

# Bulgaria

## Building and enforcing IP value

Bulgaria is in the process of acceding to the European Union, which should happen in January 2007. In this regard, Bulgarian legislation has been harmonised with EU requirements. Intellectual property is increasingly realised as an important economic asset, which is recognised in the national accounting system. Following amendments to the commercial legislation, a pledge can now be established over IP rights.

The institutions in charge of intellectual property are:

- the Bulgarian Patent Office (BPO);
- the Ministry of Culture (copyrights);
- the Bulgarian Seed Agency (plant varieties);
- the customs authorities (border measures);
- the Public Prosecution (where infringement constitutes a crime);
- the Internal Ministry;
- the Commission for the Protection of Competition; and
- the Bulgarian courts (three stages of proceedings).

The national portal [www.ipbulgaria.com](http://www.ipbulgaria.com) is the only online source of IP information in Bulgaria (events, legislation, contacts, online consulting).

### Trademarks

The Law on Marks and Geographical Indications provides that the absolute rights to a mark are acquired through registration as of the filing date of the application. Two or more persons may jointly hold a mark. The mark may be a trademark, a service mark, a collective mark or a certification mark. The application for registration is submitted to the BPO, and is examined both formally and substantially to ensure that it complies with all requirements of law; if so, the experts will issue a decision for registration.

Trademark registration is valid for 10 years and can be renewed indefinitely thereafter for further 10-year periods. Registration gives the holder absolute rights to the mark, and only the holder can use the mark or allow

others to use it. The holder can grant exclusive or non-exclusive licences to third parties. The registration process takes around 18 months.

A trademark can be cancelled at the request of any third party or revoked at the request of interested parties. The mark can be cancelled if it has been registered in contravention of the absolute grounds for refusal listed in the Law on Marks and Geographical Indications. The mark can be revoked if its registration infringes the IP rights of third parties. There is one further ground for revocation: if the mark has not been used in the territory of Bulgaria for five consecutive years.

On August 20 2005 substantial amendments to the Law on Marks and Geographical Indications entered in force. The first important amendment is the obligation of the BPO to publish all trademark applications in its official bulletin. This allows rights holders to take a more proactive approach to protecting and enforcing their rights. If an infringing application is submitted, the rights holder can submit an objection to registration. This is not a true opposition procedure, but rather gives rights holders the chance to block infringing registrations, which is more cost effective than cancelling or revoking a trademark registration. Several law firms already offer a 'trademark watch' service at very competitive rates.

### Enforcement

In Bulgaria, there are no specialised IP courts. Cases involving the infringement of trademark rights fall under the jurisdiction of the Sofia District Court. The procedure progresses through three instances and usually takes around three to four years. The plaintiff can seek:

- establishment of the fact of infringement;
- suspension of the infringing act;
- compensation for damages suffered and lost profits;
- reprocessing or destruction of the infringing items; and
- publication of the court decision in two daily publications at the infringer's expense.

The cost of the lawsuit is comparatively low.

The new amendments to the Law on Marks and Geographical Indications have also introduced a special regime for imposing interim injunctions on suspected infringers, which makes the whole enforcement system faster and more effective.

The system for applying border measures is comparatively effective. It is regulated in the Law on Marks and Geographical Indications and in the Regulation of the Council of Ministry. The process is initiated by the interested party filing an application with the customs authorities (the official fee is around €250). The application is examined by experts and, if it complies with all requirements, a decision is issued. A monthly fee of around €75 is required to keep the application in force. If the customs authorities make a seizure of suspected infringing goods, the applicant's representative is notified and is entitled to examine the goods and take samples. The goods are seized for 10 days, during which time the applicant should furnish proof that it has filed a civil action against the importer. The court may require the applicant to provide a guarantee if the seized goods are to be held throughout the court proceedings.

In case of infringement, it is recommended that the rights holder initiate an administrative procedure before the BPO, which is regulated by the Law on Marks and Geographical Indications. The procedure is executed by BPO experts, and is comparatively fast and cost effective (the official fee is €250). The evidence collected can always be used in subsequent court proceedings.

The Bulgarian Criminal Code includes provisions on trademark infringement. The available penalties are confiscation of the infringing goods, imprisonment of up to three years and fines. If the infringing act does not constitute a crime, the prosecutor will initiate administrative proceedings before the BPO.

Actions before the Commission for the Protection of Competition are very effective. The commission is an independent administrative body, which may issue a decision ordering the suspension of the infringing act and imposing a fine. If the infringement continues after the commission has issued its decision, the fine will increase. The procedure is fast and the commission members are experts. A commission decision may be appealed before the Supreme Court, so a final decision suspending the infringement can be obtained in two years.

### Geographical indications

Bulgaria is a member of the Lisbon Agreement. The international registration of an appellation of origin designating Bulgaria has the same effect as a registration granted in Bulgaria. Geographical indications are

governed by the Law on Marks and Geographical Indications and the enforcement regime is similar to that for trademarks.

### Designs

Absolute rights to the particular appearance of a product are obtained through registration of an industrial design before the BPO. The procedure and conditions for registration are set out in the Law on Industrial Designs. The procedure includes a formal and substantial examination, and takes 12 months. The term of protection for a registered design is 10 years as from the filing date of the application; protection may subsequently be renewed for up to three successive five-year periods. In order to be registered, a design must be new (world novelty) and original.

### Enforcement

The enforcement regime for design rights is similar to that for trademarks. The rights holder can initiate civil proceedings before the Sofia District Court and can seek:

- establishment of the fact of infringement;
- suspension of the infringing act;
- compensation for damages suffered and lost profits;
- reprocessing or destruction of the infringing items and, where infringement is intentional, the means through which they were made; and
- publication of the decision in two daily newspapers at the infringer's expense.

The holder of a design right can also initiate administrative proceedings before the BPO or seek the application of border measures.

### Patents and utility models

Inventions are protected through patents and utility models, which must be registered with the BPO. An application is examined to ensure compliance with the formal and substantive requirements of the Patent Law. The requirements for patentability are:

- novelty (world novelty);
- inventive step; and
- industrial applicability.

The term of protection is 20 years from the date of the application.

A patent cannot be granted for:

- inventions whose commercial use would be contrary to social order or morality;

- methods for treating humans or animals through therapy or surgery, as well as diagnostic methods practised on humans or animals (this does not apply to products - in particular substances or compositions - used in any of these methods); and
- plant or animal varieties, or essentially biological processes for creating them (this does not apply to microbiological methods and products derived from them).

The effects of a patent do not extend to:

- use of the patented invention for non-commercial purposes to service private needs, where such use does not cause significant material prejudice to the patent owner;
- use of the invention for experimental or research and development purposes relating to the subject matter of the patented invention;
- extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription; or
- use of the patented invention on board any foreign land vehicle, vessel or aircraft which temporarily or accidentally enters the territory, waters or airspace of Bulgaria, provided that the patented invention is used exclusively for the needs of such means of transport.

Patents will be granted for utility models which are new and industrially applicable. Utility model protection is available for objects with structural and technical features that improve the design, shape or layout of products, tools, apparatus or devices, or their parts or materials, designed for use in production or in everyday life. Utility model patents cannot be granted for methods. Protection for utility models is granted in the form of a patent with a term of 10 years as of the filing date.

### Pharmaceuticals

For each pharmaceutical or plant protection product, protected with valid basic patent, for which marketing authorisation is first issued after January 1 2000, a certificate can be issued in Bulgaria if the application for such certificate is submitted in the six months prior to EU accession (Article 19a(k) of Regulation 1768/92 on Supplementary Patent Certificates for Pharmaceutical Products and Article 19a(k) of Regulation 1610/96 on Supplementary Patent Certificates for Plant Protection Products).

In accordance with the Law on Drugs in Human Medicine, data exclusivity protection for medical and clinical trials may be obtained up to six years after the

first marketing authorisation in the European Union or Bulgaria is granted (10 years for biotechnological drugs).

The same law includes a 'Bolar'-type provision: the existence of a valid patent two years before the expiry of patent protection is not an obstacle to the execution of clinical trials and to examination of an application for marketing authorisation.

### Enforcement

Any unauthorised use of a protected invention constitutes infringement of the patent. The patent owner and the holder of an exclusive licence may institute patent infringement proceedings, unless otherwise agreed. A patent applicant may also initiate patent infringement proceedings before a patent is granted but after the application has been published.

The rights holder may seek:

- establishment of the fact of infringement;
- compensation for damages suffered and lost profits; and
- suspension of all infringing acts.

Where the proceedings lead to a conviction, the court may order, at the plaintiff's request:

- publication of the decision in two daily newspapers at the infringer's expense; and
- reprocessing or destruction of the infringing items and, where infringement is intentional, the means through which they were made.

The BPO Disputes Department will consider requests for the invalidation of patents for inventions or utility models under the rules governing administrative procedure requests. Any party adversely affected by a decision of the Disputes Department has three months in which to appeal the decision before the Sofia City Court under the Administrative Procedure Act.

### Copyright and neighbouring rights protection

In accordance with the Law on Copyright and Neighbouring Rights, an author has absolute rights to his or her creation from the moment of its creation by any means. These rights are recognised without registration or other formalities. Copyright lasts for the lifetime of the author plus 70 years thereafter. Software and databases are also the object of copyright protection.

### Enforcement

Strategies against copyright infringement can include civil actions, border measures, interim injunctions, administrative measures and criminal measures. The

interested party initiates civil measures before the district courts. The plaintiff can seek:

- compensation for damages suffered and lost profits;
- suspension of the infringing act;
- confiscation and destruction of illegal copies; and
- confiscation of recording and decoding equipment.

Copyright owners can also initiate administrative measures and border measures, which are fast and effective.

The Bulgarian Criminal Code also provides for the initiation of criminal proceeding in case of copyright infringement. The available penalties include up to five

years' imprisonment, fines, and confiscation of goods and equipment used for the production of infringing goods.

#### **Plant variety protection**

Bulgaria has incorporated the 'sui generis' system for the protection of plant varieties into national legislation. The system is developed and regulated on the basis of the International Union for the Protection of New Varieties of Plants Convention. As an object of IP rights, in accordance with the Law on Patents (Article 7), plant varieties are excluded from patent protection. The Bulgarian legislation is thus harmonised with EU requirements in the field of plant variety protection.

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