

Industrial Design Protection Act
(Passed on 18 November 1997 (RT I 1997, 87, 1466),
entered into force 11 January 1998)

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Amended by the following Act (date the Act was passed, publication in the Riigi Teataja (State Gazette), date of entering into force):

25.11.1998
(RT I 1998, 108/109, 1783)
16.03.1999

The amended section ends with a reference to the Act (date of the Act was passed) enforcing the current wording.

PART I GENERAL

I. General Provisions

Scope of Application of Act

1. This Act regulates legal protection in the Republic of Estonia of industrial designs made in the field of industrial designs.

Legislation Providing Legal Protection of Industrial Designs

2.—(1) Legal protection of industrial designs shall be provided for in this Act, other Acts, and regulations based on them and issued for their implementation by the Government of the Republic and the Ministers.

(2) Where a legal act providing legal protection of industrial designs is in conflict with an international agreement ratified by the *Riigikogu*, the provisions of the international agreement shall be applied.

(3) Legal protection of industrial designs provided for in this Act shall be irrespective of legal protection provided for in the Copyright Act (RT 1992, 49, 615; 1996, 49, 953).

Equality of Rights and Obligations of Natural and Legal Persons of the Republic of Estonia and of Foreign States

3. Natural and legal persons (hereinafter persons) of the Republic of Estonia and of foreign states shall be equal in exercising the rights and obligations prescribed in this Act and other legislation regulating the legal protection of industrial designs.

II. Bases for Legal Protection of Industrial Designs

Definition of Industrial Design

4.—(1) An industrial design is a two-dimensional or three-dimensional solution of the appearance of a product.

(2) For the purposes of this Act, the solution of the appearance of a product is the composition of the features of the appearance of the product that consists, either separately or in combination, of the form, the configuration, the ornament, the colour(s), the texture and the material.

(3) For the purposes of this Act, a product is an independent product or those spare parts and components of a product that, being assembled into it, remain outwardly visible in the normal use of that product. Maintenance, service and repairing of a product shall not be considered as normal use.

(4) Industrial design may have variants. The variants of an industrial design are such modifications of an industrial design that produce the same overall impression on a person skilled in the art.

(5) An industrial design set is a logical collection of industrial designs belonging to the same class according to the Locarno Agreement establishing an International Classification for Industrial Designs (RT II 1996, 23, 87), and designed in the same manner.

(6) For the purposes of this Act, an industrial design set is considered to be a single industrial design.

Granting of Legal Protection to Industrial Designs

5.—(1) Legal protection shall be granted to industrial designs that are novel, have an individual character and enable to manufacture products of industry or handicraft.

(2) Legal protection shall be granted by registration of the industrial design in the State Register of Industrial Designs (hereinafter Register) pursuant to the procedure provided for in this Act.

(3) Scope of legal protection of the industrial design shall be determined on the basis of the reproduction of the industrial design entered in the Register. Legal protection shall be considered to have been granted to the industrial design reproduced on the reproduction. Legal protection shall extend also to industrial designs confusingly similar to the industrial design reproduced on the reproduction.

(4) Legal protection shall be granted to an industrial design set as a whole. Industrial designs forming the set shall not obtain independent legal protection separately.

(5) Variants of an industrial design shall each be given independent legal protection.

Novelty of Industrial Design

6.—(1) An industrial design shall be novel if no industrial design identical with or confusingly similar to it has been made available to the public in the Republic of Estonia or in a foreign state prior to the filing date of the industrial design registration application (hereinafter registration application) or, where priority is claimed, prior to the priority date. When determining the novelty of the industrial design, an industrial design identical with or

confusingly similar to it shall be taken into account after it has been made available to the public, if the registration application of the identical or confusingly similar industrial design was filed earlier or had an earlier priority date.

(2) When determining the novelty of an industrial design, the information disclosed within six months prior to the filing date of the registration application or, where priority is claimed, prior to the priority date, by a person entitled to apply for industrial design registration or by another person having obtained information from the said person, shall not be taken into account.

Individual Character of Industrial Design

7.—(1) An industrial design shall have individual character if it produces a different overall impression on a person skilled in the art than the impression of an industrial design made available to the public in the Republic of Estonia or in a foreign state prior to the filing date of the registration application or, where priority is claimed, prior to the priority date.

(2) In proving individual character, the instructions valid, during the production period, in respect of the product manufactured according to the industrial design shall be taken into account.

Disclosure of Industrial Design

8.—(1) An industrial design is deemed to be disclosed if it is published in any public publication or made otherwise available to a large number of people.

(2) Disclosure does not include making an industrial design available to other persons as confidential information.

Subjects not Protected as Industrial Designs

9. Legal protection shall not be granted to the following industrial designs:

1. industrial designs that serve solely to obtain a technical result;
2. industrial designs contrary to good customs;
3. unstable industrial designs;
4. layout-design of integrated circuits;
5. Industrial designs that constitute the spare parts or components of a product and, being assembled into it, fail to remain outwardly visible in the normal use of the product.

Specific Cases of Legal Protection

10.—(1) Industrial designs containing the contemporary or historical names or their abbreviations, flags, armorial bearings, emblems, seals, decorations and distinctive marks, symbols or their elements of the Republic of Estonia or of its administrative units, of organisations or foundations registered in Estonia, shall be granted legal protection only with the written consent of a legally competent institution or official.

(2) The following industrial designs shall be granted legal protection only with the written consent of a legally competent institution or official:

1. industrial designs containing the armorial bearings, flags or other state emblems, official signs and hallmarks indicating control and warranty, or their imitations, of other

states, protected pursuant to Article 6^{ter} of the Paris Convention for the Protection of Industrial Property (RT II 1994, 4/5, 19);

2. industrial designs containing the names or their abbreviations, armorial bearings, flags or other emblems of intergovernmental organisations or any imitation of these signs which is protected pursuant to Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.

(3) Without the consent of an authorised person, industrial designs containing the following shall not be protected:

1. Family names, pseudonyms or portraits of well-known persons;
2. names or parts of them of other legal persons;
3. representations or names of architectural objects;
4. trademarks that are well-known or registered or filed for registration in the name of another person;
5. distinctive signs used on warranty seals and hallmarks;
6. names of medicaments.

Priority

11.—(1) Priority shall be the prerogative of a person, having filed the first registration application, to apply for legal protection for an industrial design. The first registration application is the registration application first filed for the said industrial design, irrespective of the country of filing. The filing date of the first registration application is considered to be the priority date. From the priority date the person having filed the first registration application shall have prerogative over another person who files a registration application for an identical or confusingly similar industrial design later.

(2) Where the registration application has been filed within six months after the filing date of the first registration application, priority may be established from:

1. the filing date of the first registration application in any state party to the Paris Convention for the Protection of Industrial Property (convention priority);
2. the filing date of the first registration application in a state not party to the Paris Convention for the Protection of Industrial Property provided that the said state guarantees the same conditions for the person having filed the first registration application in the Republic of Estonia.

(3) Priority may be established on the basis of the registration application filed for an identical industrial design after the first registration application, where the first registration application, by the filing date of the later filed registration application, has been withdrawn, is deemed to be withdrawn, its registration has been refused and it has not been the basis for priority claim.

(4) Priority may be established on the basis of several first registration applications.

III. Author of Industrial Design and Owner of Industrial Design

Author of Industrial Design

12.—(1) The author of an industrial design shall be the natural person who, through his creative activities, has made the industrial design.

(2) Where the industrial design has been made through combined creative activities of several natural persons, they shall enjoy co-authorship.

(3) Upon co-authorship the authors shall enjoy all the rights conferred by authorship together, if they have not concluded a written agreement regulating otherwise.

(4) Authorship is inalienable and indefinite in time.

Rights of Author of Industrial Design

13.—(1) The author of industrial design shall enjoy the following personal non-property rights:

1. right to demand the disclosure of his name as the author;
2. right to prohibit the disclosure of his name as the author;
3. right to cancel the prohibition of the disclosure of his name at any moment.

(2) The personal non-property rights of the author of industrial design shall be inseparable from his person and they shall not be transferable during the lifetime of the author.

(3) The property right of the author of industrial design is the right to a fair share from the income received from the industrial design. This right may be alienated by the author and it shall be transferred to the successor.

Right to Apply for Industrial Design Registration

14.—(1) The right to apply for industrial design registration and to become the owner of industrial design shall belong to the author or to the person to whom the author has transferred the right to apply for industrial design registration or to whom the right to apply for industrial design registration has transferred.

(2) In case the industrial design has been made in the course of fulfilling a contractual or duties of employment, the right to apply for industrial design registration and to become the owner of industrial design shall belong to the employer or to the subscriber unless the duties of employment or the contract regulates otherwise.

(3) Several persons may apply for industrial design registration together.

(4) A person having, pursuant to this Section, the right to apply for industrial design registration, may apply for the registration of an industrial design complying with the provisions of Sections 5(1), 6, 7 and 10(3) of this Act.

Owner of Industrial Design

15. The owner of industrial design shall be the person who enjoys full legal power (exclusive right) over a registered industrial design and whose name has been entered in the Register as owner.

Rights of Owner of Industrial Design

16.—(1) The owner of industrial design shall have exclusive right to manufacture products according to the industrial design and to distribute, sell, offer for sale or import, export and store for the aforementioned purposes products which are manufactured according to the registered industrial design.

(2) The owner of industrial design shall have the right to prohibit other persons, without his consent, from manufacturing products according to an identical or confusingly similar industrial design and from distributing, selling and offering for sale or importing, exporting and storing for the aforementioned purpose products which are manufactured according to the registered industrial design.

(3) The owner of industrial design shall have the right to demand the person who has infringed the rights stipulated in paragraph 1 of this Section, to stop the infringement of the said rights, to eliminate the results of the infringement and to compensate for the damages.

(4) The rights of the owner of industrial design may be limited solely in cases and in order prescribed by law.

Proceedings Non-Infringing Rights of Owner of Industrial Design

17. The following proceedings shall not be considered as infringement of the rights of the owner of industrial design:

1. the use of the industrial design in the construction or accessories of aircraft, water or land vehicles registered in other states, when those vehicles temporarily or accidentally sojourn in the territory of the Republic of Estonia;

2. the import into the Republic of Estonia of spare parts and additional devices manufactured according to the industrial design with the purpose of repairing the aircraft and vehicles mentioned in item 1 of this Section;

3. the private non-commercial use of the industrial design;

4. the non-commercial use of the industrial design for teaching purposes provided that the owner of the industrial design has been referred to and the use does not infringe his interests;

5. the use of the industrial design in experiments concerning the industrial design itself;

6. the distribution, selling or offering for sale, or the import, export or storing for the aforementioned purposes of products manufactured according to the industrial design and put into circulation by the owner of industrial design or with his consent.

Right of Prior Use

18.—(1) Any person who, prior to the filing of an industrial design registration application by another person, used an identical or confusingly similar industrial design in the Republic of Estonia in good faith and irrespectively of the applicant for industrial design registration (hereinafter applicant), or has made significant arrangements for its use, may

continue to use the industrial design in the same manner or may start using it in the intended manner (hereinafter right of prior use). The use or the arrangements for use shall be considered as done in good faith when the person concerned was not aware nor should have been aware that a registration application was intended to be filed for the industrial design.

(2) The right of prior use may only be transferred to another person together with the enterprise or the part thereof that is connected with the establishment of the right of prior use.

(3) For the purpose of this Act, the term “enterprise or part thereof” is understood in the meaning of Section 5 of the Commercial Code (RT I 1995, 26—28, 355; 1996, 52—54, 993; 1997, 16, 258; 48, 774).

PART II REGISTRATION APPLICATION AND ITS PROCESSING

IV. Registration Application and its Filing

Registration Application

19. The registration application may include one industrial design, the variants of an industrial design or an industrial design set.

Documents of Registration Application

20.—(1) The registration application shall contain the following documents:

1. the request for the registration of the industrial design;
2. the reproduction of the industrial design;
3. the document certifying the payment of the state fee;
4. the power of attorney where the registration application is filed through an Estonian patent attorney or where the applicants have a common representative;
5. where priority is claimed, the documents certifying the priority claim.

(2) The registration application may be accompanied by a description disclosing the subject matter of the industrial design.

(3) Contents and formal requirements of the documents of the registration application shall be established by the Government of the Republic or, with its authorisation, by the Minister of Economic Affairs.

(4) The documents of the registration application shall be filed in Estonian. The documents certifying priority claim may be submitted in a foreign language.

Request for Registration of Industrial Design

21.—(1) The request for the registration of the industrial design shall contain:

1. the statement requesting the registration of the industrial design;
2. the title of the industrial design;

3. where the applicant is a natural person, the full name and address of residence of the natural person; where the applicant is a legal person, the name and address of location of the legal person;
 4. information about the obtaining of the right to apply for industrial design registration in compliance with the provisions of Section 14(1) and (2) of this Act;
 5. the full name and address of residence of the author;
 6. where the application is filed through a patent attorney, the full name of the patent attorney;
 7. where the applicants have a common representative who is a natural person, the full name of the natural person; where the representative is a legal person, the name of the legal person;
 8. where priority is claimed, the priority claim;
 9. where the applicant wishes to postpone the entering of the industrial design in the Register, the request for suspension of the processing of the registration application;
 10. where the author demands, the prohibition of the publication of the full name and address of residence of the author;
 11. the address of correspondence of the applicant;
 12. the signature of the applicant, the patent attorney or the common representative.
- (2) The request for the registration of the industrial design may contain the class and subclass of the International Classification for Industrial Designs where the industrial design belongs.

Reproduction of Industrial Design

- 22.**—(1) The reproduction of the industrial design shall give a clear and complete image of the industrial design.
- (2) The reproduction of the industrial design shall consist of the general view of the industrial design and of other views necessary for giving a clear and complete image of the industrial design.
- (3) The reproduction of the industrial design shall be photographic or graphic.
- (4) The reproduction of the variant of the industrial design shall consist of the general view of the variant and of other views necessary for giving a clear and complete image of the variant of the industrial design.
- (5) The reproduction of the industrial design set shall consist of the general view of the industrial design set and of other views necessary for giving a clear and complete image of the industrial design set.

Documents Certifying Priority Claim

- 23.**—(1) The documents certifying priority claim are the following:
1. the certificate of the filing date of the first registration application, issued by the state administrative agency having received the said registration application;

2. the copy of the first registration application, the authenticity of the copy being proved by the state administrative agency having received the first registration application.

(2) During the processing of the registration application, the translation into Estonian of the documents referred to in paragraph (1) of this Section may be required.

Filing of Registration Application

24.—(1) The registration application shall be filed with the Estonian Patent Office.

(2) The registration application may be filed personally or by mail. A registration application transmitted by telefax or by means of electronic communication shall not be received.

(3) A state fee shall be paid upon filing the registration application.

(4) Where the registration application contains more than two variants of an industrial design, a supplementary state fee shall be paid for each variant starting from the third.

(5) A document certifying payment of the state fee shall be submitted at the date of receipt of the registration application or within one month from the date of receipt of the registration application.

(6) The power of attorney shall be submitted on the filing date of the registration application or within two months from the date of receipt of the registration application.

(7) The priority claim shall be submitted on the filing date of the registration application. The documents certifying the priority claim shall be submitted on the filing date of the registration application or within nine months from the priority date.

(8) The order for filing registration applications shall be established by the Government of the Republic or, with its authorisation, by the Minister of Economic Affairs.

Representation of Applicant

25.—(1) An applicant may independently file a registration application and arrange matters connected with the applying for industrial design registration and the maintaining of the registration, or it may be done through an Estonian patent attorney resident and citizen of the Republic of Estonia (hereinafter patent attorney). The authorities of the patent attorney shall be specified in the power of attorney issued by the applicant.

(2) An applicant residing or located outside the Republic of Estonia may file a registration application himself or through a patent attorney. Further matters connected with the applying for industrial design registration and the maintaining of the registration shall be arranged solely through a patent attorney.

(3) Where several applicants file a registration application together, they shall, for arranging matters connected with the applying for industrial design registration and the maintaining of the registration, appoint a patent attorney or one of them as a representative (common representative), who is residing or located in the Republic of Estonia. The authorities of the common representative shall be granted in the power of attorney issued by the applicants.

Power of Attorney

26.—(1) The power of attorney shall be issued in writing, it may be in free form.

(2) The power of attorney shall contain:

1. where the applicant is a natural person, the full name and address of residence of the natural person; where the applicant is a legal person, the name and address of location of the legal person;

2. where a patent attorney has been appointed, the full name of the patent attorney;

3. where a common representative has been appointed and where he or she is a natural person, the full name of the natural person; where the common representative is a legal person, the name of the legal person;

4. the scope of the authorities;

5. where the authorities are terminal, the term of the authorities;

6. the signature of the applicant;

7. the place and date of issue of the power of attorney.

V. Processing of Registration Application

Processor of Registration Application

27. Proceeding from Article 12(1) of the Paris Convention for the Protection of Industrial Property and from this Act, the processing of registration applications shall be carried out by the Patent Office.

Filing Date of Registration Application and Acceptance of Registration Application for Processing

28.—(1) Upon receiving the registration application, the Patent Office shall mark a note of reception on each document of the application. The note of reception shall contain the following:

1. the date of receipt of the registration application;

2. the consecutive number of receipt of the registration application (hereinafter number of the registration application).

(2) The date of receipt of a registration application filed by mail shall be considered the date of receiving it at the Patent Office.

(3) The filing date of the registration application shall be the date of receiving it at the Patent Office provided that at the date of receipt the following have been filed:

1. the statement requesting the registration of the industrial design;

2. the reproduction of the industrial design;

3. the name and address of the applicant.

(4) After the filing date of the registration application has been established in compliance with paragraph 3 of this Section and the document certifying the payment of the state fee has been submitted in compliance with Section 24(5) of this Act, the Patent Office shall accept the registration application for processing, notifying the applicant of this in writing.

(5) Where the applicant must be represented in compliance with the provisions of Section 25 of this Act, the Patent Office shall accept the registration application for processing after receiving the power of attorney in compliance with Section 26 of this Act.

(6) An application dossier shall be opened for each registration application accepted for processing.

(7) The application dossier shall contain the documents of the registration application, correspondence connected with the processing, documents certifying the payment of the state fee, decisions of the Patent Office and correspondence connected with contesting these decisions.

Refusal to Accept Registration Application for Processing

29.—(1) The Patent Office shall refuse to accept a registration application for processing by making a decision to refuse to accept the registration application for processing in the following cases:

1. the document certifying the payment of the state fee is missing and it is not submitted within one month from the date of receipt of the registration application;
2. the power of attorney is missing and it is not submitted within two months from the date of receipt of the registration application.

(2) The applicant shall be notified in writing of a decision to refuse to accept the registration application for processing and the documents of the registration application shall be returned.

(3) A decision to refuse to accept the registration application for processing shall contain the following:

1. the date and place the decision is made;
2. the reference to the applicable Acts;
3. the grounds for the decision;
4. the resolution;
5. the procedure and term for contesting the decision;
6. the name and signature of the competent official having made the decision.

(4) A decision to refuse to accept the registration application for processing shall become valid at the date when it was made.

(5) Where the Patent Office refuses to accept the registration application for processing, the state fee shall be refunded.

Files of Registration Applications, Access to and Release of Information Therefrom

30.—(1) The files of registration applications and of their processing is an organised collection of information on the documents of registration applications approved for processing and on their processing. The files shall contain information on a registration application and its processing until the application dossier is closed.

(2) Access to the files of registration applications and of their processing as well as access to the information from the files shall be prohibited. The following information is

permitted to release: the title of the industrial design, the number of the registration application, the filing date of the registration application, the priority data, the name of the applicant and the name of the representative of the applicant.

(3) Access to the application dossier shall be allowed to the applicant, or to the person having a written consent issued by the applicant or notified by the applicant in writing of the filing of the registration application and has warned of the applicant's right to apply for industrial design registration and to become owner of the industrial design, to the competent official of a state agency with supervisory rights and to the court. The information about the author shall not be available from the application file if the author has prohibited the disclosure of his name.

(4) Fees are charged for the release of information from the files with the exception of release of information to state agencies with supervisory authority or to a court.

(5) The files shall be established and the payment rates for release of information from the files are determined by the Government of the Republic or, with its authorisation, by the Minister of Economic Affairs.

*Examination of Contents and Formal Requirements of
Documents of Registration Applications Accepted for Processing*

31.—(1) The Patent Office shall examine:

1. the existence of documents pursuant to the provisions of Section 20 of this Act and their compliance with the formal requirements;

2. the contents of the documents of the registration application pursuant to the provisions of Sections 19 and 21 to 24 of this Act;

3. the industrial design pursuant to the provisions of Sections 4, 9 and 10(1) and (2) of this Act;

4. the number of the class and of the subclass of the International Classification for Industrial Designs (where the numbers are lacking, the Patent Office shall accord them).

(2) The Patent Office shall not examine:

1. the industrial design pursuant to the provisions of Sections 5(1), 6,7 and 10(3) of this Act;

2. the right of the applicant to apply for industrial design registration pursuant to the provisions of Section 14(1) and (2) of this Act.

(3) If priority is claimed, the Patent Office shall, for the purpose of determining the date of priority, examine:

1. the filing of the priority claim pursuant to the provisions of Section 11(2), (3) and (4) and Section 24(7) of this Act;

2. the contents of the documents certifying the priority claim pursuant to the provisions of Section 23 of this Act and their filing by deadline pursuant to the provisions of Section 24(7) of this Act.

(4) The Patent Office shall refuse the priority claim where the examination carried out in compliance with paragraph 3 of this Section shows that one or more requirements are not fulfilled, and it shall notify the applicant of this in writing.

(5) Upon deficiencies regarding the form and contents of the documents of the registration application or upon other factors preventing the processing of the registration application, the Patent Office shall notify the applicant of this in writing, designating a deadline of two months for elimination of deficiencies or for providing explanations.

(6) Upon a corresponding request from the applicant, the Patent Office shall extend the deadline for elimination of deficiencies or for providing explanations for up to six months. The request must be filed prior to the end of the deadline designated in paragraph 5 of this Section. A state fee shall be levied for extending the deadline.

Suspension of Processing of Registration Application

32.—(1) On a corresponding request from the applicant, the Patent Office may suspend the processing of a registration application for up to twelve months.

(2) The applicant shall be notified in writing of the suspension of the processing of the registration application.

Corrections and Amendments to Registration Application

33. A registration application may be corrected and amended by the applicant during processing, without changing the industrial design as disclosed in the registration application at the filing date of the application.

Withdrawal of Registration Application

34.—(1) An applicant may file a request in writing for withdrawal of a registration application and withdraw a pending registration application. A registration application is deemed to be withdrawn from the date of receipt of a request for withdrawal of the registration application by the Patent Office. The documents of the registration application shall not be returned.

(2) The Patent Office deems a registration application to be withdrawn if the applicant files to respond to a demand of the Patent Office to eliminate deficiencies in the registration application or to provide explanations by the deadline prescribed in Section 31(5) or (6) of this Act.

Termination of Processing of Registration Application

35.—(1) Where the registration application has been withdrawn or is deemed to be withdrawn, the Patent Office shall terminate the processing of the registration application and notify the applicant of this in writing.

(2) The application file of the registration application that has been withdrawn or is deemed to be withdrawn shall be closed and preserved permanently and in confidentiality in the archives of the Patent Office.

Resuming of Application Processing

36.—(1) The Patent Office shall resume the processing of a registration application on a corresponding request from the applicant or on a decision of the Board of Appeal or of the court, and the Patent Office shall open the closed application dossier.

(2) The applicant may require the resuming of the processing of a registration application that has been terminated, provided that the applicant has failed to respond to the

invitation of the Patent Office to eliminate deficiencies or to provide explanations by the deadline designated in compliance with Section 31(5) or (6) of this Act due to force majeure or other obstacle irrespective of the applicant or of his representative.

(3) The request for resuming the processing of a registration application may be submitted within one year from the end of the deadline designated in compliance with Section 31(5) or (6) of this Act. The request shall be accompanied by a document certifying the payment of the state fee.

(4) The Patent Office shall resume the processing of a registration application provided that the applicant proves the existence of the force majeure or other obstacle irrespective of the applicant or of his representative and responds to the invitation of the Patent Office to eliminate deficiencies or to provide explanations within two months after the removal of the force majeure or other obstacle. The Office shall notify the applicant in writing of the resuming of the application processing.

Decision on Industrial Design Registration

37.—(1) Where the industrial design is not in conflict with the requirements stipulated in Sections 4, 9 and 10(1) and (2) of this Act and where the registration application is in compliance with the requirements stipulated in Sections 19 to 24 and 33 of this Act, the Patent Office shall make a decision on industrial design registration, notifying the applicant of this in writing.

(2) The decision on industrial design registration shall contain the following:

1. the date and place the decision is made;
2. the reference to the legislation applied;
3. the resolution on the registration of the industrial design in the Register;
4. the procedure and deadline for contesting the decision;
5. the name and signature of the competent official having made the decision.

(3) The decision on industrial design registration shall enter into force at the date it is made.

Decision on Refusal of Industrial Design Registration

38.—(1) Where the industrial design is in conflict with the requirements stipulated in Sections 4, 9 or 10(1) or (2) of this Act or where the registration application is not in compliance with the requirements of Sections 19 to 24 or 33 of this Act, the Patent Office shall make a decision on refusal of industrial design registration, notifying the applicant of this in writing.

(2) The decision on refusal of industrial design registration shall contain the following:

1. the date and place the decision is made;
2. the reference to the legislation applied;
3. the grounds for the decision;
4. the resolution;
5. the procedure and deadline for contesting the decision;

6. the name and signature of the competent official having made the decision.

(3) The decision on refusal of industrial design registration shall enter into force at the date it is made.

Cessation of Processing of Registration Application

39.—(1) The processing of a registration application at the Patent Office shall cease with entering the industrial design in the Register or with refusal of industrial design registration.

(2) After entering the industrial design in the Register the application dossier shall be closed and added to the Register.

(3) Where the Patent Office refuses to register the industrial design, the application dossier shall be closed after the lapse of the deadline for lodging an appeal or, upon contest, after the contesting procedure, and it shall be preserved permanently and in confidentiality in the archives of the Patent Office.

VI. Contest of Decisions of Patent Office

Right to Appeal against Decision of Patent Office

40.—(1) The applicant may appeal against the following decisions of the Patent Office:

1. the decision on refusal to process the registration application;
2. the decision on refusal of industrial design registration;
3. the decision on termination of the application processing or on refusal to resume the application processing.

(2) The applicant may appeal against the decision of the Patent Office on industrial design registration where the priority claim contained in the registration application has been refused.

Board of Appeal of Industrial Property

41.—(1) The applicant may appeal against the decision of the Patent Office at the Board of Appeal of Industrial Property (hereinafter Board of Appeal) established in compliance with the Republic of Estonia Trademark Act (RT I 1992, 35, 459; RT I 1995, 26—28, 355; 1996, 49, 953).

(2) The Board of Appeal shall operate within the area of government of the Ministry of Economic Affairs and it shall be funded from the State Budget via the Ministry of Economic Affairs budget.

Term for Lodging Appeal

42.—(1) An appeal against the decision of the Patent Office may be lodged within two months from the date the decision is made.

(2) Upon a subsequent appeal, the Board of Appeal may reconstitute the deadline for appealing against the decision where it finds the reason for the delayed appeal to be well grounded.

Requirements for Appeal

43.—(1) The appeal shall be lodged at the Board of Appeal in writing and it shall contain the following:

1. the full name of the Board of Appeal;
2. where the complainant is a natural person, the full name and address of residence of the natural person; where the complainant is a legal person, the name and address of location of the legal person;
3. the number and date of the contested decision;
4. the statement of the complainant explaining why he considers the contested decision to be inaccurate and in conflict with the law;
5. the request of the complainant;
6. the signature of the complainant or his attorney.

(2) The appeal shall be accompanied by:

1. the copy of the contested decision;
2. the document certifying payment of the state fee;
3. where the appeal is lodged through a representative, the power of attorney.

(3) The power of attorney shall be submitted together with the appeal or within two months from the date of lodging the appeal.

(4) The appeal may be accompanied by the documents certifying the reason for the appeal.

Amendments to Appeal

44.—After submitting a corresponding request in writing and the required documents, the complainant may amend the appeal until the beginning of the appeal procedure at the Board of Appeal.

Abandonment of Appeal

45.—(1) Before the Board of Appeal has made a decision, the complainant may abandon his appeal, submitting a corresponding written request to the Board of Appeal.

(2) Where the complainant abandons his appeal, the Board of Appeal shall terminate the appeal procedure. The state fee shall not be refunded to the complainant.

Approving Appeal for Procedure

46.—(1) The Board of Appeal shall register the appeal at the date of receipt of it and notify the Patent Office of the appeal.

(2) The Board of Appeal shall check the compliance of the appeal with the requirements stipulated in Sections 40, 42 and 43 of this Act.

(3) Where the appeal is in compliance with the requirements stipulated in Sections 40, 42 and 43 of this Act, the Board of Appeal shall approve it for procedure and it shall notify the complainant and the Patent Office of the date and place of the appeal procedure.

(4) The Board of Appeal shall send to the Patent Office a copy of the appeal that has been approved for procedure and it may invite the Patent Office to submit, by a designated deadline, its objections or position in writing.

(5) Where the appeal is in conflict with the requirements stipulated in Sections 40, 42 or 43 of this Act, the Board of Appeal shall dismiss the appeal and return it to the complainant. The state fee shall be refunded to the complainant.

Parties to Appeal Procedure at Board of Appeal

47.—(1) The complainant and the Patent Office shall be parties to the appeal procedure at the Board of Appeal.

(2) A party to the appeal procedure shall have the right to, personally or through the representative:

1. take part in the appeal procedure;
2. submit to the Board of Appeal explanations regarding the appeal orally and in writing;
3. submit additional documents and requests;
4. put questions to other parties;
5. request the removal of a member of the Board of Appeal.

(3) The failure of a party to attend the appeal procedure shall not prevent the Board of Appeal from treating the appeal, provided that the said party has been notified of the date and place of the appeal procedure and he has failed to notify the Board of Appeal of the reasons preventing his attendance.

Appeal Procedure at Board of Appeal

48.—(1) The Board of Appeal shall treat the appeal in the extent requested in the appeal.

(2) The Board of Appeal shall be competent to treat the appeal and to make a decision provided that the Chairman or Vice-Chairman and at least three members of the Board of Appeal are present. The Chairman or Vice-Chairman of the Board of Appeal shall be the Chairperson of the Board of Appeal.

(3) Before commencement of the appeal procedure, the Chairperson of the Board of Appeal shall check the attendance of the parties to the procedure and their power of attorneys. Subsequently the Board of Appeal shall announce the appeal to be treated, the members of the Board of Appeal shall be introduced and the requests for removal and other requests of the parties shall be settled.

(4) The appeal procedure shall begin with a report by a member of the Board of Appeal, followed by an explanation from the complainant. Subsequently the Board of Appeal shall hear an explanation from the representative of the Patent Office, which may be followed by a dispute between the parties. The members of the Board of Appeal shall be entitled to put questions to the parties.

(5) Where a party to the discussion presents additional evidence during the procedure and the Board of Appeal regards it necessary to consider it, the Board of Appeal shall postpone the procedure and designate, upon a corresponding request from another party, another date for the procedure.

(6) Where the parties have presented explanations to the Board of Appeal and answered questions, and there are no requests for continuing the procedure, the appeal procedure shall be terminated and the Board of Appeal shall make a decision.

(7) During the making of the decision, the parties to the procedure shall not be present.

Removal of Member of Board of Appeal

49.—(1) The member of the Board of Appeal who has personal interest in the result of the appeal procedure, shall be removed at a corresponding request by a party to the procedure.

(2) The request for removal may be submitted before the beginning of the appeal procedure.

(3) The staff of the Board of Appeal treating the particular appeal shall review the request for removal. Where the request for removal is satisfied, the member of the Board of Appeal mentioned in the request shall be removed from the staff of the Board of Appeal treating the appeal. Where all members are removed or the number of members making the Board of Appeal incompetent to make decisions in compliance with Section 48(2) of this Act, the Board of Appeal shall terminate the appeal procedure and the complainant shall have the right to lodge an appeal against the decision of the Patent Office at the administrative court within three months from the decision on the termination of the procedure at the Board of Appeal pursuant to procedure provided for in the Administrative Procedure Code (RT I 1993, 50, 694; 1994, 16, 290; 28, 425; 1995, 29, 358 and 359; 1996, 37, 739; 1997, 16, 260; 30, 472).

Postponing Appeal Procedure

50.—(1) The Board of Appeal may postpone the appeal procedure where the parties to the procedure submit a corresponding justified request or where the Board of Appeal considers it necessary to request additional documents from the parties.

(2) Upon postponing the appeal procedure, the parties shall be notified of the deadline for submitting additional documents and of the new date and place of the appeal procedure.

(3) Where the parties to the appeal procedure fail to submit the requested documents by the end of the term, the Board of Appeal shall review the appeal and make a decision on the basis of the documents available to it and of the matters revealed during the appeal procedure.

Deadline for Appeal Procedure

51. The Board of Appeal shall treat the appeal during the period of time commencing ten days after the date of notifying the parties to the procedure of the time and place of the procedure and ending on the date when three months have passed from the lodging of the appeal.

Decision of Board of Appeal

52.—(1) When making the decision, the Board of Appeal shall solely take into account facts presented in the appeal as well as facts regarding the claim of the appeal revealed in the course of the procedure.

(2) The Board of Appeal shall make a decision on refusing the appeal or on satisfying it. Upon satisfying the appeal the Board of Appeal shall revoke the decision of the Patent Office and shall order the Patent Office to resume the processing of the registration

application and to make a new decision. Where the Board of Appeal satisfies the appeal and revokes the decision of the Patent Office, the state fee shall be refunded to the applicant.

(3) The Board of Appeal shall issue its decision in writing and it shall be signed by all members of the Board of Appeal who took part in the appeal procedure. The decision must be well grounded and based on the facts revealed in the course of the appeal procedure. The decision shall contain the summary of the appeal, the summary of the evidence and explanations presented, the claim of the appeal, reference to the legislation applied in making the decision, the reason for the decision, the resolution and the procedure and deadline for contesting the decision.

(4) The decision of the Board of Appeal shall be made by the majority of votes. Upon an equal division of votes, the vote of the Chairperson shall be determinant.

Notifying of Decision of Board of Appeal

53.—(1) The parties to the appeal procedure shall be notified of the decision of the Board of Appeal orally promptly after the decision is made.

(2) The decision of the Board of Appeal shall be sent to the parties to the procedure in writing within five workdays after it is made.

Appeal Against Decision of Board of Appeal

54. Within three months from the date when the Board of Appeal made the decision, the parties to the appeal procedure shall have the right to appeal against the said decision at the administrative court pursuant to procedure provided for in the Code of Administrative Court Procedure.

PART III STATE REGISTER OF INDUSTRIAL DESIGNS

VII. General Provisions

Maintenance of Register

55.—(1) The Patent Office shall be the chief and authorised processor of the State Register of Industrial Designs.

(2) The registry secretary shall be responsible for the maintenance of the Register at the Patent Office and for making the decisions on entry in the Register.

(3) The Register shall be maintained as an entry book on paper carrier. The Register may be maintained on computer, storing the entries as print-outs.

(4) The Register shall be maintained in Estonian. Documents in foreign languages shall be submitted to the authorised processor together with the translation into Estonian.

(5) The maintenance expenses of the Register shall be covered from the State Budget via the budget of the Patent Office.

(6) The Government of the Republic shall establish the Register and ratify the regulation on the maintenance of the Register.

Registration of Industrial Design in Register

56.—(1) An industrial design shall be registered in the Register by entering the data of the industrial design registration (hereinafter registration) in the entry book on the basis of the decision on industrial design registration.

(2) The data of the registration are the following:

1. the number of the registration;
2. the date of registration;
3. the title of the industrial design;
4. the reproduction of the industrial design;
5. the number of variants of the industrial design;
6. the number of class and subclass of the International Classification for Industrial Designs;
7. the full name and address of residence of the author of industrial design;
8. the full name and address of residence of the owner of industrial design; where the owner is a legal person, the name, address of location and zip code of the owner;
9. the date of the beginning of the term of the registration;
10. the date of the end of the term of the registration;
11. where a patent attorney has been appointed, the full name of the attorney;
12. where the common representative is a natural person, the full name of the natural person; where the common representative is a legal person, the name of the legal person;
13. the number of the registration application;
14. the filing date of the registration application;
15. the data of priority (priority date, number of the registration application and country).

(3) The registrations shall be numbered in the order of the registration of the industrial designs starting with number 208, continuing the numeration of the Register that was discontinued in 1940.

(4) The applicant who has been mentioned in the decision on industrial design registration, shall be entered in the Register as the owner of industrial design.

(5) The data of the registration shall be entered in the Register within five workdays from the date of making the decision on industrial design registration.

(6) Where the decision on industrial design registration refuses the claim for priority contained in the registration application and the applicant has not contested it, the data of the registration shall be entered in the Register after the lapse of two months from the date of making the decision on industrial design registration.

(7) The registration shall become valid from the date when the registry secretary signs the entry of the data of registration.

Term of Industrial Design Registration

57.—(1) The term of the registration shall be five years from the filing date of the registration application.

(2) The term of the registration may be renewed firstly for five years and later for five more years. A state fee shall be paid for renewal of the term.

Entry in Register

58.—(1) An entry in the Register shall be the entry of registration and the entry of deletion of registration.

(2) The categories of the entry of registration are the following: the entry of the data of registration, the entry of the renewal of the term of registration, the entry of the change of the data of registration and the entry of the transfer of rights of the industrial design owner into usufruct.

(3) A state fee shall be paid for the entry of the change of the data of registration and for the entry of the transfer of rights of industrial design owner into usufruct.

(4) An entry in the Register shall contain the following:

1. the text of the entry;
2. the date of the entry;
3. the signature of the registry secretary.

(5) On the registry card the entries in the Register shall be numbered in the order of their registration.

(6) The entry in the Register shall be made within five workdays from the date of making the decision on entry in the Register.

(7) The entry in the Register shall become valid from the date of signing it by the registry secretary.

(8) An announcement on the entry in the Register shall be published in the Official Gazette of the Patent Office.

(9) The date of publication of the announcement about the entry of the data of the registration shall be entered in the entry book.

Access to and Release of Information from Register

59.—(1) The Register shall be public. Everyone shall have the right to examine the entry book and to obtain copies from the registry card.

(2) No information is released from the Register on an author if the author has prohibited disclosure of the author's name.

(3) The registry dossier and the application dossier shall be made available to a person having a written consent of the owner of industrial design, to an interested person, to a competent official of a state agency with supervisory rights and to the court.

(4) A state fee shall be paid for the release of information from the Register, except for release of information to a state agency with supervisory rights or to the court.

Maintenance and Storage of Register

60.—(1) The Register shall be maintained in the premises of the Patent Office, the removal of the Register shall be forbidden.

(2) The Register shall be permanently stored in the archives of the Patent Office.

Liability of Chief Processor

61. Damages caused by an unlawful action of the chief processor shall be compensated for by the state.

VIII. Contents of Register

Composition of Register

62. The Register consists of:

1. the entry book;
2. the application dossier;
3. the registry dossier;
4. the registry journal.

Entry Book

63. The entry book consists of registry cards that are bound together into the volumes of the entry book.

Registry Card

64.—(1) A registry card shall be opened upon entering an industrial design in the Register.

(2) A registry card consists of the following parts:

1. the data of the registration in compliance with Section 56(2) of this Act;
2. the date of publication of the announcement about the entry of the data of the registration and the date of the issue of the industrial design certificate;
3. the renewal of the term of the registration;
4. the change of the data of the registration;
5. the transfer of the rights of the owner of industrial design into usufruct;
6. the deletion of the registration.

(3) The number of the registry card shall be the number of the registration.

Registry Dossier

65.—(1) A registry dossier shall be opened for an industrial design entered in the Register.

(2) The registry dossier shall contain the requests for entry in the Register, the decisions on entry in the Register, the decisions on refusing entry in the Register, the documents certifying the payment of the state fee and correspondence connected with the registration and with the contest of the registration.

(3) The original documents mentioned in paragraph (2) of this Section shall be submitted to the authorised processor unless the law regulates otherwise.

Registry Journal

66.—(1) The decisions on industrial design registration, the requests for entry in the Register and the documents submitted to the authorised processor shall be registered in the registry journal.

(2) A note on satisfying the request for entry in the Register shall be entered in the registry journal.

IX. Industrial Design Certificate

Definition of Industrial Design Certificate

67.—(1) The industrial design certificate (hereinafter certificate) shall be a document certifying the industrial design registration and the exclusive right of the owner of industrial design to the industrial design.

(2) The certificate shall be issued in the name of the Republic of Estonia.

Content and Form of Certificate

68.—(1) The certificate shall contain:

1. the name of the state—the Republic of Estonia;
2. the coat of arms of the state—the small coat of arms of the Republic of Estonia;
3. the number of the certificate;
4. the registration data;
5. the data of the agency having issued the certificate (the name and location of the agency, the official title, name and signature of the head of the agency, the seal of the agency);
6. the date of issue of the certificate.

(2) The number of the certificate shall be the number of the registration.

(3) The date of issue of the certificate shall be the date of signing it by the head of the agency having issued the certificate.

(4) The form of the certificate and the order of filling in the form shall be designated by the Government of the Republic or, with its authorisation, by the Minister of Economic Affairs.

Issue of Certificate

69.—(1) Within ten workdays from the date of entering the industrial design in the Register, the Patent Office shall issue a certificate to the owner of industrial design.

(2) Only one certificate shall be issued, regardless of the number of owners indicated in the registration.

(3) The date of issue of the certificate shall be entered in the entry book.

(4) On a request from the owner of industrial design a duplicate of the certificate shall be issued to him. The duplicate shall be issued within one month from the receipt at the Patent Office of the request and of the document certifying payment of the state fee. An

announcement of the issue of the duplicate shall be published in the Official Gazette of the Patent Office.

Issue of Appendix to Certificate

70.—(1) After changing the data of the registration, the Patent Office shall issue to the owner of industrial design an appendix to the certificate, which shall be an inalienable part of the certificate.

(2) The appendix to the certificate shall contain the changed data of the registration and the date of entry.

(3) The appendix shall be issued within one month from the date of entry concerning the changed data of the registration.

PART IV TRANSFER, CESSATION, CONTEST AND PROTECTION OF RIGHTS OF OWNER OF INDUSTRIAL DESIGN

X. Transfer of Rights of Owner of Industrial Design

Transfer of Right to Apply for Industrial Design Registration

71.—(1) Any person having, in compliance with Section 14(1) or (2) of this Act, the right to apply for industrial design registration, may transfer the said right to another person.

(2) The right to apply for industrial design registration shall transfer to the successor or to the legal successor.

Transfer of Registration Application

72.—(1) The applicant may transfer to another person a registration application pending at the Patent Office.

(2) Upon the death of the applicant or, where the applicant is a legal person, upon the dissolution of the applicant, a registration application pending at the Patent Office shall transfer to the successor or to the legal successor.

(3) For changing the data of the applicant in the application, the applicant or the person to whom the registration application is transferred, shall submit to the Patent Office a corresponding request and the document certifying payment of the state fee. Where the

request is submitted by the person to whom the registration application is transferred, the request must be accompanied by the document certifying transfer or the certified copy of it.

(4) The Patent Office shall amend the data mentioned in Section 21(1)3 of this Act.

(5) The registration application shall be deemed to have been transferred to another person from the date of changing the data.

Transfer of Rights of Owner of Industrial Design

73.—(1) The owner of industrial design may transfer his rights to another person.

(2) Upon the death of the owner of industrial design or, where the owner is a legal person, upon the dissolution of the owner, the rights of the owner shall transfer to the successor or to the legal successor.

(3) For changing in the registration of the data of the owner of industrial design, the owner of industrial design or the person to whom the rights of the owner transfer shall submit to the Patent Office a corresponding request and a document certifying payment of the state fee. Where the request is submitted by the person to whom the rights of the owner transfer, the request shall be accompanied by a document certifying the transfer or the certified copy of it.

(4) The request mentioned in paragraph 3 of this Section shall be submitted within one year from the date of the transfer of rights as specified in the transaction, or from the date of establishment of legal succession. Where the rights of the owner transfer on the basis of a court order, the request shall be submitted within one month from the effective date of the court order.

(5) The Patent Office shall enter in the Register the change of data mentioned in Section 56(2)8 of this Act.

(6) The rights of the owner of industrial design shall be deemed to have transferred from the date of transfer of the rights as specified in the transaction or in court order, or from the date of establishment of legal succession.

(7) A person to whom, in compliance with this Section, the rights of the owner have transferred, shall be entitled to exercise them from the date of coming into force of the entry of changed data of the registration.

Licence

74.—(1) Owner of industrial design (licenser) may transfer, in whole or in part, the rights of the owner of industrial design referred to in Section 16 of this Act into the usufruct of one or more persons (licensee).

(2) With the consent of the licenser, the licensee may transfer the rights proceeding from the usufruct to a third person by a sub-licence.

(3) The term of the licence shall not exceed the term of the registration.

(4) The licence may be registered in the Register.

(5) Upon the collision of rights transferred to several licensees by different licences, the prerogative shall belong to the licensee whose licence has been registered in the Register.

(6) A licence not registered in the Register shall have no legal right with regard to a third person.

(7) Upon granting a licence, a licence agreement shall be concluded in writing.

*Validity of Licence upon Deletion of Registration from Register
and upon Transfer of Rights of Owner of Industrial Design*

75.—(1) Upon the deletion of the registration from the Register after the end of the term of the registration provided for in Section 57 of this Act, the licence shall become invalid from the day following the end of the term of the registration.

(2) Upon deletion on the basis of an effective court order adjudicating the registration as being in conflict with the provisions of paragraph 1 of Section 37 or of paragraph 4 of Section 14 of this Act, the licence shall become null from the day of its issue.

(3) Upon the transfer of the rights of the owner of industrial design to another person in cases stipulated in Section 73 of this Act, the rights and duties proceeding from the licence shall also transfer.

Registration of Licence in Register

76.—(1) For the registration of the licence in the Register, the licensor or the licensee shall submit to the Patent Office a corresponding request, the licence agreement or the certified copy of it and the document certifying payment of the state fee.

(2) The request for entering the licence in the Register shall contain the following:

1. the name and address of residence or of location of the licensor;
2. the name and address of residence or of location of the licensee;
3. the subject of the licence;
4. the list of rights granted to the licensee;
5. the term of the licence;
6. other data considered necessary by the licensor and the licensee to be entered in the Register.

(3) Instead of the licence agreement or the certified copy of it, a certified excerpt from the licence agreement may be submitted to the Patent Office, containing the data mentioned in paragraph 2 of this Section.

(4) The Patent Office shall enter in the Register the transfer of the rights of the owner of industrial design into usufruct.

(5) The entry of the transfer of the rights of the owner into usufruct shall be deleted from the Register upon the end of the term of the licence or on a corresponding demand by the person having filed the request for the registration of the licence in the Register.

XI. Cessation of Rights of Owner of Industrial Design

Bases for Cessation of Rights

77.—(1) The rights of the owner of industrial design shall cease upon the end of the term of the registration in compliance with Section 57 of this Act.

(2) The rights of the owner of industrial design shall cease prior to the term stipulated in Section 57 of this Act in the following cases:

1. where the owner abandons the rights of the owner of industrial design without transferring his rights to another person;
 2. upon the death of the owner where the owner is a natural person and the rights have not been transferred to the successor, and upon the dissolution of the legal person where the rights have not been transferred;
 3. on the basis of an effective court order where the registration has been adjudicated as being in conflict with the provisions of Sections 4 or 9, Section 10(1) or (2) and Sections 19 to 24 or 33 of this Act;
 4. on the basis of an effective court order where the registration has been adjudicated as being in conflict with the provisions of Section 14(4) of this Act;
 5. on the basis of an effective court order adjudicating that the owner mentioned in the registration had no right, in compliance with Section 14(1), (2) and (3) of this Act, to apply for industrial design registration and the person adjudicated as the owner of industrial design has failed to submit, in order prescribed by Section 73(3) and (4) of this Act, a request for changing in the registration the entry concerning the owner of industrial design.
- (3) The cessation of the rights of the owner of industrial design shall be based on entering the deletion of the registration in the Register.

Entering Deletion of Industrial Design Registration in Register

78.—(1) The Patent Office shall enter the deletion of the registration in the Register in compliance with the provisions of Section 77(1) of this Act after the lapse of six months from the end of term of the registration in compliance with Section 57 of this Act, or, where the registration has been renewed for fifteen years, after the lapse of the said term.

(2) For entering the deletion of the registration in the Register in cases prescribed by Section 77(2)1, 2, 4 and 5 of this Act, the owner of industrial design or an interested person shall submit to the Patent Office a corresponding request. Where the request is submitted by an interested person, it shall be accompanied by the documents certifying the claim.

(3) The Patent Office shall not enter the deletion of the registration in the Register in compliance with Section 77(2)1 where the rights of the owner of industrial design are the subject of a registered licence.

(4) The Patent Office shall enter the deletion of the registration in the Register pursuant to Section 77(2)3 of this Act and it shall resume the processing of the registration application pursuant to Section 36 of this Act.

Legal Consequence of Entry of Deletion of Registration of Industrial Design

79.—(1) Upon making the entry of deletion of registration in compliance with Section 77(1) of this Act, the rights of the owner of industrial design shall cease as of the day following the end of the term of the registration.

(2) Upon making the entry of deletion of registration in compliance with Section 77(2)1 of this Act, the rights of the owner of industrial design shall cease as of the day following the date of entry.

(3) After deleting the registration from the Register, any person may manufacture products according to the industrial design and he may distribute, sell or put on the market, or

import, export and store the said products for the aforementioned purposes. The said right shall be retroactive until the date of cessation of the rights of the owner of industrial design.

XII. Contest and Protection of Rights of Owner of Industrial Design

Contest of Authorship of Industrial Design

80.—(1) Disputes concerning authorship of industrial designs entered in the Register shall be settled by the court.

(2) Any natural person who considers himself to be the author of industrial design in compliance with Section 12 of this Act, may bring action against the owner of industrial design for certification of his authorship.

Contest of Rights of Owner of Industrial Design

81.—(1) Any person considering that the rights of the owner of industrial design belong to him in compliance with Section 14 (1), (2) and (3) of this Act, may bring action against the owner of industrial design for certification of his ownership.

(2) The action mentioned in paragraph 1 of this Section may be brought within one year from the publication of the announcement about the entry of the data of the registration.

(3) Any person who considers that another person who became the owner of industrial design had no right, in compliance with the provisions of Section 14(4) of this Act, to file a registration application and become the owner of industrial design, and where the registration hampers his economic or business transactions, may bring action against the owner of industrial design for adjudication of the registration as illegal.

(4) The action mentioned in paragraph 3 of this Section may be brought during the term of the registration.

Contest of Registration of Industrial Design

82.—(1) Any interested person who considers that the registration of the industrial design by the Patent Office is in conflict with the requirements of Sections 4 or 9, Section 10(1) or (2), Sections 19 to 24 or 33 of this Act, may lodge an appeal at the Administrative Court pursuant to procedure provided for in the Code of Administrative Court Procedure, requesting the adjudication of the industrial design registration as illegal and ordering the Patent Office to resume the processing of the registration application and to make a new decision.

(2) The appeal mentioned in paragraph 1 of this Section may be lodged within three months from the publication of the announcement of the entry concerning the data of the registration.

Protection of Rights of Author of Industrial Design

83.—(1) The author of industrial design shall have inalienable right to bring action upon the infringement of his rights stipulated in Section 13(1) of this Act or for the establishment of other rights proceeding from his authorship.

(2) For settling a property dispute connected with the industrial design, the author may bring action within three years from the date when he was aware or should have been aware of the infringement of his rights.

Protection of Rights of Owner of Industrial Design

84.—(1) The owner of industrial design may bring action:

1. for disposal of the infringement of exclusive right;
2. for preventing the repetition of the infringement of exclusive right;
3. for restoring the status quo before the infringement commenced;
4. for compensation for damages caused by the infringement of exclusive right;
5. for settling disputes arising from the licence;
6. in other cases of infringement of the rights of the owner.

(2) Any person having infringed the exclusive right of the owner of industrial design shall entail civil or criminal liability prescribed by the law.

(3) The action mentioned in paragraph 1 of this Section may be brought:

1. for disposal of the infringement of exclusive right, for preventing the repetition of the infringement of exclusive right or for restoring the status quo before the infringement of exclusive right commenced—during the term of the industrial design registration;
2. for compensation for damages caused by the infringement of exclusive right—within three years from the day when the owner of industrial design was aware or should have been aware of the infringement of his exclusive right;
3. for settling disputes arising from the licence—during the term of the licence;
4. in other cases of infringement of the rights of the owner—within three years from the day when the owner of industrial design was aware or should have been aware of the infringement of his rights.

Protection of Rights of Other Persons

85.—(1) Any person who, before the filing of the registration application, has used the industrial design in good faith, may bring action against the owner of industrial design for establishment of his right of prior use.

(2) Where the exclusive right of the owner of industrial design has been infringed and the owner does not bring action against the infringer, the licensee having a registered licence may bring action unless the licence agreement regulates otherwise. The licensee shall be obliged to notify the owner of industrial design of his wish to sue. The notification obligation shall be considered to be fulfilled if the notification has been sent to the owner of industrial design by registered mail at the address mentioned in the licence agreement or at the address mentioned in the industrial design registration.

Order for Settlement of Industrial Design Disputes

86.—(1) The appeals and actions referred to in this Act belong to the jurisdiction of the court of location of the Patent Office.

(2) A transcript of an effective court order passed with regard to an industrial design dispute shall be sent to the Patent Office promptly, regardless of whether the Patent Office has been party to the proceeding.

Representative In Court Upon Settlement of Industrial Design Disputes

87.—(1) Upon settlement of industrial design disputes, patent attorneys shall be allowed to appear in court as representatives.

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(2) The patent attorney shall submit to the court the certificate of a patent attorney and the power of attorney issued by the client.

PART V
FINAL PROVISIONS

XIII. State Fee

State Fee

88. In cases prescribed in this Act, state fees shall be levied for effecting transactions and issuing documents according to the rates stipulated in the State Fees Act (RT I 1997, 80, 1344).

Payment of State Fee

89.—(1) The state fee shall be paid by the applicant, by the owner of industrial design or by a third person interested in effecting transactions prescribed in this Act or in the issue of documents. Where the state fee for industrial design registration or renewal of a registration is paid by a third person, the written consent of the applicant or of the owner of industrial design shall be required.

(2) The state fee shall be deemed to be paid upon the receipt at the Patent Office, in case of an appeal at the Board of Appeal, of a document certifying payment.

(3) The state fee shall not be refunded, except in cases provided for in Sections 29(5), 46(5) and 52(2) of this Act.

Payment of State Fee for Renewal of Registration

90.—(1) The document certifying payment of the state fee for renewal of the term of registration shall be submitted to the Patent Office within six months before the final day of the term.

(2) The state fee for renewal of registration may be paid within six months after the final day of the term, submitting a document certifying payment of the supplementary state fee.

XIV. Implementing Provisions

Amendments to Other Legal Acts

91.—(1) The State Fees Act (RT I 1997, 80, 1344) shall be amended with Sections 147¹ to 147⁷, following Section 147, worded as follows:

“147¹. Filing of Industrial Design Registration Application

(1) For filing an industrial design registration application, a state fee of 1,600 EEK shall be paid.

(2) For filing a registration application containing variants of industrial design, a state fee of 400 EEK shall be paid for each variant starting from the third.

147². Extending of Deadline for Elimination of Deficiencies in Industrial Design Registration Application and for Providing Explanations

For extending the deadline for the elimination of deficiencies in an industrial design registration application and for providing explanations, a state fee of 400 EEK shall be paid.

147³. Resuming of Processing of Industrial Design Registration Application

For resuming the processing of an industrial design registration application, a state fee of 400 EEK shall be paid.

147⁴. Transfer of Industrial Design Registration Application

Upon the transfer of industrial design registration application, for submitting a request for changing the data of the applicant, a state fee of 500 EEK shall be paid.

147⁵. Renewal of Industrial Design

(1) For the renewal of the industrial design, the state fee shall be paid as follows:

1. 2,000 EEK for the first renewal;
2. 4,000 EEK for the second renewal.

(2) For the renewal of the industrial design after the due date, the state fee prescribed in items 1 or 2 of paragraph (1) of this Section shall be paid + 10 per cent of the corresponding state fee.

147⁶. Change of Data of Industrial Design Registration

(1) For entry of the change of data of industrial design registration, a state fee of 500 EEK shall be paid.

(2) For entry of the transfer of the rights of the owner of industrial design into usufruct, a state fee of 500 EEK shall be paid.

147⁷. Duplicate of Industrial Design Certificate

For the issue of a duplicate of an industrial design certificate, a state fee of 500 EEK shall be paid.”.

(2) The title and text of Section 184⁵ of the Code of Administrative Offences (RT 1992, 29, 396; RT I 66—68, 1109; 73, 1201) shall be amended as follows:

with the words “or industrial design” following the words “utility model”.

(3) The Criminal Code (RT 1992, 20, 287 and 288; RT I 1997, 21/22, 353; 28, 423; 30, 472; 34, 535; 51, 824; 52, 833 and 834) shall be amended as follows:

1. paragraph 6 of Section 33 shall be amended with words “or industrial design” following the words “utility model”;

2. the title and paragraph 1 of Section 136¹ shall be amended with words “or the authorship of the industrial design” following the words “the authorship of the invention”;

3. the title and text of Section 136² shall be amended with words “or the industrial design” following the words “the utility model”.

(4) [repealed—25.11.1998]

Transitional Provision

92. Where the registration application is filed within twelve months from the entry into force of this Act, each priority shall be recognized upon registration of industrial design on the basis of the first registration application filed on 20 February, 1991 and later in a state member to the Paris Convention for the Protection of Industrial Property.

Entry into Force of the Act

93. The present Act shall enter into force after the lapse of one month from the date of its publication in Riigi Teataja.
