

Comments on the Final Draft of the Territories and Seats of Courts Act

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American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

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Comments on the Final Draft of the Act

With this document, the American Chamber of Commerce in Croatia (*AmCham*), sets out its position on the Final Draft of the Territories and Seats of Courts Act.

The Final Draft of the Act is generally acceptable, but AmCham deems it necessary to provide suggestions for further improvements.

AmCham hereby supports the amendments to the Territories and Seats of Courts Act, which will have a significant impact on the economy. We especially deem that the amendment proposed by Article 8 (paragraph 2) will contribute to better efficiency of courts. At the same time, in the existing draft, AmCham notices some details that could lead to disruption of past achievements, which we want to warn for with these comments.

For the purpose of further improving the Final Draft of the Act, AmCham makes the following recommendations:

Article 2

AmCham in general supports the specialization of courts, especially in the field of criminal and misdemeanor protection of intellectual property. With respect to the wide range of jurisdictions of the misdemeanor, municipal, and county courts, and the State Attorney's Office in the system of suppressing economic crime, the lack of specialization of judges and deputy state attorneys in the intellectual property domain has proven to be a crucial factor in reducing the efficiency of the system of misdemeanor and criminal protection in this legal field. Part of the responsibility for the inability to specialize the courts lies in the inadequate allocation of jurisdiction, and AmCham recommends that concentration of jurisdiction is carried out wherever necessary at the same time as the specialization.

Nevertheless, we deem that the narrowing of jurisdiction to one municipal and one misdemeanor court in the whole state is too drastic. AmCham's proposal is to concentrate jurisdiction in the field of criminal and misdemeanor protection of intellectual property rights and to specialize four courts - misdemeanor, municipal and county courts in Zagreb, Rijeka, Split and Osijek, and appropriate State's Attorney offices, in order to maintain symmetry with civil law adjudication. We want to point out that the National Strategy 2005 – 2010 envisaged the concentration of the prosecution of criminal offenses of intellectual property rights infringements similar to the existing concentration of civil cases at the Zagreb, Rijeka, Split and Osijek Commercial Courts.

Therefore, we deem that the concentration of criminal and misdemeanor prosecution and the administration of justice in cases regarding intellectual

property, modeled after the special jurisdiction of the four commercial and administrative courts (Zagreb, Split, Rijeka, Osijek) would create institutional centers for the protection of intellectual property rights, achieve optimal preconditions for the specialization and continuous training of judges, and ensure a higher level of legal security for rights holders.

The only exception to this rule is the proposed concentration of actual and local jurisdiction where Amcham proposes concentration for the entire Republic of Croatia to the Zagreb Commercial Court as a first-instance court in the field of patent law disputes.

Article 7

For the settlement of disputes relating to ships and navigation on the sea and inland waters and disputes to which maritime law applies; disputes relating to airplanes and disputes to which air navigation law applies; disputes relating to the protection and use of industrial property, copyright and related rights and other intellectual property rights, disputes relating to the protection and use of inventions and technical improvements of that company, unless otherwise provided for by a special law, the following commercial courts are designated:

- Osijek Commercial Court;*
- Rijeka Commercial Court and for the territory of Pazin Commercial Court;*
- Split Commercial Court and for the territory of Dubrovnik Commercial Court and Zadar Commercial Court;*
- Zagreb Commercial Court and for the territory of Bjelovar Commercial Court and Varaždin Commercial Court.*

According to official statistics, there has been an extremely small number of patent disputes at commercial courts for intellectual property in the past 10 years.

Considering a relatively small number of cases in the field of patent law, the need for specialization which is difficult to achieve if the cases are allocated to a large number of courts and the fact that the largest number of such cases is concentrated in Zagreb, AmCham suggests that Zagreb Commercial Court be the sole competent court for disputes in the field of patent law.

The National Strategy 2005 – 2010 envisaged the adoption of the amendments to the Judiciary Act and the Territories and Seats of Courts Act, which would, as a part general judiciary reform, introduce the concentration of cases from the field of intellectual property rights to a smaller number of courts, in particular, focusing the administration of justice in patent cases exclusively to the Zagreb Commercial Court, due not only to its sophisticated nature, but also to the scarcity of such disputes in Croatia.

In view of the above, AmCham deems that only one court should be in charge of disputes in the field of patent law in order to gain relevant practice that would enable Croatia to catch up with the countries of Central and Eastern Europe.

Accordingly, AmCham proposes a new wording of Article 7:

(1) For the settlement of disputes relating to ships and navigation on the sea and inland waters and disputes to which maritime law applies; disputes relating to airplanes and disputes to which air navigation law applies; disputes relating to the protection and use of industrial property, except patents, business secrets, copyright and related rights and other intellectual property rights, disputes relating to the protection and use of technical improvements of that company, unless otherwise provided for by a special law, the following commercial courts are designated:

- Osijek Commercial Court;*
- Rijeka Commercial Court and for the territory of Pazin Commercial Court;*
- Split Commercial Court and for the territory of Dubrovnik Commercial Court and Zadar Commercial Court;*
- Zagreb Commercial Court and for the territory of Bjelovar Commercial Court and Varaždin Commercial Court.*

(2) Zagreb Commercial Court is designated for resolving disputes relating to the protection and use of patents and inventions.

Article 8

(1) Seats and territories of jurisdiction of administrative courts are as follows:

I. Osijek Administrative Court for the territories of Brod-Posavina County, Osijek-Baranja County, Požega-Slavonia County, Virovitica-Podravina County and Vukovar-Srijem County.

II. Rijeka Administrative Court for the territories of Istria County, Karlovac County, Lika-Senj County and Primorje-Gorski Kotar County.

III. Split Administrative Court for the territories of Dubrovnik-Neretva County, Split-Dalmatia County, Šibenik-Knin County and Zadar County.

IV. Zagreb Administrative Court for the territories of Bjelovar-Bilogora County, Koprivnica-Križevci County, Krapina-Zagorje County, Međimurje County, Sisak-Moslavina County, Varaždin County, Zagreb County and City of Zagreb.

(2) Zagreb Administrative Court shall have jurisdiction to handle all administrative disputes against the decision of tax authorities.

The AmCham deems that only one court should have jurisdiction over administrative disputes in the field of intellectual property because the competent state body, the State Intellectual Property Office, whose decisions would be

reviewed before the Administrative Court, is located in Zagreb and thus, standardization and concentration of relevant practice could be achieved.

AmCham therefore proposes adding paragraph (3) to Article 8 which reads:

(3) Zagreb Administrative Court shall have jurisdiction to handle all administrative disputes against decisions and bodies competent in industrial property and copyright and related rights and other intellectual property rights.