INTERNATIONAL IP LAW FIRMS

国际知识产权事务所名录

Connecting International IP Firms with China

2013 EDITION

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IP OVERVIEW

In 2009, Serbia enacted a set of laws in the field of intellectual property with the aim of harmonization of the national legislation with European Union laws. The reformist endeavor continued in 2011 with the passage of a patent bill.

Trademark

Under the current Trademark Law, any mark that is used to distinguish goods and/or services in trade and that may be graphically presented may be protected as a trademark. A mark may be comprised of words, slogans, letters, numbers, images, drawings, combinations of colors, three-dimensional shapes, graphically presentable musical notes, and other contents. A trademark applicant does not have to state a bona fide intent to use the mark in commerce.

The body in charge of examining applications for trademark protection is the Intellectual Property Office. Under the new law, the decisions of the Office may be appealed before the Serbian government. The Office maintains an online database of trademark applications and registered trademarks, which is available on the website of the Office.

In spite of the general trend toward modernization of the Serbian intellectual property laws, Serbia, alone among the countries in the territory of the former Yugoslavia, does not use opposition proceedings as a means of ensuring that only the signs that fulfill requisite conditions receive protection under the law. The law still vests the Intellectual Property Office with the power to examine all grounds for refusal to register a mark. The grounds for refusal largely coincide with those from the Council Regulation (EC) No 207/2009 on the community trademark (Articles 7 and 8), but they are not classified as absolute or relative ones. Amendments enacted in January 2013 added aesthetic functionality among the grounds for refusal of a trademark application.

Foreigners have the same rights as domestic citizens to apply for registration, subject to international treaties or reciprocity between the relevant country and Serbia. A person who has filed an orderly trademark application effective in a member state of the Paris Union or the World Trade Organization is granted a right of priority in Serbia, provided that an application for the mark is filed in Serbia within 6 months from the effective date of the application in the country concerned.

After the registration of a mark, trademark protection lasts 10 years. The registration may be renewed an indefinite number of times with a payment of a fee. The registration vests the proprietor with an exclusive right to use the mark for the goods or services belonging to the designated class. Well-known marks, within the meaning of Article 6bis of the Paris Convention, do not have to be registered in order to enjoy protection from trademark infringement in Serbia. Registered famous marks are protected against dilution by blurring or tarnishment.

Patent

The number of patent applications filed in Serbia has been in decline. In 2008, according to data made available by the World Intellectual Property Organization, 386 applications were filed by Serbian residents and 237 by non-residents; in 2011 the respective figures were 185 and 49. The body in charge of examining patent applications is the Intellectual Property Office of the Republic of Serbia. Judicial proceedings concerning patent infringement take place only infrequently.

The current Patent Law entered into force on January 4th, 2012. It introduces, as a general rule, the right of the applicant to lodge an appeal from the decision of the Intellectual Property Office. The appeal is heard by the government, rather than by an independent appellate body within the Intellectual Property Office, as has been recommended by legal experts.

The law protects two types of intellectual property rights to protect inventions: patents and utility models, the latter under the term "petty patents". To qualify for protection, both types of patents must be new and susceptible of industrial application, and both must involve an inventive step. The current law, in contrast to the previous one, does not set a lower threshold for inventive step for a petty patent than for a patent. The two types of patents, however, have different subject matters. Invention protected by a patent may be a product, a process, use of a product, or use of a process, whereas the subject matter of invention protected by a petty patent may only be a solution relating to the structure of a product or the layout of its components. The patent term is 20 years from the date of filing a complete application. For a petty patent, the term is 10 years. Prior to the registration of a petty patent, the Intellectual Property Office does not examine ex officio the applications as to substance.

Serbia uses a first-to-file as opposed to first-to-invent system of acquisition of patent rights. A single application may refer to only one invention, unless a number of

inventions are mutually so linked as to form a single general inventive concept. The single inventive concept exception does not apply to petty patents. The law does not provide for opposition proceedings. On the other hand, the Intellectual Property Office may take into account written observations by any third party, concerning the patentability of the invention to which the application relates.

The following activities are not considered to constitute patent infringement: personal non-commercial use; use for the purpose of research and development; direct individual preparation of a drug in pharmacies based on a single prescription, and sale of such drug. The patent holder may request a variety of legal measures against the infringer, including cessation of the infringement and compensation for damages.

Assignment and licensing of a patent must be in writing. In order to have legal effect vis-à-vis third parties, assignment and license must be registered.

Industrial Design

Under the Law on Legal Protection of Industrial Design (2009), registered industrial design protects visual three-dimensional or two-dimensional appearance of the product (shape, texture, materials, colors, contours, lines of the product or its ornamentation, as well as combination of those features). "Product" is defined broadly, to include any industrial or handmade items. The products that are components of other, more complex products are also encompassed by the definition and may be subject to a separate registration.

Novelty and individual character are the two preconditions for registration of a design. The requirement of novelty is satisfied if, prior to the filing of the application for registration, no identical design has been made available to the public before the filing date of the application for registration, and there is no application previously filed requesting the registration of an identical industrial design. "Individual character" of industrial design concerns the overall impression that design produces on informed user, as different from the impression produced by any other design which has been made available to the public.

The Intellectual Property Office examines ex officio whether the conditions for registration of a design have been fulfilled. Industrial design may not be registered if its appearance is solely dictated by its technical function. Registration is also excluded if the design is immoral, infringes copyright or an industrial property right, uses public coat of arms, flag or emblem, depicts without authorization an image of a person, etc. A registered design enjoys protection for a period of 25 years from the date of application. The proprietor is entitled to prevent any unauthorized use of the registered design by third parties and to recover damages. Non-registered designs do not enjoy protection.

Copyright

The copyright law in Serbia protects any original intellectual creation in the literary, scientific, and artistic domain, expressed in a certain form, regardless of its artistic, scientific or some other value, its purpose, size, contents and way of manifestation. Intellectual creations that consist only of ideas, procedures, methods of operation, or mathematical concepts are not copyrightable. For copyright to attach, neither registration nor placement of the copyright notice on the work is required.

Copyright includes two distinct types of rights: moral and economic rights. Moral rights include the right of first disclosure, right of attribution, and the right to the integrity of the work. Economic rights comprise reproduction right, distribution right, the right to communicate the work to the public, the right to prepare a derivative work, and resale right. The term of protection for economic rights is 70 years after the death of the author. Moral rights survive the termination of economic rights.

Copyright may be licensed or assigned by a copyright contract. The moral rights of an author, however, are not transferable by a contract.

The Serbian law does not allow a general fair use defense to copyright infringement. Instead specific exceptions to copyright infringement are enumerated in the Copyright Act. The first exception includes the right of quotation of short extracts of a work of authorship, or of short works of authorship, which has already been lawfully made available to the public, for the purpose of illustration, verification, or reference, with a clear indication that a quotation is involved and in accordance with fair practice. Other exceptions include, inter alia: the use of copyright material for the purpose of reporting current events; the use of works by way of illustration for teaching; private use; and, alteration of a work for the purpose of a parody.

Provided by BDK Advokati/Attorneys at Law. For further information, please see their entry on page 128.

知识产权概况

为了使塞尔维亚国内立法与欧盟立法逐渐一致，塞尔维亚于2009年颁布了一系列知识产权法律,2011年又通过了一项专利法案。

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根据现行商标法，能将商品及（或）服务相区别并能以有形形式表现的任何符号，均可以在塞尔维亚申请注册商标。商标可以由文字、口号、字母、数字、图像、绘图、颜色组合、三维形状、以图形形式呈现的符号和其他内容构成。商标申请人无需明确表明其将在商业中使用该商标。

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外国人在塞尔维亚提出商标注册申请的，与塞尔维亚国民享有同等权利，但以其所在国家与塞尔维亚同受国际条约约束或有互惠关系为限。申请人在巴黎公约成员国或WTO成员国提出商标注册申请后6个月内，又在塞尔维亚提出注册商标申请的，可以享有优先权。

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塞尔维亚专利实行在先申请原则，而非在先发明

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