

# INDUSTRIAL PROPERTY: AN OVERVIEW OF PROTECTION IN THE REPUBLIC OF NORTH MACEDONIA

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## Abstract

Industrial property law constitutes one of the two pillars (the other being copyright) of the broader entity known as intellectual property law. According to the Paris Convention for the Protection of Industrial Property (1883) “Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour” (Article 1(3)). Industrial property is considered to give identity and add value to products in the market. Thus, creativity and innovation expressed by people and business entities through visionary institutions, laws and policies provide prerequisites for a stable platform for economic development. This highlights the main function of this branch of the legal system, the transformation of ideas into products and services that will improve our lives and realize the process of transformation into knowledge based economy. In the Republic of North Macedonia, industrial property is mainly regulated by the Law on Industrial Property (2009), while the issues related to the acquisition and protection of industrial property rights is carried out by the State Office of Industrial Property (SOIP). In addition to the empirical, descriptive and normative treatment, the authors through the methods of analysis, synthesis and statistical method processes the official data from the SOIP to give a clear overview of the trends in providing protection of individual industrial property rights for the period of eleven years (2011-2021) in North Macedonia.

*Keywords:* industrial property, Paris Convention, law, official data, Republic of North Macedonia.

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## 1. Introduction

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.<sup>1</sup> According the Convention Establishing the World Intellectual Property Organization<sup>2</sup> IP include the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,

<sup>1</sup> <https://www.wipo.int/about-ip/en/> [Accessed on 11.09.2022].

<sup>2</sup> *Convention Establishing the World Intellectual Property Organization*, signed at Stockholm on July 14, 1967 and as amended on September 28, 1979.

- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

More specifically, such matter is often the product or embodiment of investments of diverse resources, such as: human capital, time, energy, money, and a wide range of other resources. The investments in question must be made before any return benefits are realized.<sup>3</sup> The World Intellectual Property Organization (WIPO) has reached the conclusion that countries generally have laws to protect IP for two main reasons:<sup>4</sup>

- to give statutory expression to the rights of creators and innovators in their creations and innovations, balanced against the public interest in accessing creations and innovations;
- to encourage and promote creativity and innovation, so contributing to economic and social development.

IP is usually divided into two branches, namely copyright and industrial property. The Berne Convention for the Protection of Literary and Artistic Works, provides that works protected by copyright include: (1) Literary and artistic works; (2) Possible requirement of fixation; (3) Derivative works; (4) Official texts; (5) Collections; (6) Obligation to protect; beneficiaries of protection; (7) Works of applied art and industrial designs; (8) News.<sup>5</sup> The Paris Convention for the Protection of Industrial Property, as the most important international document for industrial property, foresees that the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.<sup>6</sup> Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.<sup>7</sup>

The common feature behind each of the intellectual property rights is that they allow the holders to prevent others from exploiting their protected creations. This affects the preservation of integrity and reserves the use and presentation of those creations only to their rightful owners.<sup>8</sup> Of course, there are many similarities and differences between the rights of the various types of rights that make up intellectual property. Some rights create monopolies, while others simply prevent others from unfairly exploiting an existing work or creation. Different rights are not necessarily mutually exclusive and two or more rights may coexist in relation to a particular thing or matter. Sometimes rights will progressively give protection, one right taking over another over a period of time during the development of an invention, design or copyrighted work.<sup>9</sup>

<sup>3</sup> Roger D. Blair, Thomas F. Cotter, *Intellectual Property: Economic and Legal Dimensions of Rights and Remedies*, Cambridge: Cambridge University Press, 2005, 263.

<sup>4</sup> *Understanding Industrial Property*, Geneva: World Intellectual Property Organization, 2016, 5.

<sup>5</sup> Article 2 of the Berne Convention for the Protection of Literary and Artistic Works, signed at Berne on September 09, 1886 and as amended on September 28, 1979.

<sup>6</sup> Article 1(2) of the *Paris Convention for the Protection of Industrial Property*, as the most important international document for industrial property, signed at Paris on March 20, 1883 and as amended on September 28, 1979.

<sup>7</sup> Article 1(34) of the Paris Convention.

<sup>8</sup> Catherine Colston, Jonathan Galloway, *Modern Intellectual Property Law* (3<sup>rd</sup> edition), Oxon: Routledge, 2010, 2.

<sup>9</sup> David Bainbridge, *Intellectual Property* (9<sup>th</sup> edition), Harlow: Pearson Education Limited, 2012, 4.

## **2. Legal and institutional platform for the protection of industrial property in the Republic of North Macedonia**

Seeing the importance of industrial property rights and the benefits they bring to individuals, organizations and the general interest, today's constitutions are characterized by the norm of guaranteeing the protection of creations and creators/users of these goods. This has led the local legislator of the Republic of North Macedonia to raise it to the constitutional level, providing that: "The rights derived from scientific, artistic or other types of intellectual creativity are guaranteed".<sup>10</sup> The Constitution only in principle guarantees the protection of intellectual rights, while the further concretization of this provision is left to the relevant law.

Establishing quality legal solutions is important, but as a first step, in order to produce results, it is necessary to be accompanied by comprehensive access to public policies, measures and tools for effective implementation and awareness-raising. Over the last decade North Macedonia has undertaken measures for achieving a level of protection of the industrial property rights similar to the level that exists in the European Union. North Macedonia is member of the WIPO and the European Patent Organization (EPO), in addition to being a signatory of all the most important international treaties in the field. When it comes to the protection of industrial property rights, the legal framework in North Macedonia offers roughly the same level of protection as the legal framework in EU Member States. Taking into account the prediction that both internationally and at the EU level the regulation of this area is under development to simplify the rules and strengthen stability, it is important for North Macedonia to keep up with the new challenges and continue with the new solutions.

The acquisition, implementation and protection of industrial property rights in our country are regulated by the Law on Industrial Property.<sup>11</sup> The current law succeeded two previous laws, the one of 2002<sup>12</sup> and the one of 1993.<sup>13</sup> In addition to this law, a number of other acts with the aim of concretizing and implementing it more functionally are adopted. Here, in the first place, the Law on Administrative Taxes,<sup>14</sup> the Law on the Protection of Topography and Integral Circuits,<sup>15</sup> the Law on Customs Measures for the Protection of Intellectual Property Rights<sup>16</sup> come into play. Then there are the regulations of the SOIP for the patent, industrial design, trademark, as well as for the origin of the product and the geographical indication.<sup>17</sup>

The works related to the acquiring and safeguarding of the industrial property rights shall be performed by the SOIP. The SOIP is an administrative organization with a status of an independent state administrative body with statutory powers. It has the status of a legal entity

<sup>10</sup> Article 47(2) of the Constitution of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia, no. 02/91. Amendments to the Constitution, Official Gazette of the Republic of North Macedonia, no. 01/92, 31/98, 03/84, 05/107, 09/03, 11/49, 06/19.

<sup>11</sup> Article 1 of the Law on Industrial Property, Official Gazette of the Republic of North Macedonia, no. 21/09. The Law on Amendments and Supplements to the Law on Industrial Property, Official Gazette of the Republic of North Macedonia, no. 24/11, 12/14, 41/14, 152/15, 53/16, 31/20.

<sup>12</sup> Law on Industrial Property, Official Gazette of the Republic of North Macedonia, no. 47/02. The Law on Amendments and Supplements to the Law on Industrial Property, Official Gazette of the Republic of North Macedonia, no. 42/03, 09/04, 39/06, 79/07.

<sup>13</sup> Law on Industrial Property, Official Gazette of the Republic of North Macedonia, no. 42/93.

<sup>14</sup> Law on Administrative Taxes, Official Gazette of the Republic of North Macedonia, no. 17/93. The Law on Amendments and Supplements to the Law on Administrative Taxes, Official Gazette of the Republic of North Macedonia, no. 20/96, 7/98, 13/01, 24/03, 19/04, 61/04, 95/05, 7/06, 70/06, 92/07, 88/08, 130/08, 6/10, 145/10, 17/11, 84/12, 192/15, 23/16.

<sup>15</sup> Law on the Protection of Topography and Integral Circuits, Official Gazette of the Republic of North Macedonia, no. 05/98. The Law on Amendments and Supplements to the Law on the Protection of Topography and Integral Circuits, Official Gazette of the Republic of North Macedonia, no. 33/06, 136/11, 53/16.

<sup>16</sup> Law on Customs Measures for the Protection of Intellectual Property Rights, Official Gazette of the Republic of North Macedonia, no. 88/15. The Law on Amendments and Supplements to the Law on Customs Measures for the Protection of Intellectual Property Rights, Official Gazette of the Republic of North Macedonia, no. 154/15, 192/15, 23/16.

<sup>17</sup> <http://www.ippo.gov.mk/mk/Legislativa.aspx> [last accessed on 21.09.2022].

with headquarters in Skopje. The SOIP is led by the director who is appointed and dismissed by the Government.<sup>18</sup> It maintains registers of registered and recognized industrial property rights and a register of representatives in the field of industrial property. The register also includes the later changes regarding the applicant, the right holder and the right itself.<sup>19</sup>

### 3. The current state of industrial property rights in the North Macedonia

The official data for each individual right from industrial property in the North Macedonia for the eleven-year period from 2011 to 2021 by the SOIP and processed by the authors using the statistical method and then presented in the form of results through tables and charts, are reflected in the paper. The results show a different trend of the movement of numbers over the years of requests for protection and the provision of protection of these rights through issued decisions, i.e. for some over the years the trend is increasing (e.g. patents), for some this trend is leveled with no apparent increase or decrease (e.g. trademarks), while for others the trend is decreasing (e.g. industrial design).

Table 1 presents the descriptive data for patent applications from 2011 to 2021, where it is shown that there were a total of 456 domestic patents (1.3%), Patent Cooperation Treaty (PCT)<sup>20</sup> 36 (0.1%), EPO<sup>21</sup> 8422 (24.2%), SOIP 8458 (24.3%), Total at SOIP (SOIP and domestic) had 8914 (25.6%) and issued decisions on patents' recognition 8470 (24.4%). The data of table 1 are also presented graphically in Chart 1.

**Table 1.** Description of data for patent applications from 2011 to 2021.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid de	Domestic	456	1.3	1.3	1.3
	PCT	36	0.1	.1	1.4
	EPO	8422	24.2	24.2	25.6
	SOIP	8458	24.3	24.3	50.0
	Total at SOIP (SOIP and Domestic)	8914	25.6	25.6	75.6
	Issued decisions on patents' recognition	8470	24.4	24.4	100.0
	Total	34756	100.0	100.0	

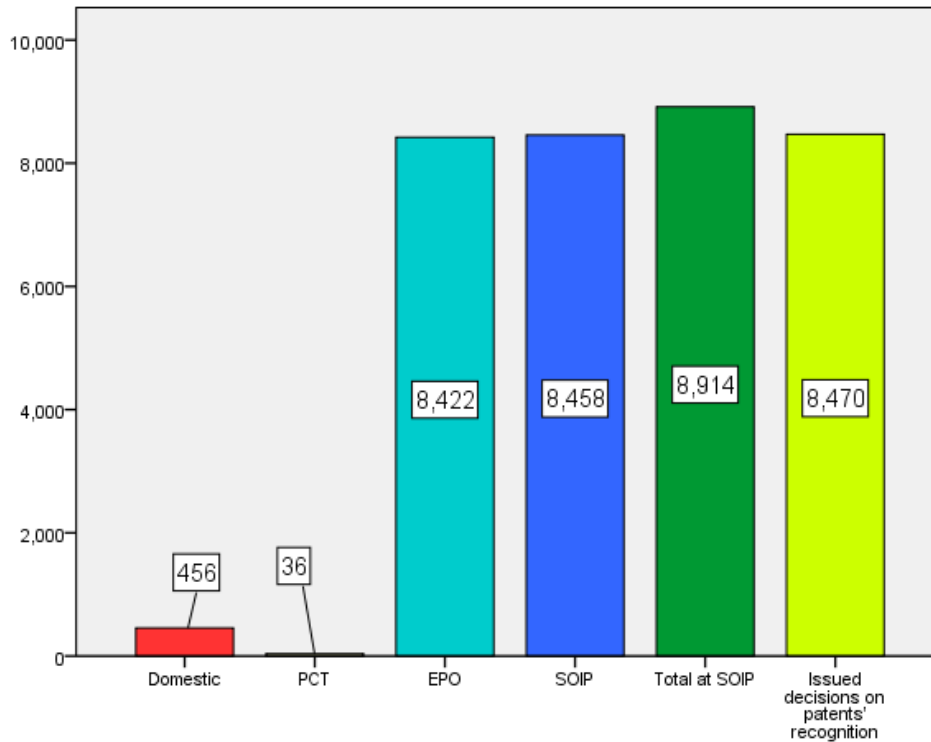
*Source: State Office of Industrial Property*

<sup>18</sup> Articles 9-10 of the Law on Industrial Property.

<sup>19</sup> Article 16(1)-(2) of the Law on Industrial Property.

<sup>20</sup> *Patent Cooperation Treaty*, done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001(as in force from April 1, 2002).

<sup>21</sup> *European Patent Office*, <https://www.epo.org/>.



**Chart 1.** Patent applications

Table 2 presents the data for the comparison of the internal patent rank averages by year through the Kruskal Wallis Test statistic. The data show that the highest average rank for internal patents was in 2015 with MR=18258.47, then the highest average was the year 2021 with MR=18251.09 difference from all other years from 2011 to 2021, while the year 2014 with MR=14265.89 and 2013 with MR= 16460.04 resulted in the lowest rank average, difference from other years and this difference was significant at the  $p < 0.01$  level (Chi-Square=317.83,  $df=10$ ). The same data for the comparison of averages are presented graphically in Chart 2.

**Table 2.** The difference in averages ranked patent applications for by years.

	Year	N	Mean Rank	Chi-Square	df	Asymp. Sig.
Patent applications	2011	1570	17432.38	317.829	10	.000
	2012	1949	17720.92			
	2013	1959	16460.04			
	2014	1806	14265.89			
	2015	3010	18258.47			
	2016	3458	16545.87			
	2017	3895	17328.84			
	2018	4527	18071.53			

	2019	4220	17155.30
	2020	4138	17671.23
	2021	4224	18251.09
	Total	34756	

a. Kruskal Wallis Test

b. Grouping Variable: Year

Source: State Office of Industrial Property

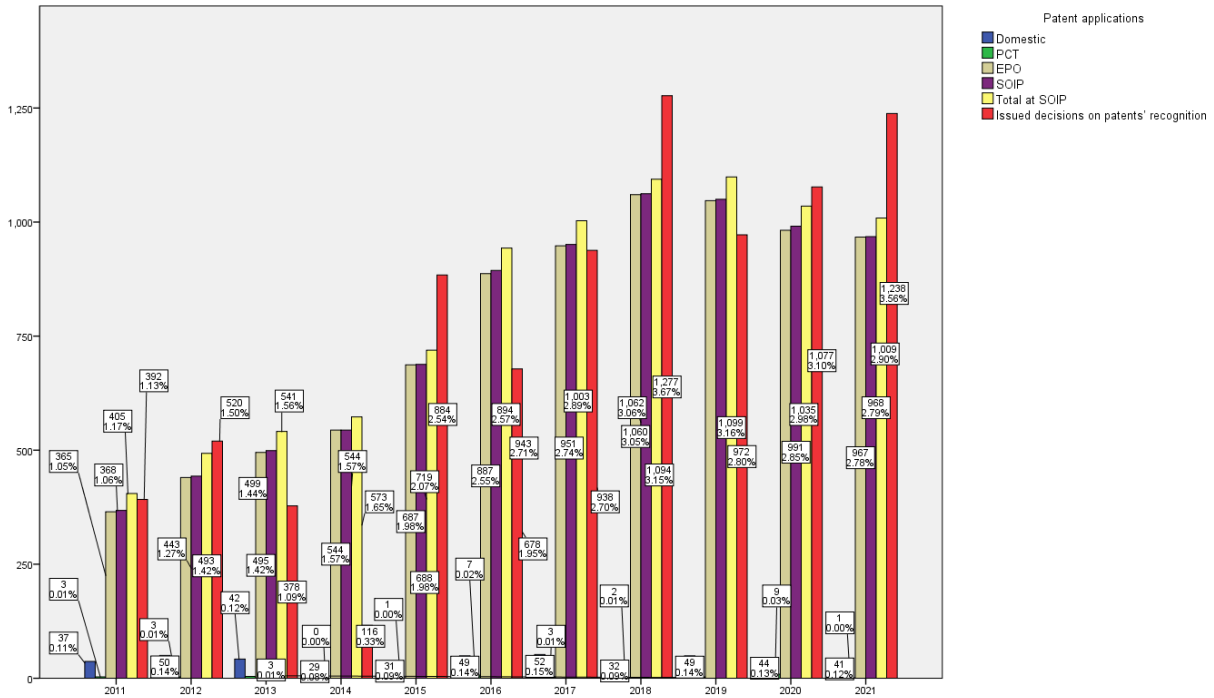


Chart 2. Domestic patents by year.

Table 3 presents the data for the difference in average rank for Trademark applications at SOIP according to the years, according to which the year 2012 resulted in the highest average rank with MR=234.12, then the year 2013 with MR=226.26, difference from all other years starting from 2011 to 2021, while the lowest average of the Trademark applications at SOIP rank was 2018 with MR=172 and 2017 with MR=172, this difference is statistically significant in  $p < 0.01$  level (Chi-Square=36.714,  $df=10$ ). The data on the respective differences are also presented graphically in Chart 3.

Table 3. Difference in ranked averages for Trademark applications at SOIP by year.

	Year	N	Mean Rank	Chi-Square	df	Asymp. Sig.
	2011	61	225.77			
	2012	66	234.12			

Trademark applications at SOIP	2013	34	226.26	36.714	10	.000
	2014	37	194.16			
	2015	25	204.80			
	2016	23	180.91			
	2017	35	172.00			
	2018	33	172.00			
	2019	36	183.39			
	2020	21	220.81			
	2021	39	203.54			
	Total	410				

- a. Kruskal Wallis Test
- b. Grouping Variable: Year

Source: State Office of Industrial Property

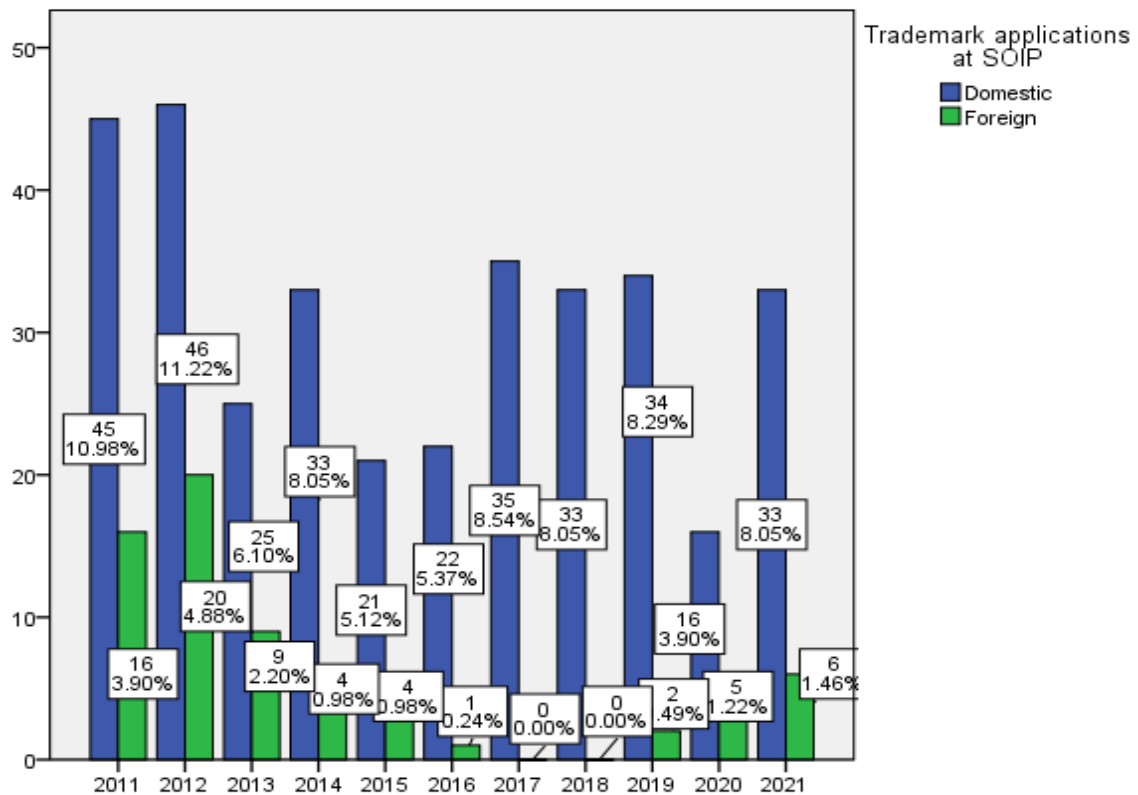


Chart 3. Trademark applications at SOIP by year

Table 4 shows the results for the difference of the average rank for Industrial design applications according to the years, based on the results it is shown that the highest average rank of Industrial design applications resulted in 2016 with a value of MR=8854.28, then in the year 2014 with MR=8844.11, difference from other years from 2011 to 2021, while the lowest

average rank for Industrial design applications resulted in 2021 with MR=208.73 and 2019 with MR=6948.63, this the difference is statistically significant at the  $p < 0.01$  level (Chi-Square=492.017,  $df=10$ ). The corresponding difference data are presented graphically in Chart 4.

**Table 4.** Difference of ranked averages for Industrial design applications by years.

	Year	N	Mean Rank	Chi-Square	df	Asymp. Sig.
Industrial design applications by year	2011	3090	8773,73	492.017	10	.000
	2012	3307	8783,31			
	2013	3343	8834,96			
	2014	1083	8844,11			
	2015	1507	8726,64			
	2016	1287	8854,28			
	2017	874	7084,76			
	2018	683	7064,09			
	2019	833	6948,63			
	2020	830	6961,13			
	2021	39	208,73			
	Total	16876				

a. Kruskal Wallis Test

b. Grouping Variable: Year

*Source: State Office of Industrial Property*



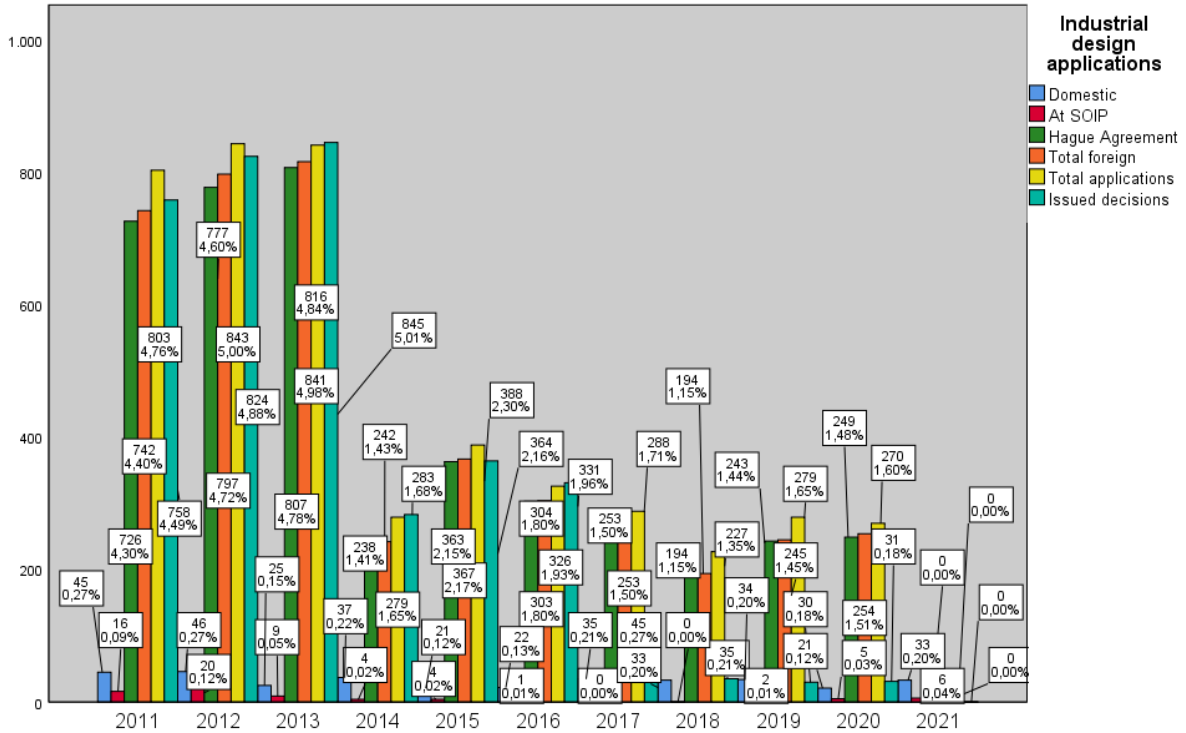


Chart 4. Industrial design applications by year

The data presented in Table 5 show the difference in the average rank for Industrial design applications at SOIP according to the years, which show that in 2012 the highest average of the rank Industrial design applications at SOIP reached with MR=234.12, then in 2013 with MR=226.26, difference from all other years from 2011 to 2021, while the lowest average rank for Industrial design applications at SOIP is in 2018 with MR=172 and in 2017 with MR= 172, this difference was statistically significant at the  $p < 0.01$  level (Chi-Square=36.714,  $df=10$ ). These results are also presented graphically in Chart 5.

Table 5. Difference of ranked averages for Industrial design applications at SOIP by years.

	Year	N	Mean Rank	Chi-Square	df	Asymp. Sig.
Industrial design applications at SOIP by year	2011	61	225,77	36.714	10	.000
	2012	66	234,12			
	2013	34	226,26			
	2014	37	194,16			
	2015	25	204,80			
	2016	23	180,91			
	2017	35	172,00			
	2018	33	172,00			
	2019	36	183,39			
	2020	21	220,81			

	2021	39	203,54			
	Total	410				

a. Kruskal Wallis Test

b. Grouping Variable: Year

Source: State Office of Industrial Property

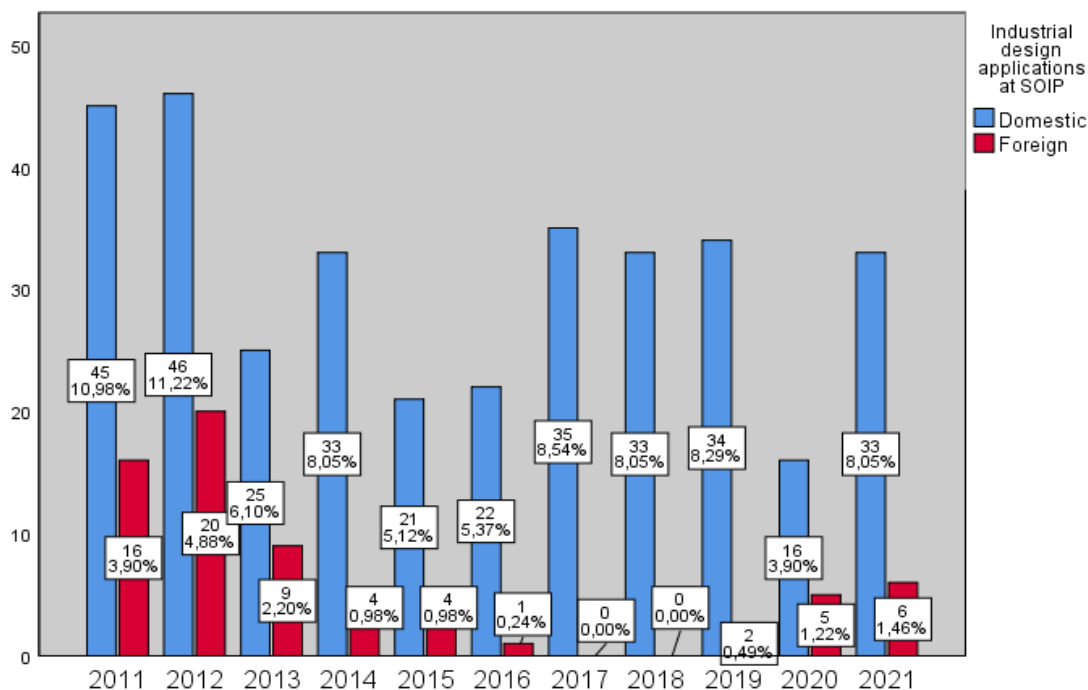


Chart 5. Industrial design applications at SOIP by year

#### 4. Conclusion

The protection of industrial property rights should be understood as a broad process of cross-sector cooperation that includes many different actors, levels, activities and should be continuously improved and adapted to the development of new technologies and social phenomena. In principle, there is a widely accepted view that intellectual property drives innovation. As such, it perfects research, art and development. In this spirit are the two main objectives of WIPO: (i) to promote the protection of intellectual property worldwide; and (ii) to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers.

Taking into account the fact that at the international and EU level the regulation of this field is in continuous development for the simplification of rules and the strengthening of implementation, North Macedonia has given evidence that it is following the new challenges step by step and with purpose of harmonizing the local regulations with the new solutions.

Analysis of the situation in practice of applications and decisions issued for the recognition of industrial property rights in the period from 2011 to 2021 despite the fact that a gradual increase

is observed, the figures nevertheless reflect the current state of innovative and technological development in the country.

From the point of view of domestic and foreign applications, only in the case of patents there is a balance in the number of domestic ones in relation to foreign ones, while in the cases of trademarks and industrial designs, the number in favor of those of domestic compared to foreign ones is evident.

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