made by the Appellate Chamber following such objection shall be final and may only be cancelled by court.

9. The applicant may appeal against the Appellate Chamber's decision as approved by the Institution in due course of law within two months following the receipt of said decision.

7) Part seven of Article 14 shall be deleted;

9) In Article 15:

To supplement part 1 with paragraph two as follows:

“The deadline for the state duty payment may be extended, but for not more than six months. Fees shall be paid for the filing of a petition requesting such extension of the period for payment.

The period for payment of state duty missed by the applicant for valid reasons may be renewed, so long as a respective petition has been filed and a fee for its filing has been paid within six months following its expiration.;

9) To delete the word “illegal” in Subsection “b” of section 4 of Article 17;

10) In paragraph 1 of part two of Article 20 to replace words “may be invalidated by court if it” with words “and the certificate for the right to use a qualified indication of origin of goods, may be invalidated by court if registration”;

11) In Article 21:

To delete the word “Protection” in the title of the Article;

To word Paragraph (a) of Part III to read as follows:

“a) subject to a court decision, in connection with the loss by the good of unique features or other characteristics described in the Register as at the date established by court”;

12) In Article 23:

part two and paragraph 1 of [part three after the word “certificate” shall be supplemented with the words “on the right registration”

in subclause “a” of part three and subclause “b” of part four the word “right” shall be replaced with “on the right registration”;

13) to delete Article 24;

14) to reword Article 25 to read as follows:

"Article 25. Means of Civil Legal Protection of Rights

1. The rights to use qualified indication of origin of goods shall be protected in due course of law and following other procedures as provided by applicable laws.

2. The courts jurisdiction shall extend to cover all legal relations arising in connection with application hereof.

Within their respective jurisdictions, the courts shall hear disputes related in particular to:

legitimacy of registration of a qualified indication of origin of goods;

determination of the fact of use of a qualified indication of origin of goods;

violation of rights of a holder of a certificate to use a qualified indication of origin of goods;

compensation.

9. In the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”

(Vidomosti Verkhovnoji Rady Ukrainy, 1994 No. 17, page 32; 2000, No. 37, page 307; 2001, No. 8, page 37; 2002, No. 16, page 114; 2002, No. 35, page 256):

1) In Article 1:

To supplement Paragraph three with the words “and other matters referred to its competence by this Law”;

To restate Paragraph four as follows:

“Invention (utility model)” shall mean a result of intellectual, creative activity of a certain person in any sphere of technology”;

To delete Paragraph five;

To restate Paragraph thirteen as follows:

“Inventor” shall mean a person through whose intellectual, creative activity an invention (utility model) has been created”;

To delete the words “and examination regarding local novelty” in Paragraph sixteen;

To delete Paragraphs twenty one and twenty two;

To delete the words “(a declarative patent) on an invention or a declarative patent on a utility model” in Paragraph twenty six;

To supplement Paragraph twenty seven, after the word "application", with the words "or has acquired an applicant's rights as otherwise may be provided by law”;

To replace the words “on the Protection” with the words “for the Protection” in Paragraph twenty nine;

2) In Article 6:

To replace the words “public interests” with the words “public order” in Part one;

To restate Parts two and three as follows:

“2. The subject matter of an invention, whose legal protection is granted pursuant to this Law, may include:

a product (a device, substance, culture of micro-organisms, culture of cells of plants and animals, etc.);

a process; (means), as well as a new usage of the known process or product.

3. Legal protections pursuant to this Law shall not extend onto the following technology items:

plant varieties and animal breeds;

basically biological processes of plant and animal reproduction that are not referred to non-biological and microbiological processes;

layout-designs (topographies) of integrated circuits;

results of artistic design.”;

To supplement Paragraph five in Part 4 with the following sentence: “A fee shall be paid for filing the application”;

3) In Article 12:

To delete the words “subject to the qualification expert examination” in Paragraph two of Part five;

in Part eleven:

to supplement Paragraph one with the following sentence:

“The said time limit may be extended, but not more than by six months, if a respective application has been filed and a fee for the filing thereof has been paid prior to such deadline expiration.”;

To delete Paragraph two;

4) To restate Articles 13 and 14 as follows:

“Article 13. Application Filing Date

1. The date of filing an application shall be the date of receipt by the Institution of documents and materials, which contain at least:

an application for a patent (declarative patent), written in Ukrainian, in arbitrary form;

information about the applicant and his(its) address written in Ukrainian;

a material making an impression of being a description of the invention (utility model) written in the Ukrainian or other language, which can be recognized as the formula of the invention (utility model), written in Ukrainian or another language. If the description is in a foreign language, the Ukrainian translation thereof must be received by the Institution within two months of the application filing date, in order to preserve the application filing date.

2. The application filing date shall be determined pursuant to Parts ten, eleven and twelve of Article 16 herein.

Article 14. International Applications

1. Procedures for obtaining a patent on the basis of an international application shall be the same as the procedures for obtaining a patent on the basis of national applications, except as otherwise may follow from the Patent Cooperation Agreement.

2. The expert examination of an international application shall be carried on condition that an examination institution has received, within 31 months from its date of the translation of the application into Ukrainian and a document confirming payment of an application filing fee filed by the applicant. This time limit may be extended, but not more than by 2 months, if a respective application has been filed and a fee for the filing thereof has been paid before the lapse of such time limit.

Upon the receipt within set deadlines of the above stated documents, the applicant shall be provided with a notice to the effect that the international application acceptance for the examination.

3. In the event of failure to comply with at least one of the requirements set out in Part two of this Article herein, the effect of the international application in Ukraine shall be deemed to have been suspended. In case that the applicant has met at least one of these requirements, a respective notice of such examination suspension shall be furnished to the applicant.

4. Upon a petition from the application, the effect of the international application in Ukraine may be renewed, if the requirements of Part two of this Article herein have not been complied with for valid reasons. A fee shall be paid for filing the petition.

Such a petition may be filed within 2 months from the date on which the circumstances arose that resulted in the failure to comply with the 31-month time period specified in Part two of this Article herein, or within 12 months following the lapse of such time period, whichever occurs first. In such case, on the petition filing date the applicant must accomplish all actions as are provided in this Law with respect to the application, which actions must have been accomplished as of this date.

5. If the requirements of Part four of this Article herein are not complied with as of the date on which the examination institution received the petition for renewing the effect of the international application in Ukraine, the applicant shall be provided with a notice of a possible refusal to satisfy the petition.

If inconsistencies with the requirements of Part four of this Article herein have not been eliminated within 2 months following the applicant's receipt of such notice, the applicant shall be provided with a notice of refusal to satisfy the petition.

6. The Institution shall publish information, as determined by the Institution, about the international application accepted for examination in its official bulletin.”;

5) In Article 15:

To replace the words “on the Protection” for the words “for the Protection” in Part one and Paragraph one in Part two;

To add Part eight reading as follows:

“8. Priority of an invention (a utility model) may be determined by the date on which the examination institution received additional materials, completed in accordance with Part seven of Article 16 herein, as an independent application, if such an application was filed within 3 months following the applicant's receipt of notice that the said materials would not be taken into account in the course of the expert examination of the application they were attached to.”;

6) To restate Article 16 as follows:

“Article 16. Expert Examination of an Application

1. The expert examination of an application shall have the status of scientific and technical expertise that consists of a preliminary expert examination, a formal expert examination and, with respect to an application for a patent on an invention (a secret invention), - of a qualification examination, and shall be carried out by an examination institution in accordance with this Law and rules prescribed by the Institution on the basis hereof.

2. The examination institution shall engage in information activities that are necessary for conducting expert examinations of applications, and shall act as a center for the international exchange of publications in accordance with the Convention Concerning the International Exchange of Publications, adopted on 3 December 1958 by the General Conference of the UNESCO.

3. The outcomes of examination of the application that is not deemed revoked or is not revoked shall be reflected in a grounded conclusion of the examination entering into effect upon its approval by the Institution. Based on such a conclusion, the Institution shall decide upon the patent issue or denial. The Institution's decision shall be communicated to the Applicant.

The applicant shall have the right to, within a month's term following his/her receipt of the Institution's decision, demand that copies of materials confronting the application be made available to him/her. Such copies shall be furnished to the applicant within the period of one month.

4. On his own initiative or at the request of the examination institution, the applicant may, either in person or through his agent, participate in the prescribed manner in the consideration of issues which have arisen in the course of the expert examination.

5. In his application, an applicant shall have a right to make corrections of errors and amendments to his name (title) and address, mail address, the name and address of his agent, as well as amendments as to the reduction of a list of goods and services.

The applicant may make amendments in the application that are related to the change of the applicant's identity, provided that the other applicants mentioned in the application have consented thereto. Such amendments may also be made by a person, who wishes to become an applicant, subject to consent from the other applicants.

These corrections and amendments shall be taken into account in the materials of the application, if they had been received by the examination institution not later than on the date of receipt of document attesting to the payment of the state duty for the patent issue.

At the time of publication of information on the application for the patent on the invention, the said corrections and amendments shall be taken into account, if they were received by the examination institution 6 months prior to the publication date.

A fee shall be paid for filing an application for correction of an error or introduction of any of the specified amendments, provided that the error is not obvious or technical, and that an amendment has arisen due to circumstances under the control of the applicant.

6. The examination institution may require that the applicant provided it with additional materials in case that in their absence the examination appears impracticable or if it has reasonable doubts as to the authenticity of any data or elements that are contained in the materials of an application.

Within 1 month following the receipt of a notice or a conclusion from the examination institution containing the requirement to provide additional materials, the applicant shall be entitled to request that the institution provide the applicant with copies of the materials confronting the application.

Additional materials must be provided by the applicant within 2 months following the receipt of the notice or a conclusion from the examination institution containing the requirement to provide additional materials or copies of the materials confronting the application. The deadline for filing additional materials shall be extended, but not more than by 6 months, if a respective petition has been filed and a fee for the filing thereof has been paid before said deadline expiration. This time limit, if missed for valid reasons, shall be renewed, if a respective petition has been filed and a fee for the filing thereof has been paid. If the applicant fails to provide the additional materials within the prescribed time, the application shall be deemed to have been withdrawn, of which a proper notice shall be served to the applicant.

7. If the applicant has provided additional materials, then it shall be ascertained in the course of the expert examination whether such materials do not go beyond the essence of the invention (utility model).

Additional materials go beyond the scope of the essence of an invention (utility model) as covered by the filed application, if they contain features that need to be included into the formula of the invention (utility model).

The additional materials to the extent going beyond the essence of the invention (utility model) as covered in the filed application shall not be taken into account in the course of the expert examination of the application and may be, upon receipt of an appropriate notice from the examination institution, filed by the applicant as an independent application.

8. In the course of a preliminary examination, an application, which does not include an applicant's proposal to declare an invention (utility model) to be a state secret, shall be reviewed as to whether it contains materials, which can be declared as state secrets in accordance with the Book of State Secrets.

In case of availability of such data in the application or if the application contains the applicant's proposal to declare an invention (utility model) as a state secret, materials contained in the application shall be sent to a State Expert for Secret Matters (hereinafter referred to as the "State Expert"), who will decide as to whether recognize the invention (utility model) as a state secret.

The State Expert shall send his decision, together with the materials contained in the application, to the examination institution within one month of his receipt of the materials contained in the application.

A time period, during which a decision on recognizing information in the application as a state secret will be in effect, shall be set by the State Expert, taking into account the ruling of classification of such information.

If the State Expert has decided to recognize the applied-for invention (utility model) as a state secret, he also shall specify individuals, who may have access to it, and all subsequent proceedings with respect to the application shall be carried out in accordance with secrecy mode procedures.

The examination institution shall immediately notify the applicant of the decision made by the State Expert. If the application did not contain a proposal from the applicant to recognize an invention (utility model) as a state secret, but the State Expert has recognized the invention (utility model) as a state secret, then the applicant, in case of dissent, may file with the examination institution a substantiated request to declassify the materials contained in the application, or challenge the decision of the State Expert in court.

9. In the course of a formal expert examination:

a date of filing an application shall be determined on the basis of Article 13 of this Law;

a determination shall be made of whether the item mentioned in the application belongs to the technological items as are specified in Part two of Article 6 herein, and whether such item does not belong to the technological items as are specified in Part three of Article 6 herein;

the application shall be verified as to its compliance with the formal requirements to it specified in Article 12 of this Law and by rules adopted by the Institution hereunder;

a document evidencing payment of a fee for filing an application shall be verified as to its compliance with the prescribed requirements.

10. If materials contained in an application comply with the requirements of Article 13 of this Law and a document evidencing payment of a fee for filing the application is available, the applicant shall be provided notice of the determined application filing date.

11. If materials contained in an application are inconsistent with the requirements of Article 13 of this Law, the applicant shall be immediately provided notice thereof. If the inconsistency has been eliminated within 2 months following the applicant's receipt of the notice, the date, on which the examination institution received the corrected materials, shall be regarded as an application filing date. Otherwise, the application shall be deemed not to have been filed, whereof the applicant shall be provided notice.

12. If materials of the application conformant with the requirements of Article 13 hereof contain references to a drawing, but no such drawing is found therein, a proper notice thereof shall be served to the applicant complete with a proposal to, at his discretion, either to choose to send the drawing or remove the reference thereto in the application. If the drawing has been provided within 2 months following the applicant's receipt of the notice, the date, on which the examination institution received the drawing, shall be regarded as an application filing date. If within this period the applicant does not choose among the options offered, then the application shall be deemed not to have been filed, whereof the applicant shall be provided notice.

13. In the event that the requirements of Part eleven of Article 12 herein are violated, an application shall be deemed to have been withdrawn, whereof the applicant shall be provided notice.

14. In the event that an item, which is mentioned in an application, belongs to the technological items as are specified in Part two of Article 6 herein, the documents contained in the application comply with the formal requirements to it as are specified in Article 12 of this Law and by the Rules set by the Institution hereunder, and that a document evidencing payment of a fee for filing the application complies with the requirements applied to them, the following shall be communicated to the applicant, in relation to the application for:

a patent on an invention - a notice of completion of the formal expert examination and a possibility to carry out an expert examination of the application on the merits;

a declarative patent on an invention (utility model) – a decision by the Institution to issue the declarative patent on the invention (utility model).

15. If an examination institution has grounds to believe believes that an item mentioned in an application does not belong to the technological items specified in Part two of Article 6 herein, or that the application fails to comply with the formal requirements specified in Article 12 of this Law and of the Rules set by the Institution hereunder, or that a document evidencing payment of a fee for filing the application is inconsistent with established requirements, then this institution shall send to the applicant a justified preliminary conclusion with a proposal to provide a reasoned response, subject to elimination, if necessary, of the defects specified in the conclusion.

The response of the applicant shall be provided under the procedure specified in Part six of this Article, and shall be taken into account in the course of preparation of the conclusion on the expert examination of the application.

In the event of violation of the integrity requirement specified in Part four of Article 12 herein, the applicant must indicate in the response the invention (utility model), with respect to which the expert examination of the application is requested, and, if necessary, clarify the application. In such case, independent applications may be filed with respect to other inventions (utility models).

If the integrity requirement has not been complied with in response to the examination institution's proposal, the examination institution shall carry out an expert examination of the application concerning the invention (utility model), which is first indicated in its formula.

16. Upon the expiration of 18 months from the date on which an application for obtaining a patent on an invention was filed and, if priority is declared – then as from the date of its priority, the Institution shall publish information, as determined by the Institution, about the application in its official bulletin, provided that the application has not been withdrawn, is not deemed to have been withdrawn, or a decision, whereby it is refused to issue a patent based on such application, has not been adopted.

Upon a petition from the applicant, the Institution shall publish information on the application prior to an earlier set date. A fee shall be paid for filing the petition.

Upon publication of the information on the application, any person shall be entitled to familiarize himself with the materials contained in the application under the prescribed procedures. A fee shall be paid for the access to the materials contained in the application.

In the event that obvious errors have been found in the published information, the applicant shall be entitled to file a petition for their correction.

No information on an application for a declarative patent on an invention (utility model) shall be published.

Information on applications, with respect to which the State Expert has adopted decisions on recognizing them as state secrets, shall not be published.

17. In the course of the qualification examination the compliance of the claimed invention with conditions of patentability as are specified in Article 7 of this Law shall be reviewed.

The qualification examination shall be carried out upon receipt by an examination institution of the given application from any person and of a document evidencing payment of a fee for such an expert examination.

The applicant may file the said application and document within three years from the application filing date. Another person may file the same upon publication of the information on the application for the invention, but not later than three years after the application filing date. In this case, such person shall not take part in the resolution of matters concerning the application. This person shall only be sent a conclusion approved by the Institution on the expert examination.

The deadline for filing the said application and document shall be extended, but not more than by 6 months, if a respective petition has been filed and a fee for the filing thereof has been paid before the lapse of such time limit. This deadline, if missed for valid reasons, shall be renewed, if a respective petition has been filed and a fee for the filing thereof has been paid within twelve months upon said deadline expiration. If the applicant fails to provide the said application and document within the prescribed time, the application shall be deemed to have been withdrawn, of which a proper notice shall be served to the applicant.

18. If an examination institution has grounds to believe that the claimed invention does not comply with patentability conditions, it shall send a justified preliminary conclusion to the applicant with a proposal to provide a reasoned response, complete with a proposal to eliminate, if necessary, the defects specified in the conclusion.

The applicant's response shall be provided in meeting deadlines specified in Part six of this Article, and shall be taken into account in the course of preparation of the conclusion on the expert examination of the application. In such case, the question of the invention's compliance with the integrity requirement shall be addressed in accordance with Part sixteen of this Article.”;

7) To supplement Article 17, after the word “of a patent”, shall be supplemented with the words “(a declarative patent) on a secret invention or a declarative patent on a secret utility model, or by the date of payment of a state duty for issuance of a patent (a declarative patent) on an invention or a declarative patent on a utility model”;

8) To supplement Article 18 with part three reading as follows:

“A fee shall be paid for filing a request for conversion of the application.”;

9) To delete Article 20;

10) In Article 22:

In part one, the word “twelve” shall be replaced with the word “sixteen”;

In part four, the words “its publication” shall be replaced with the words “publication of data concerning it”;

11) In Article 22:

To restate Part two as follows:

“2. State registration of a patent (declarative patent) on an invention and a declarative patent on a utility model shall be effected if there is a document confirming payment of a state duty for issuance of the patent and a document confirming payment of a duty for a publication on patent issuance. Said duty and fee shall be payable upon the applicant's receipt of the decision to the effect of the patent issuance.

If within 3 months following the applicant's receipt of the decision on issuing the patent the documents confirming payment of the state duty for issuance of the patent and the duty for a publication on patent issuance have not been received by the examination institution, no state registration of the patent shall be effected, and the application shall be deemed to have been withdrawn.

The deadline for filing these documents shall be extended, but not more than by 6 months, if a respective petition has been filed and a fee for the filing thereof has been paid before the lapse of such time limit. This time limit, if missed for valid reasons, shall be renewed, if a respective petition has been filed and a fee for the filing thereof has been paid within 6 months upon the said deadline expiration.”;

To restate Paragraph one in Part three as follows:

“Upon entry of information in the Register, any person shall have a right to familiarize himself with such information according to the procedure as specified by the Institution, and shall have a right to receive, in accordance with his petition, an extract from the Register concerning information about a certain patent, provided that a fee has been paid for filing this petition.”;

To restate Paragraph one of Part four to read as follows:

4. Errors in data entered in the Register shall be corrected on the patent holder’s or Institution’s initiative;

12) To supplement Part three of Article 23 with the following sentence: “A fee shall be paid for review of materials contained in an application.”;

13) To restate Article 24 as follows:

“Article 24. Appeals against the Decision On an Application

1. An applicant may appeal a decision of the Institution on an application in court, as well as in the Appellate Chamber within 2 months following the receipt of the decision from the Institution or copies of materials requested in accordance with Part three of Article 16 herein.

2. To the extent that the Institution’s decision has been appealed in a due course of law following the patent’s state registration, the court then shall make a concurrent decision on the respective patent’s validity.

3. The right to challenge a decision of the Institution in the Appellate Chamber shall be forfeited in case of payment of the state duty for issuance of a patent (a declarative patent) on an invention or a declarative patent on a utility model.

4. A decision of the Institution shall be appealed in the Appellate Chamber by filing an objection with the Chamber against such decision under the procedure specified in this Law and the Rules of the Appellate Chamber adopted hereunder and approved by the Institution. A fee shall be paid by the applicant for filing the objection. If the fee has not been paid within the time specified in Part one of this Article, the objection shall be deemed not filed, of which a proper notice shall be served to the applicant.

5. In the event that the Appellate Chamber has received an objection and a document evidencing payment of a fee for filing the objection, proceedings in the application shall be suspended until the decision has been approved by the Appellate Chamber.

6. An objection against a decision of the Institution on an application shall be adjudicated pursuant to the Rules of the Appellate Chamber, within 2 months following the receipt of the objection and the document evidencing payment of a fee for filing the objection, in the context of motives that have been presented by the applicant in the objection and in the course of adjudication thereof. The time limit for adjudicating the objection shall, on the applicant’s initiative, be extended, but not more than by 2 months, if a respective petition has been filed and a fee for the filing thereof has been paid prior to such deadline expiration.

7. Based on results of the objection review, the Appellate Chamber shall make a motivated decision subject to approval by order of the Institution communicating it to the applicant.

In case of the full or partial satisfaction of the objection, the fee for the objection submission shall be refunded in full.

8. Prior to approval of a decision of the Appellate Chamber, within one month from the date of such decision, the Head of the Institution may submit a motivated objection against this decision, which objection must be considered within one month. The decision of the Appellate Chamber adopted in relation to the said objection shall be final and may be reversed only by the court.

9. An applicant may challenge a decision of the Appellate Chamber that has been approved by the Institution in court within 2 months following the receipt of the decision.”;

14) To supplement Article 25 with Part four as follows:

“4. In the event of loss of or damage to a patent, its owner shall be issued a duplicate patent under the procedures prescribed by the Institution. A fee shall be paid for issuance of the duplicate patent.”;

15) In Article 26:

To restate Part one as follows:

“For purposes of changing a declarative patent on an invention into a patent on an invention, the holder of the declarative patent on the invention or his successor may submit a request for a qualification examination of the application. Such a request must be provided to an examination institution not later than within three years from the date of filing of the application, on which basis the declarative patent was issued. A fee shall be paid for filing the request.”;

To replace the words “at the request” with the words “in order to” in Paragraph three;

16) In Article 28:

in Part two:

To restate Paragraph five as follows:

“manufacture of a product with the use of a patented invention (utility model), as well as use, offering of such product for sale, including through the Internet, sale, importation (bringing in) or other introducing of such product into civil circulation or storage of such product for the above mentioned purposes;”

To replace the words “of a method” and “a method” with the words “of a process” and “a process” respectively in Paragraph six;

To delete Paragraph seven;

To replace the word “method” with the word “process” in Paragraph nine;

To add the following Paragraphs:

“Any product, a process for whose manufacture is protected by a patent, shall be deemed to have been manufactured with the use of such a process, unless proof to the contrary is available, and provided that at least one of the two requirements below is satisfied:

a product manufactured with the use of the process protected by a patent, is new;

there is ground to believe that the said product has been manufactured with the use of this process, and the owner of the patent is unable to determine the process that was used in the manufacture of this product through reasonable efforts.

In such case, the burden of proof that the process used to manufacture the product, which is identical to the product that is manufactured with the use of the process protected by a patent, is different from the latter, shall be borne by a person with respect to whom there is sufficient ground to believe that such a person infringes upon rights of the patent holder.”;

To supplement Part five, after the word “holder”, with the word “exclusive”;

To restate Part seven as follows:

“7. A patent holder shall be entitled to grant a permit (issue a license) to any person for the use of an invention (utility model) on the basis of a licensing agreement, and in respect of a secret invention (utility model) such a permit shall be only granted following a confirmation from the State Expert.”;

In Part eight:

To restate Paragraph two as follows:

A party to an agreement shall have the right to informing the indefinite number of persons on the transfer of ownership to an invention (utility model) or issue of a license authorizing the invention (utility model) use. Such notification shall be carried out by means of publishing in an official newsletter of data, in the amount and following the procedure as set by the Institution with their concurrent entering into the Register.

To supplement with paragraph three reading as follows:

A fee shall be collected for the publication of said data and of modifications in data on license issue as proposed by a party to the agreement.

17) In Article 30:

in Paragraph one in Part one:

To replace the word “not fully” with the word “insufficiently”;

To delete the words “on non-exclusive license conditions”;

In Paragraph two:

To delete the words “on non-exclusive license conditions”;

To add the following sentence:

“In such case, the right of the patent holder to grant permits for use of the invention (utility model) shall not be restricted.”;

To restate Part three as follows:

“3. In order to protect public health, environmental safety and other public interests, the Cabinet of Ministers of Ukraine may permit a person nominated by it to use an invention (utility model) without consent of the holder of the patent (declarative patent) in the event of such holder’s groundless refusal to grant a license to use the invention (utility model). In such case:

1) a permit for such use shall be granted proceeding from specific circumstances;

2) the scope and duration of such use shall be determined in accordance with the purposes of such a permit, and in case of a semiconductor technology such use must be only of a non-commercial nature on the part of governmental authorities or for rectification of anti-competitive practices by decision of a competent governmental authority;

3) the permit for such use shall not deprive the patent holder of a right to grant permits to use the invention (utility model);

4) the right to such use shall not be transferable, unless such right is transferred with that portion of an undertaking or business practice in which such use is made;

5) use is permitted, primarily, in order to satisfy the domestic market needs;

6) the patent holder shall be provided with a notice advising that a permit to use the invention (utility model) has been granted as soon as practically possible;

7) the permit shall be cancelled if the circumstances, due to which the permit was issued, have ceased to exist;

8) the patent holder shall be paid adequate compensation in accordance with the economic value of the invention (utility model).

A decision of the Cabinet of Ministers of Ukraine to grant a permit to use an invention (utility model), the time period of and conditions for such grant, cancellation of a permit for use, fee amounts payable to a patent holder and fee payment procedures may be challenged in court.”;

To restate Paragraph two of Part four as follows:

“If the said person is not able to reach agreement with the holder of such a patent in respect of the license issue, the Cabinet of Ministers of Ukraine shall have the right to permit such a person to use the secret invention (utility model) in accordance with Part three of this Article herein.”;

18) in Part two of Article 31:

To supplement the words “whereof the patent holder shall be notified as soon as practically possible and shall be paid appropriate compensation”;

To delete the last Paragraph;

19) In Article 33:

To supplement Part one with paragraph “d” to read as follows:

“d) issuance of a patent as a result of filing an application in violation of rights of other persons.
“;

20) In Article 34:

To restate Part two as follows:

“2. On demand of a patent holder, such infringement must be discontinued, and the infringer shall be obligated to reimburse the patent holder for losses caused.

A person who has obtained a license, may demand reinstatement of the violated rights of the patent holder on the basis of such holder’s consent.”;

21) To restate Article 35 as follows:

“Article 35. Remedies

1. Rights to an invention (utility model) shall be protected by courts or otherwise as provided by law.
2. The jurisdiction of courts shall extend onto all legal matters and relations that arise in connection with application of this Law.

In accordance with their competence, the courts shall resolve disputes involving in particular:

authorship to an invention;

ascertainment of the fact that an invention has been used;

ascertainment of a patent holder;

infringements upon rights of a patent holder;

entering into and performance of licensing agreements;

a right to preliminary use;

compensation.

22) To word Article 37 to read as follows:

1. Any person shall have the right to patent an invention (utility model) in foreign states conditional on the prior submission of an application for an invention (utility model) to the Institution and non-receipt by such person, within three months following the date of the said application submission, of a notice to the effect of the claimed invention (utility model) relation to the state secret.

On the applicant’s request, he/she shall be provided with a notice concerning the possibility of an invention (utility model) patenting in foreign states before the expiration of the deadline specified above. A fee shall be collected for filing such petition.

2. In the event that an invention (utility model) appears to be patented in line with the procedure stipulated by the Patent Cooperation Agreement, the international application shall then be filed with the Institution.

10. The Law of Ukraine “On Copyright and Related Rights” (*Vidomosti Verkhovnoyi Rady* (Newsletter of the Verkhovna Rada) of Ukraine, 2001, #43, p. 214):

the following paragraph shall be added to Article 1:

the state system for legal protection of intellectual property – the Institution and an aggregate of expertise, research, educational, information and other state agencies of respective specialization that are under the Institution’s management;”

- 2) The following new paragraph shall be added to part one of Article following paragraph thirteen:

“promote the activities of organizations engaged in the collective management of property rights of a holder of copyright and (or) related rights related to the performance of functions that are set out in Article 49 of this Law.”

In connection with the above, paragraph 14 shall respectively be regarded as paragraph 15.

3) in section 11 of part one of Article 8 the phrase “ unless they are protected by laws of Ukraine governing legal protection of industrial property objects” shall be deleted;

5) In paragraph three of part five of Article 15, the word “indexation” shall be replaced with the word “application”;

6) Clause five of Part one of Article 21 shall be worded as follows:

“5) reproduction of works in catalogues that are displayed in exhibitions available for the public, auctions, fairs or collections, for coverage of these events without using these catalogues for commercial purposes”;

7) subclause "c" of clause 1) of Article 22 shall be deleted;

8) subclause "c" of clause 2 of Article 23 shall be deleted;

9) Paragraph one of part one of Article 24 after the words “lawfully owned” shall be supplemented by the words “legally produced”;

10) In Article 25:

Section "d" of part one shall be deleted;

Part two shall be worded as follows:

“2. Works and performance fixed in phonograms, videograms, copies thereof as well as audiovisual works and copies thereof may be reproduced at home and for personal use only or use by the regular family circle without authorization of an author (authors), performers, producers of phonograms, producers of videograms, however, with the payment of a compensation. Peculiarities of payment of a compensation in this case are determined by Article 42 of this Law”;

11) Part nine of Article 28 shall be worded as follows:

“9. The term of copyright granted after the demise of an author and terms set forth in parts three through seven of this Article shall commence on the date of demise of the author or occurrence of events specified in the said parts, however shall be counted from January 1 of the year following the demise of the author or a year when the specified event occurred.”

12) In part five of Article 47, words “on a collective basis” shall be deleted;

13) subclause “d” of part seven of Article 48 shall be worded as follows:

“d) on entering into agreements for management of property rights held by holders of copyright and (or) related rights;”

14) In part one of Article 49:

clause "c" shall be worded as follows:

“c) to collect, distribute and pay out collected fees for use of items covered by copyright and/or related rights to holders of copyright and/or related rights whose rights they manage, as well as to other holders of rights according to this Law.”

Clause "d" shall be worded as follows:

“d) to use such other measures as envisaged by applicable laws and required to protect rights that are managed by an organization, including the application to a court for protection of rights of holders of copyright and (or) related rights upon consent of these holders;”

Clause “e” shall be deleted

15) Subclause “a” of paragraph two of part one of Article 52, after the words “of their rights” shall be supplemented with the following words: “including the prohibition of actions infringing or threatening to infringe upon a copyright and/or related rights.”

16. across the whole text of the Law, the words “regular family circle” and “regular circle of one family” shall be replaced with the words “family circle” in respective cases.

II. Final Provisions

1. This Law shall come into force from the date of publication hereof.

2. It is hereby prescribed that:

applications for patents on industrial samples and certificates for marks for goods and services, proceedings with respect to which have not been completed by the date on which this Law enters into force, shall be reviewed under procedures provided in this Law. In this respect, compliance of industrial samples with conditions of patentability and compliance of marks for goods and services with conditions for legal protections shall be determined in accordance with the law that was in effect as of the application filing date;

patents on industrial samples and certificates for marks for goods and services may be recognized as invalid under the procedures provided in this Law in the event that an industrial sample does not comply with the conditions of patentability and marks for goods and services do not comply with the conditions for legal protections specified by the law that was in effect as of the application filing date.

3. Within 6 months from the date of the entry into force of this Law, the Cabinet of Ministers of Ukraine must:

bring its rules and regulations into conformity with this Law;

ensure that agencies of executive power review and repeal their rules and regulations that are inconsistent with this Law;

ensure that rules and regulations that are necessary for implementation of this Law are enacted.

President of Ukraine

L. KUCHMA

**Kyiv
May 22, 2003
N 850-IV**