


MADRID PROTOCOL

PARTIAL PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1) of the Common Regulations

I.	Office making the notification:  Patent Office of the Republic of Bulgaria 52b, boul. Dr.G.M.Dimitrov, BG-1040 SOFIA, Bulgaria www.bpo.bg
II.	Number of the international registration: 1 502 740
III.	Name of the holder: Open Joint Stock Company "Mogilevsky zavod liftoovogo mashinostroeniya" (OJSC "Mogilevliftmash")
IV.	Information concerning the type of provisional refusal: <input checked="" type="checkbox"/> Partial provisional refusal based on an ex officio examination <input type="checkbox"/> Partial provisional refusal based on an opposition ¹ <input type="checkbox"/> Partial provisional refusal based on both an ex officio examination and an opposition
V.	Information concerning the scope of the provisional refusal: <i>Please indicate the scope of the refusal, by choosing one of the two listed options below and, where applicable, list the relevant goods and/or services:</i> <input checked="" type="checkbox"/> Partial provisional refusal affects only the following goods: Class 7: Winches; elevators [lifts] and parts thereof; hoists; lifts, other than ski-lifts; elevator operating apparatus, lift operating apparatus; elevating apparatus; escalators. <input type="checkbox"/> Partial provisional refusal does NOT affect the following goods: Class 7: grinding machines; control mechanisms for machines, engines or motors; moving sidewalks (passenger conveyors); moving walkways (passenger conveyors); automatic multi-level car parking systems, mechanical multi-level car parking systems.
VI.	Grounds for refusal [(where applicable, see item VII)]: Motives for refuse: The registration of the mark is refused for part of the following goods in Class 7: Winches; elevators [lifts] and parts thereof; hoists; lifts, other than ski-lifts; elevator operating apparatus, lift operating apparatus; elevating apparatus; escalators. The mark applied for is a word combination, which consists of the words "CONTROL", "THE" and "HEIGHT". According to the Cambridge English Dictionary the meaning of "CONTROL" is "the act of controlling something or someone, or the power to do this", "THE" is determiner and "HEIGHT" means "the particular distance that something is above a surface". As a whole the mark lacks distinctive character. The mark for which protection is sought clearly points out the characteristics of the above-mentioned goods in Class 7, by indicating that the goods in question are devices or machines designed or used for height control, such as lifts, escalators, hoists, winches, etc. In this way, the mark only provides to the consumer's information about the goods in question, but lacks information, which may serve to consumers to identify their commercial origin. The sign is ineligible for registration for the above-mentioned goods in Class 7.

¹ Where the refusal is based on an opposition, please indicate the name and address of the opponent.

VII. Information relating to an earlier mark² :

- (i) Filing date and number, and, if any, priority date:
- (ii) Registration date and number (if available):
- (iii) Name and address of the owner:
- (iv) Reproduction of the mark:
- (v) List of all or relevant goods and/or services:

VIII. Corresponding essential provisions of the applicable law [(see text under XII)]:

Art. 11(1) 2 and art. 11(1) 4

IX. Information relating to subsequent procedure:

- (i) Time limit for requesting review or appeal:

Deadline for filing a request for review:

The holder of the international registration may submit its request for review against this refusal to the Patent Office of the Republic of Bulgaria (at the address in item I above)

within **two months**

from the date of receipt of this refusal.

During this period, the refusal is provisional. In the absence of a request for review, this refusal will become final without further notice (Art. 47(3)).

After this period the holder may lodge an appeal against this final refusal to the Patent Office of the Republic of Bulgaria (at the address in item I above)

within **two months (Art. 70(1))**.

The persons, which do not have a permanent address or registered office in the Republic of Bulgaria, shall perform activity before the Patent Office through an industrial property representative (Art. 43(2)).

The official language for correspondence with the Patent Office of the Republic of Bulgaria is the Bulgarian language.

- (ii) Authority to which such request for review or appeal should be made:

the **Patent Office of the Republic of Bulgaria**

- (iii) Indications concerning the appointment of a representative:

See the list of representatives in Bulgaria – Internet page of the Office www.bpo.bg

Please also note that, despite the provisional refusal based on the ex officio examination, it is possible that an **opposition or objection by third parties** is filed against the recognition of the effects of the international registration in the territory of the Republic of Bulgaria in the period from **29/04/2020 to 28/07/2020**

X. Signature or official seal of the Office making the notification:

XI. Date of the notification to the International Bureau: **03/04/2020**

² Where the grounds on which the provisional refusal is based relate to an earlier mark, as indicated under item VI. The indication required under this item may be given by annexing a printout from the register or database.

XII. Corresponding essential provisions of the applicable law:

LAW ON MARKS AND GEOGRAPHICAL INDICATIONS

Prom. SG.98/13 Dec 2019

Absolute grounds for refusal of registration

Art. 11. (1) The following shall not be registered:

1. a sign, which is not a trademark in the meaning of Art. 9, Para. 1;
 2. a mark, which is not distinctive;
 3. a mark, consisting exclusively of signs or indications, which have become customary in the spoken language or in established commercial practice in the Republic of Bulgaria in respect of the goods or services claimed;
 4. a mark consisting exclusively of signs or indications, indicating the type, quality, quantity, purpose, value, geographical origin, time or method of production of the goods, the manner, in which the services are provided or other characteristics of the goods or services;
 5. a sign, consisting exclusively of:
 - a) the shape of the goods or any other characteristic, that arises from the nature of the goods itself;
 - b) the shape of the goods or other characteristic, necessary to achieve a technical result;
 - c) the shape of the goods or other characteristic, that gives significant value to the goods;
 6. a mark, that is contrary to public policy or to good morals;
 7. a mark, which may mislead consumers as to the nature, quality, geographical origin or other characteristics of the goods or services;
 8. a mark, consisting of, or incorporating, the emblems, flags or other symbols, and imitations thereof, of a Member State of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as amended and supplemented pursuant to the Decision of the Council of Ministers on the accession of the People's Republic of Bulgaria to the Lisbon Edition of the Convention (ratified by Decree No. 663 of the Presidium of the National Assembly - SG, 75/65), hereinafter referred to as "the Paris Convention", as well as the emblems, flags or other symbols, abbreviations or names of international intergovernmental organizations, declared under Art. 6 of the Paris Convention;
 9. a mark, which consists of or includes signs, emblems or heraldry, other than those, declared under Art. 6, from the Paris Convention, and of particular public interest;
 10. a mark, consisting of, or incorporating, official marks and the control mark and guarantee, where they are intended to mean identical or similar goods;
 11. a mark, consisting of or incorporating a name or image of a cultural property or parts of a cultural property, defined in accordance with the Cultural Heritage Act;
 12. a mark, whose registration is in breach of Bulgarian law, European Union law or international agreements, to which the Republic of Bulgaria or the European Union is a party, providing legal protection of geographical indications;
 13. a mark, whose registration is in breach of European Union law or international agreements, to which the European Union is a party, providing legal protection for foods of traditional specific nature;
 14. a mark, whose registration is in breach of European Union law or of international agreements, to which the European Union is a party, providing for the legal protection of traditional wine names;
 15. a mark, which consists of, or reproduces in its essential elements the name of an earlier plant variety, registered under national legislation, European Union law or international instruments, to which the Republic of Bulgaria and the European Union are parties, providing legal protection to the plant variety rights, where the mark and the plant variety refer to identical or closely related species.
- (2) The provisions of Para. 1, items 2, 3 and 4 shall not apply where, prior to the date of application, the mark as a result of use, has acquired distinctiveness in respect of the goods or services, for which it has been claimed.
- (3) The provisions of Para. 1, items 8, 9, 10 and 11 shall not apply, when the applicant presents evidence of consent of the relevant competent authority
- (4) The provision of Para. 1, item 12 shall not apply, when the applicant of a mark, containing a geographical indication, previously claimed or registered under this Act, is a registered user of the geographical indication.
- The provisions of Para. 1, items 12, 13 and 14 shall not apply, when the applicant restricts the list of goods, for which the mark has been applied for, to those, corresponding to the specification of registered in accordance with the legislation of the European Union or international agreements, to which the European Union is a party, geographical indications, foods with traditional specific nature and traditional names of wines.

Continuation of terms

Art. 80. The terms under Art. 46, Para. 2, sentence three, Art. 47, Para. 2, Art. 55, Para. 3, Art. 57, Para. 4 and Art. 58, Para. 5 may be extended once, with the same duration, at the request of the applicant or the holder submitted before their expiry. The request shall not be considered, where a state fee payment document has not been attached to it, if it is paid by a bank transfer.