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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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REVIEW OF LEGISLATION IN THE FIELDS OF PATENTS, LAYOUT-DESIGNS
(TOPOGRAPHIES) OF INTEGRATED CIRCUITS, PROTECTION OF
UNDISCLOSED INFORMATION AND CONTROL OF
ANTI-COMPETITIVE PRACTICES IN
CONTRACTUAL LICENCES

Replies from Bulgaria to questions posed by the United States

Addendum

The following communication, dated 16 May 1997, has been received from the Permanent Mission of Bulgaria.

Patents

1. *Please explain, whether any of the following inventions are prohibited from being patented in Bulgaria if they otherwise satisfy the conditions of being novel, involving an inventive step, and being industrially applicable:*

- (a) *process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;*
- (b) *product inventions consisting of elements of a computer-implemented invention, including in particular:*
 - (i) *machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and*
 - (ii) *a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;*
- (c) *pharmaceutical or agricultural chemical products; or*
- (d) *non-naturally occurring microorganisms, plants or animals.*

If any of these types of inventions are excluded from eligibility to be patented, please explain how Bulgarian patent law complies with the obligations of Article 27 of the TRIPS Agreement, which mandates patent eligibility for all categories of invention without discrimination.

(a) Under the provisions of Article 6, paragraphs 2 and 3 of the Bulgarian Patent Law (1993) the computer programmes are excluded from the patentable inventions, provided that no legal protection is required for them as such, but that provision does not exclude "*a priori*" the patentability of inventions related to computers.

In that meaning, the Patent Law does not exclude from the patent protection the inventions for methods, which in whole or in part, consist of steps that are performed by a computer and are directed by a computer program.

(b) (i) Machine-readable computer program code stored on a tangible medium such as a floppy disc, computer hard drive or computer memory is in the scope of the excluded by Article 6, paragraph 2 of the Patent Law objects - "computer programmes" as such.

Such a product, besides its storage on a tangible medium, is excluded from patentability, because its novelty over the field of technology is concentrated only and exclusively to the contribution, provided by the computer programme as such.

(ii) A general purpose computer, whose novelty over the prior art arises primarily due to its combination with a specific computer programme which provides the working process of the computer in a different way from a technical point of view, is not excluded from the patent protection.

(c) The pharmaceuticals or agricultural chemical products may be protected under the provisions of the Patent Law.

(d) Plant varieties and animal breeds are excluded from the patent protection as per Article 7, paragraph 3 of the Patent Law.

The non-naturally occurred plants and animal breeds, e.g. where there exists human intervention to the essential biological process, are not excluded from the patent protection.

The micro-organisms, as products of microbiological methods, under the provisions of paragraph 3 of Article 7 of the Patent Law may be patent protected.

The Bulgarian Patent Law mandates patent eligibility for all categories of inventions without discrimination in compliance with Article 27 of the TRIPS Agreement.

2. *Please explain whether it is possible in Bulgaria to obtain a compulsory licence (a licence granted to a third party without the consent of the patent owner), and if so, how such authority complies with the provisions of Article 31 of the TRIPS Agreement.*

Under the provisions of Article 32 of the Patent Law, any person involved could request the Patent Office for concession of a compulsory licence in his favour for the use of a patent protected invention, without the patent owner's consent, provided that at least one of the following conditions is present:

- failure to use the invention for a period of four years from the date of the application for a patent or of three years from the grant of a patent, provided that the time limit which expires later is valid;

- insufficient use of the invention to satisfy the needs of the national market, within the time limits as per above, unless the patent owner proves valid reasons for that;
- declared national state of emergency - for the time period of its duration.

These conditions do not deplete the conditions of Article 32 of the TRIPS Agreement but as far as paragraph 7 of Article 32 (PL) establishes the applicability of the conditions under which the compulsory licence shall be issued and fixed in bilateral and multilateral agreements to which Bulgaria is a party, and the application of this institution in Bulgaria will be fully complied with the standards and rules of the TRIPS Agreement.

The American side should note that according to Article 5, paragraph 5 of the Constitution of the Republic of Bulgaria, the TRIPS Agreement after its publishing in State Gazette shall become part of the internal legislation of our country and its standards and rules shall prevail over those rules of our legislation which are in contradiction with them.

3. *Please indicate how many compulsory licences on a yearly basis have been granted in Bulgaria since 1 January 1993.*

Since 1 January 1993, no compulsory licence has been requested for the use of patent protected invention.

4. *Please explain whether protection is offered in Bulgaria for plant varieties, and if so, whether such protection is based on the standards of the 1978 or 1991 Acts of the International Convention for the Protection of New Varieties of Plants (UPOV).*

The plant varieties in Bulgaria are protected by the Law on Protection of New Plant Varieties and Animal Breeds which entered into force on 4 January 1997.

The law and the protection are based on the standards of the 1991 Act of the UPOV.

Protection of undisclosed information

5. *Please explain how undisclosed information is protected in Bulgaria, and the legal basis for such protection [NOTE: no notification from Bulgaria concerning protection of undisclosed information had been distributed by the WTO Secretariat at the time these questions were prepared].*

The protection of undisclosed information is legally established. The Law on the Protection of Competition adopted in 1991, prohibits the announcement of decisions and data, representing production or trade secret. The learning, use or divulging of undisclosed information in contradiction with the bona fide trade practice represent unfair competition.

Article 14, paragraph 3 of the Law on the Protection of Competition provides for more tough sanction for the infringement - the learning of another's production or trade secret "through eavesdropping, entering into premises, opening of correspondence, photographing" and other illegal means.

Article 14, paragraph 5 of the Law on the Protection of Competition obliges the employees of any enterprise or organization, as well as the state bodies (including after termination of their employment contracts) not to communicate the production or trade secrets which they have learned through their employment for a period of 5 years, except where a longer term is stipulated in the employment or other contract.

The Law guarantees the right to claim before the court of the natural and legal persons whose interests have been harmed by the violation. The same right, on independent legal basis, has the specialized body for the protection of the competition as well as the district attorney.

In cases of violation under Article 14, the Law provides imposition of pecuniary sanctions on the persons found guilty by the district court according to the crime commitment.

6. *Please indicate the nature of measures, if any, that are taken by judicial authorities in Bulgaria to protect the confidentiality of undisclosed information furnished by a party to the court during legal proceedings, when the information has been provided either to enforce rights in such information, or for other purposes.*

For the purpose of preventing the announcement of undisclosed information, submitted by the corresponding party to the court, the case shall be held in closed doors according to Article 105, paragraph 2 of the Code on Civil Procedures.

7. *Please explain the measures, if any, that have been implemented in Bulgaria to protect against unfair competition those parties that have provided confidential test or other data concerning a pharmaceutical or agricultural chemical product to Bulgarian regulatory authorities pursuant to a request for marketing approval and how such measures are consistent with Article 39.3 of the TRIPS Agreement. Please explain whether the information is protected against disclosure indefinitely, or is only protected for a specific period of time.*

There are no explicit provisions in the Law on the Protection of Competition, which guarantee protection from unfair competition to the persons, who had submitted to the competent Bulgarian authorities confidential tests or other data for pharmaceutical or agricultural chemical products with request for their approval.