

DESIGN PROTECTION ACT 1990

I. General Provisions

Subject of Design Protection

1.–

(1) In this Federal Act, design shall mean the model for the appearance of an industrial product.

(2) Under this Act, design protection may be acquired for novel designs which are neither liable to cause offense nor contrary to public policy or the prohibition of double protection.

Novelty

2.–

(1) A design shall not be deemed novel if it is identical with or confusingly similar to the appearance of an article which was accessible to the public before the priority date of the design and if it appears obvious to transfer this appearance to the products contained in the list of goods of the design.

(2) Subsection (1) shall not apply to a disclosure that occurred no earlier than six months before the priority date of the design and that is directly or indirectly due to:

1. an evident abuse to the detriment of the applicant or his successor in title, or
2. to the fact that the applicant or his predecessor in title displayed the design at official or officially recognized exhibitions as defined in the Convention on International Exhibitions, Federal Law Gazette No. 445/1980.

(3) Subsection (2) para. 2 shall apply only if the applicant states, on filing the application, that the design was displayed at the exhibition and submits a certificate to this effect from the organizers of the exhibition within four months of filing. Such certificate shall indicate the date of the opening of the exhibition and, unless the first disclosure occurred on the same date, also the date of disclosure. The certificate shall be accompanied by a representation of the design bearing an attestation clause of the organizers of the exhibition.

Prohibition of Double Protection

3.–

A design shall be excluded from design protection if it is identical with or confusingly similar to a design that is published after its priority date (Section 17), but enjoys an earlier priority, and if it appears obvious to transfer the design with the earlier priority from the products contained in its list of goods to the products contained in the list of goods of the design with the later priority.

Effect of Design Protection

4.–

Design protection shall entitle the owner of the design to exclude others from commercially manufacturing, putting on the market, offering for sale or using products that are identical with or confusingly similar to his design and if it appears obvious in view of the products contained in the list of goods to transfer the design to them.

Right of Prior User

5.–

(1) Design protection shall not be effective against a person who had already used a design which is identical with or confusingly similar to the protected design in good faith in Austria or who had made the necessary arrangements for doing so before the priority date (prior user).

(2) The prior user may continue to use the design for the products concerned by such use for the needs of his own business in his own workshops or in those of others.

(3) This right may be inherited or transferred only together with the business.

(4) The prior user may request a document from the owner of the design recognizing his right. Recognition of the right shall be entered in the Design Register at the request of the prior user.

(5) If such recognition is refused, the Patent Office shall, upon request, decide that matter and may order that such right be entered in the Design Register.

Period of Protection

6.–

Design protection shall commence as from the date of publication (Section 17) of the design and shall end five years after the end of the month in which the application for the design was filed. It may be extended for two five-year periods by payment of a renewal fee in good time (Section 41). The new period of protection shall be computed as from the end of the preceding period of protection.

Right to Design Protection

7.–

(1) In principle the creator of the design or his successor in title shall be entitled to design protection.

(2) However, if the design of an employee falls within the sphere of activity of the enterprise in which he is employed and if the activity which has led to the design is part of the professional duties of the employee or if the design has not been created under an employment relationship, but on a commission, the employer or the person commissioning the design or his successor in title shall have the right to design protection.

Naming of the Creator of the Design

8.–

(1) The creator of a design shall be entitled to be named as the creator in the Design Register on publication pursuant to Section 17 and in the priority documents to be issued by the Patent Office.

(2) The claim can neither be assigned nor inherited. Renunciation of the right shall have no legal effect.

(3) The request to be named as creator may be made by the creator of the design, by the applicant or by the owner of the design. Where several persons are entitled to make the request, the party making the request shall produce proof that the other persons entitled agree, unless the request is made jointly by all those entitled. Where a person other than the one already named as creator is to be named as such in addition to or in place of the person so named, proof of the consent of the person already named as creator shall be produced.

(4) Where the applicant, the owner of the design or the person already named as creator refuses his consent, the Patent Office shall decide, upon request, on the right to be named as creator. The creator shall be named pursuant to subsection (1) on the basis of a final decision granting such request.

Relationship of Several Design Owners

9.–

The legal relationship of a plurality of design owners shall be governed by civil law. The right to permit third parties to use a protected design shall in case of doubt be exercised only by all design owners jointly; each individual design owner may, however, take action against infringers of the design right.

Transfer

10.–

- (1) The right arising from an application for a design and the design right may be transferred with respect to all or individual products of the list of goods wholly or in imaginary shares.
- (2) Such rights shall not pass to the State (Section 760 of the Austrian Civil Code).

II. Filing Procedure and Design Register

Filing Offices

11.–

- (1) An application for protection of a design shall be filed with the Patent Office or with a Chamber of Commerce at which a filing office has been established.
- (2) The filing offices of the Chambers of Commerce shall send the design applications filed with them as well as the priority declaration and petitions for corrections of priority to the Patent Office on the 1st and 16th day of each month.
- (3) Where a Chamber of Commerce is interested in setting up its own filing office, such filing office shall be established by an ordinance. The procedure at the filing offices and the lists to be kept by them shall also be laid down by ordinance, taking into consideration the public need for information as well as the greatest possible simplicity and expediency.

Formal Requirements of Filing

12.–

- (1) The application shall be filed in writing. The date of an application's arrival at the filing office (Section 11(1)) shall be regarded as the filing date.
- (2) On filing, the design shall be disclosed by submitting a picture or a specimen of the design. Where a specimen of the design is filed, a picture of the design reproducing the specimen of the design as clearly as possible shall also be submitted for the publication (Section 17) and registration (Section 18 (1) para. 4), but shall not be taken into consideration for the disclosure.
- (3) A description may be filed to illustrate the design.
- (4) The products for which the design is intended shall be indicated according to the list of classes and subclasses of the Locarno Agreement Establishing an International Classification for Industrial Designs, Federal Law Gazette No. 496/1990 (list of goods).

13.–

Designs belonging to the same class may be combined in a collective application. The collective application may not comprise more than 50 designs. The facility granted by Section 14, however, shall be available only jointly for all designs combined in one collective application.

14.–

The specimen and the picture of the design as well as the description may be filed openly or in a sealed envelope (secret design). The envelope shall be opened:

1. at the request of the design owner;

2. at the request of a third party if such third party proves that the design owner has invoked the design against him;
3. ex officio eighteen months after the priority date of the design.

15.–

The detailed requirements for the description and the list of goods, the number of the copies thereof to be filed as well as the number, nature and dimensions of the pictures and specimens of the design to be filed shall be laid down by order of the President of the Patent Office, taking into consideration the requirements of the filing procedure, printing and publication of the design.

Examination for Compliance with the Law

16.–

(1) The Patent Office shall examine each design application for compliance with the Law, in the case of openly filed designs after receipt thereof, in the event of designs filed in a sealed envelope, as far as this is not possible after their receipt, after opening of the envelope (Section 14). However, the filing procedure shall not comprise an examination for novelty (Section 2), with respect to double protection (Section 3) as well as to ascertain if the applicant is entitled to design protection (Section 7).

(2) If the examination shows that there are objections to the registration of the design, the applicant shall be invited to comment thereon within a reasonable period of time. If following comments made in good time or after expiry of the time limit it is found that registration is inadmissible, the design application shall be rejected.

(3) If there are no objections to the registration of the design, its publication (Section 17) and registration (Section 18) shall be ordered.

Publication of the Design

17.–

The design shall be published in the Austrian Design Gazette (Section 33). The contents and scope of the publication of the design shall be determined by order of the President of the Patent Office, taking into consideration the public need for information.

Registration

18.–

(1) The following shall be entered in the Design Register kept by the Patent Office:

1. the register number;
2. the filing date and any priority claimed;
3. the beginning of the period of protection (Section 6);
4. the representation of the design;
5. where appropriate, the notice that also a specimen of the design or a description have been filed;
6. the products for which the design is intended (list of goods);
7. the name as well as the residence (registered office) of the design owner and of his representative, if any;
8. the person named as creator, if any (Section 8).

(2) The design owner shall receive an official certificate (design certificate) on the entries in the Register pursuant to subsection (1).

(3) Any person may inspect the Design Register. Upon request a certified extract from the Register shall be issued.

Priority

19.–

The applicant shall have the priority right from the date on which his application for a design was duly filed.

20.–

(1) The priority rights granted by Art. 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973, shall be expressly claimed. The date and country of the application the priority of which is claimed shall be indicated (declaration of priority) as well as the serial number of that application.

(2) The declaration of priority shall be submitted to the Patent Office or the receiving office at which the application was filed within two months after receipt of the application by the Patent Office or receiving office. The priority claimed may be corrected within that period. A fee amounting to half the application fee (Section 40 (1) para. 1.) shall be paid for such correction.

(3) If the maintenance of a design right depends on the validity of the claim to priority, the priority right shall be proved. The evidence required for such proof (priority documents) in the proceedings before the Patent Office and before the Supreme Patent and Trademark Chamber and the time of submission shall be laid down by ordinance.

(4) If the declaration of priority is not made in good time, if the priority documents are not submitted in time, or if the serial number of the application the priority of which is claimed is not notified on official demand within the specified time limit, the priority shall be determined in accordance with the filing date of the application in Austria.

Entries in the Design Register

21.–

In addition to the data mentioned in Section 18 (1) the end of design protection, the declaration of nullity, the declaration of lack of title as well as the transfer of design rights, liens and other rights in rem relating to design rights, licence rights, rights of prior user, restoration of previous rights, declaratory decisions and entries of disputes as well as references to rulings transmitted pursuant to Section 36 shall be registered in the Design Register.

22.–

(1) Rights in rem relating to design rights as well as the design right itself in the event of its transfer (Section 10) shall be acquired upon registration in the Design Register.

(2) The petition for registration shall be accompanied by the original or a duly certified copy of the document on which the entry is to be based. Any document other than a public document shall bear the duly certified signature of the person alienating his right.

(3) Legal disputes relating to design rights shall be entered in the Design Register upon request (entry relating to legal dispute).

(4) For the rest, Section 43 (2), (3), (4), (5), and (7) (entries in the Patent Register), Section 44 (charges) and Section 45 (2) (entries relating to legal disputes) of the Patents Act 1970, Federal Law Gazette No. 259, shall apply *mutatis mutandis*.

(5) Subsection (2) as well as Section 43 (5) and (7) of the Patents Act 1970 shall apply *mutatis mutandis* to the transfer of the right arising from the application for a design.

III. Declaration of Nullity and Declaration of Lack of Title

Ex Officio Nullity Declaration

23.–

(1) The Patent Office shall institute proceedings for the *ex officio* declaration of nullity of a design right if it turns out that evidently the design is not novel (Section 2) or falls under the prohibition of double protection (Section 3).

(2) The Patent Office shall declare the design right to be null and void if after hearing the design owner it considers that the circumstances on which the institution of the proceedings pursuant to subsection (1) was based are still applicable; otherwise the proceedings shall be discontinued.

(3) If one of the grounds for nullity (subsection (1)) applies only to a part of the list of goods, such list of goods has to be restricted accordingly.

(4) The final declaration of nullity shall have retroactive effect to the filing date of the design. If the design right is declared to be null and void because it falls under the prohibition of double protection (Section 3), the second sentence of Section 48 (3) of the Patents Act 1970 shall apply *mutatis mutandis*.

Nullity Declaration upon Request

24.–

Anyone may request the declaration of nullity of a design right if the design is not novel (Section 2), if it falls under the prohibition of double protection (Section 3), if it is liable to cause offense or contrary to public policy (Section 1 (2)). Section 23 (3) and (4) shall apply.

Declaration of Lack of Title

25.–

(1) Anyone who claims that he is entitled to design protection for the products contained in the list of goods (Section 7) instead of the design owner or his predecessor in title may request that the owner of the design is declared to lack title to the design and that it is assigned to the person so requesting. Unless an assignment is requested, design protection shall end on the day the decision declaring lack of title becomes final.

(2) Where the ground for declaration of lack of title (subsection (1)) applies only to a part of the list of goods, the design owner shall be declared only partially lacking in title or the design shall be assigned only in part.

(3) The claim against the bona-fide design owner shall become statutebarred within three years as from the date of its registration in the Design Register. Section 49 (4) and (7) of the Patents Act 1970 shall apply *mutatis mutandis*.

IV. RESPONSIBILITY AND PROCEDURE

General

26. (1) Unless otherwise provided in this Federal Act, the Patent Office shall be responsible for taking decisions and handling other matters relating to design protection. In the Patent Office, the member of the Legal Division handling this matter who is responsible according to the rules of procedure shall be responsible unless the matter is reserved to the President, the Appeal Division or the Nullity Division.

(2) Sections 52 to 56, 58, 60, 61, 64, 66 to 69, 76 (1), (4) and (5), 79, 82 to 86 and 126 to 137 of the Patents Act 1970 shall apply *mutatis mutandis*. The Legal Division shall also be the responsible division as defined by Section 130 (1) of the Patents Act 1970 if the omitted act should have been taken at a Chamber of Commerce.

Responsible Officials

27. (1) By an order of the President employees who are not members of the Patent Office may also be entrusted to handle matters of the Legal Division the nature of which shall be clearly defined if this appears expedient for purposes of simplicity and if the training of the employees so entrusted (responsible officials) is such as to ensure correct action. The responsible officials shall be bound by the instructions of

the responsible member of the Legal Division. The latter may reserve matters to him or handle these himself at any time.

(2) Section 76 (1), (4) and (5) of the Patents Act 1970 shall apply to the responsible officials *mutatis mutandis*.

(3) The decisions of the responsible officials may be appealed against just like those of the responsible member of the Legal Division. The responsible member may himself allow the appeal; if he takes the view that the appeal is not allowable or only partly allowable, he shall submit the appeal to the Appeal Division.

Appeal

28.(1) The decisions of the Legal Division may be appealed against. The appeal shall contain a petition for appeal; it shall be lodged with the Patent Office within two months from the date the decision was served and shall be substantiated no later than one month after expiration of said time limit.

(2) Appeals lodged in due time shall have suspensive effect. Appeals arriving after the time limit referred to shall be dismissed by the Legal Division. Inadmissible appeals as well as appeals which do not comply with the legal requirements shall be dismissed by the Appeal Division without further proceedings; in the case of defects of form, however, an appeal may be dismissed only if the appellant has failed, on request, to remedy the defects.

(3) The Appeal Division shall deliberate and take decisions in boards consisting of three members, comprising a legally qualified chairman as well as a legally qualified member and a technically qualified one.

(4) The decision of the Appeal Division cannot be appealed against. However, a petition for amendment of preparatory orders of the rapporteur and of interim decisions may be filed with the Appeal Division itself.

(5) For the rest, the Sections 71 (2) and (4), 72 and 73 of the Patents Act 1970 shall apply *mutatis mutandis*.

Procedure before the Nullity Division and the Supreme Patent and Trademark Chamber

29.(1) The Nullity Division shall decide through a legally qualified member on petitions for recognition of a right of prior user (Section 5 (5)), naming as creator (Section 8 (4)), declaration of nullity (Section 24), declaration of lack of title (Section 25) and declaratory decision (Section 39) as well as on the ex officio nullity declaration (Section 23).

(2) The Nullity Division shall hear the petitions and claims referred to in subsection (1) with the exception of the ex officio nullity declaration applying Sections 112 (2) to 114a, 116 (2) to (5), 117 to 120 and 122 to 125 of the Patents Act 1970 *mutatis mutandis*. However, an oral hearing shall be fixed only if deemed necessary by the responsible member or if requested by a party.

30.(1) Appeals against final decisions of the Nullity Division may be lodged with the Supreme Patent and Trademark Chamber. The appeal shall be lodged with the Patent Office in writing within two months from the date when the decision was served. It shall contain the petition for appeal stating the grounds for appeal.

(2) Appeals lodged in due time shall have suspensive effect. Appeals arriving after the time limit referred to or appeals not containing a substantiated formal petition for appeal or which are not corrected within the time limit set by the Nullity Division shall be dismissed by the Nullity Division.

(3) The Supreme Patent and Trademark Chamber shall deliberate and decide under the chairmanship of the President or, if he is unable to attend, of the Vice-President in boards consisting of three members, comprising a chairman as well as one legally qualified and one technically qualified member. The chairman shall ensure that the board includes at least one judge. The legally qualified member shall be the rapporteur; if necessary, the chairman may appoint the technically qualified member as co-rapporteur.

(4) There shall be no separate appeal against preparatory orders and interim decisions of the Nullity Division, but a petition for an amendment thereof may be filed with the Division itself. They can be contested by lodging an appeal to the Supreme Patent and Trademark Chamber only if they have affected the final decision.

(5) For the rest, the Sections 74, 75 (2), 138 (4), 139 (1), (2), (4) and (5) as well as 140 to 145 of the Patents Act 1970 shall apply *mutatis mutandis*.

Inspection of Files

31.(1) The parties involved in proceedings shall be entitled to inspect the files relating to those proceedings.

(2) Any person may inspect the files relating to published designs (Section 17).

(3) Third parties may inspect the files relating to unpublished designs only with the applicant's consent. The consent of the applicant shall not be required for any person against whom the applicant has invoked the rights under his design application.

(4) The right to inspect the files shall also include the right to make copies. Copies shall be certified by the Patent Office upon request.

(5) Information and official certificates as to the date of the design application, the name of the applicant and of his agent, if any, if the application relates to a secret design, the serial number of the application, any priority claimed, the serial number of the application on which priority is based, the products for which the design is designated (list of goods), where applicable the person named as creator, whether the application is still pending, and whether and to whom the rights under the application have been assigned shall be supplied to any person.

(6) Records of deliberation and parts of files relating solely to internal administrative transactions shall not be accessible to the public.

Representatives

32.(1) Anyone acting as a representative in matters of design protection before a Chamber of Commerce, before the Patent Office or before the Supreme Patent and Trademark Chamber shall have his residence in Austria. He shall prove his authorization by producing the original written power of attorney or a certified true copy thereof. If a power of attorney has been granted to a plurality of persons, each may solely act as a representative.

(2) If an attorney at law, patent attorney or notary acts as a representative, he may refer to the authorization granted to him without actually presenting documentary evidence. However, an authorization to assign a design shall in any case be proved by a written power of attorney which has to be duly certified.

(3) If a representative acts without a power of attorney or, in the event of subsection (2), without referring to the authorization granted to him, the action in the proceedings taken by him shall be valid only on condition that he submits a proper power of attorney or refers to the authorization granted to him within the reasonable time limit prescribed therefor.

(4) Anyone having neither residence nor place of business in Austria may claim rights under this Federal Act before a Chamber of Commerce and before the Legal Division of the Patent Office only if he has a representative resident in Austria. He may claim these rights before the Appeal Division and before the Nullity Division of the Patent Office as well as before the Supreme Patent and Trademark Chamber only if he is represented by an Austrian attorney at law, patent attorney or notary.

(5) The authorization granted to an Austrian attorney at law, patent attorney or notary to act as a representative before the Patent Office shall empower him by law to exercise all rights under this Federal Act before a Chamber of Commerce, before the Patent Office and before the Supreme Patent and Trademark Chamber, in particular to file design application, to withdraw applications, to file and withdraw petitions or appeals to be dealt with by the Nullity Division, to conclude compromises, accept service of documents of any kind and receive payment of official fees and of the cost of proceedings and representation from the adverse party and to appoint an agent.

(6) The authorization pursuant to subsection (5) may be limited to a particular right and to representation in particular proceedings. However, it shall not expire on the death of the principal or as a result of a change in his legal capacity.

(7) If the representative is to have also the power to waive a published design (Section 17) in whole or in part, he must be expressly authorized to do so.

Austrian Design Gazette

33. The Patent Office shall issue periodically an official Design Gazette (Musteranzeiger) containing in particular promulgations pursuant to Section 17. publications as to the end of design protection, partial waivers, changes of name and changes of the person of the design owner as well as publications to be made pursuant to Section 26 (2) applying Sections 128 and 133 (3) of the Patents Act 1970 *mutatis mutandis*.

V. INFRINGEMENTS OF DESIGN RIGHTS AND PETITIONS FOR DECLARATORY DECISIONS

Design Infringements

34. Any person who has suffered an infringement of his design right shall be entitled to demand an injunction, elimination, publication of the judgment, reasonable compensation, damages, surrender of the

profits realized and accounting; any person who worries that such an infringement might take place may also demand an injunction. Sections 147 to 154 of the Patents Act 1970 shall apply *mutatis mutandis*.

35.(1) Any person who infringes a design right shall be punished by the court by a fine of up to 360 times the per diem rate for calculating fines.

(2) The same penalty shall be imposed on the owner or director of an enterprise who does not prevent the infringement of a design right committed by a person working for him or on his behalf in the course of the activities of the enterprise. Where the owner of the enterprise is a legal entity, this provision shall apply to the officers of the enterprise who have failed to prevent such infringement. The enterprise shall be jointly and severally liable with the guilty party for the fines imposed on the officers.

(3) Prosecution shall take place only at the request of the injured party.

(4) Sections 148, 149 and 160 of the Patents Act 1970 shall apply to the criminal proceedings *mutatis mutandis*.

36. The court of first instance shall send to the Patent Office in respect of every judgment ruling on the validity or effectiveness of a design right a copy confirming the legal force of the decision, for attachment to the design grant file. A notation shall be made in the Design Register (Section 21) concerning such a judgment.

37. Any person who designates products in a manner likely to give the impression that they enjoy design protection shall on request provide information regarding the design right on which such designation is based.

38.(1) The Commercial Court of Vienna shall have exclusive jurisdiction over actions and interim injunctions under this Federal Act.

(2) Jurisdiction in criminal matters under this Federal Act shall belong to the Vienna Provincial Court for Criminal Matters.

Petitions for Declaratory Decisions

39.(1) Any person who commercially manufactures, puts on the market, offers for sale or uses a product or intends to take such steps may apply to the Patent Office for a declaration against the owner of a protected design or an exclusive license, stating that the product is neither wholly nor partly covered by the design right.

(2) The owner of a protected design or of an exclusive license may apply to the Patent Office for a declaration against any person who commercially manufactures, puts on the market, offers for sale or uses a product or intends to take such steps, which declaration shall state that the product is wholly or partly covered by the design right.

(3) Petitions under subsections (1) and (2) shall be rejected if the party opposing the petition proves that an infringement action concerning the same design right and the same product instituted between the same parties at an earlier date is still pending or has been finally terminated.

(4) The petition for a declaratory decision may relate to only one design right. The petition shall be accompanied by a picture of the product in four copies; one copy shall be attached to the final decision.

(5) The costs of the proceedings shall be borne by the petitioner if the opponent has not provoked the petition by his conduct and has recognized the claim within the period allowed him for his reply.

VI. Fees

Fees to Be Paid on Filing the Application

40.(1) The following fees shall be payable on filing the application:

1. Application fee
 - a) for a single application ATS 600
 - b) for a collective application (Section 13) ATS 750
plus ATS 80 for the 11th and for each additional
design combined in this application;
2. surcharge for a secret design application (Section 14) 50 per cent
of the application fee to be paid;
3. Class fee for a single application per class ATS 150

- 4. Storage fee for three-dimensional designs
per design specimen ATS 500
- 5. Printing fee, the amount of which is to be fixed
by ordinance (Section 43 (1)).

(2) The printing fee according to subsection (1) para. 5 shall be refunded if the application does not result in publication (Section 17).

Renewal Fee

41. (1) The renewal fee for single designs shall be ATS 900 for the first extension of the period of protection and ATS 1,200 for the second extension, for designs of a collective application ATS 300 per design for the first extension of the period of protection and ATS 400 per design for the second extension. It may be paid one year before the end of the period of protection at the earliest and six months after its end at the latest. Whenever payment is made after the end of the period of protection, a surcharge of 20 per cent shall be payable in addition to the renewal fee.

(2) The renewal fees may be paid by any person interested in the design.

Procedural Fees

42.–

(1) The following procedural fees shall be payable:

- 1. for the filing of an appeal (Section 28) ATS 800
- 2. for any petition to be dealt with
By the Nullity Division (Section 29) ATS 2,600
- 3. for an appeal (Section 30) ATS 4,000
- 4. a) for a petition for recordal of a right of prior
user (Section 5 (4)),
for assignment inter vivos (Section 10),
for recordal of a license (Section 22 (4))
or an assignment of a license
or for any other entries in the Design Register
provided for in Section 22 (1)..... ATS 700
- b) for a petition for an entry relating
To a dispute (Section 22 (3)) ATS 300

(2) The fees pursuant to subsection (1) shall be payable for any design application and any protected design which is the subject of the petition or appeal.

(3) The fees pursuant to subsection (1) para, 1 and 3 shall be refunded if the appeal is essentially successful and if the proceedings have been conducted without an adverse party. Half of the fees provided for in subsection (1) para. 3 shall be refunded if the appeal is dismissed or the proceedings are terminated without any hearing. Half of the fees provided for in subsection (1) para. 4 shall be refunded if the petition is withdrawn before a decision is taken.

Special Fees

43.–

(1) Printing fees as well as special fees for official copies, publications, certificates and certifications as well as for extracts from the Register may be fixed by ordinance. In the determination of the fees for each particular case, which shall not exceed ATS 1,100, account shall be taken of the labor and material required for the official service involved. To the extent to which fees depend on the number of pages or sheets. Section 166 (10) of the Patents Act 1970 shall apply *mutatis mutandis*.

(2) If fees are fixed by an ordinance pursuant to subsection (1), official copies, certificates and certifications may be made and issued only after payment of the fees payable for them. Petitions for official

publications and petitions which may be accepted only after official publication under this Federal Act shall be refused if the relevant fees or printing fees payable for them are not paid in time.

Payment of Fees

44.–

(1) Fees payable under this Federal Act shall be paid to the Patent Office.

(2) The method of payment of these fees as well as the type of the proof of payment shall be laid down by ordinance, which shall specify in particular when any payment is deemed to have been made in time. The ordinance shall be so framed as to take into account, on the one hand, methods of payment available other than payment in cash and, on the other hand, the need for simple and economical verification by the Patent Office.

(3) If a design application has been filed with a Chamber of Commerce, the Patent Office shall remit 50 per cent of the application fee paid to the respective Chamber. Annual accounts shall be rendered.

VII. Final and Transitional Provisions

45.–

The provisions of the federal acts cited in this Federal Act shall apply as amended from time to time.

46.–

(1) This Federal Act shall enter into force as of January 1, 1991.

(2) Ordinances on the basis of this Federal Act may be issued already as from the day following its promulgation. However, they shall not enter into force before the date referred to in subsection (1).

(3) The following shall cease to have effect upon the entry into force of this Federal Act:

1. the Designs Act 1970, Federal Law Gazette No. 261,
2. the ordinance of the Federal Ministry of Trade and Reconstruction of November 11, 1959 concerning particular requirements when depositing designs, Federal Law Gazette No. 255.
3. the ordinance of the Federal Minister of Trade, Commerce and Industry of November 11, 1969 concerning the establishment of design depositories and the evidence of the priority right (Design Regulations) Federal Law Gazette No. 387.

(4) However, the legal provisions repealed pursuant to subsection (3) shall continue to apply to designs deposited prior to January 1, 1991.

47. The following shall be responsible for the implementation of this Federal Act:

1. the Federal Minister of Justice with respect to Section 25 (2) in connection with Section 49 (2) of the Patents Act 1970 as well as with respect to Sections 34 to 38 in connection with Sections 148 to 154 and 160 of the Patents Act 1970,
 2. the Federal Minister of Economic Affairs and the Federal Minister of Justice with respect to Section 26 (2) in connection with Section 126 of the Patents Act 1970 as well as with respect to Section 30 (5) in connection with Section 74 (2) and (3) of the Patents Act 1970 as far as it relates to the appointment of judges,
 3. the Federal Minister of Economic Affairs in agreement with the Federal Minister of Finance with respect to Section 43 (1),
 4. the Federal Minister of Economic Affairs with respect to all other provisions of this Federal Act.
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