
Law No. XXXVIII of 1991 on Utility Model Protection

Part I Protectable Utility Models

Art. 1.—

(1) Utility model protection shall be granted to any solution relating to the configuration or construction of an article or to the arrangement of parts thereof (hereinafter referred to as “utility model”) which is new, involves inventive step and is susceptible of industrial application.

(2) within the meaning of paragraph (1), utility model protection shall not be granted, in particular, to

(a) aesthetic designs of an article,

(b) plant varieties and animal breeds.

Art. 2.—

(1) The solution for which utility model protection is sought shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written description or by public use in the country before the date of priority.

(3) Any patent application or utility model application having an earlier date of priority that was announced by the National Office of Inventions — in the course of publication, the grant of patent or utility model protection — following the date of priority of the utility model application, shall also be considered to form part of the state-of-the-art.

(4) For the application of paragraphs (1) and (2), a written description or public use within six months preceding the date of priority of the application shall not be taken into consideration if it was made by, or with the consent of, the applicant or his predecessor in title, or if it was due to an abuse of the rights of the applicant or his predecessor in title.

Art. 3.—

(1) The utility model involves inventive step if it is not obvious to a skilled craftsman as compared with the state of the art.

(2) For the application of paragraph (1), the part of the state of the art under Article 2(3) are not to be considered.

Art. 4. The utility model shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Art. 5.—

(1) The applicant shall be granted protection for his utility model if

(a) the utility model satisfies the requirements prescribed in Articles 1 to 4 of the Law and it is not excluded from utility model protection within the Article 1(2),

(b) the application complies with the formal requirements prescribed by this Law.

(2) The utility model cannot be granted protection if its use would be contrary to law or public morals, unless merely the trade in such products is restricted by law.

Inventor of the Utility Model and Right to Utility Model Protection

Art. 6. The inventor of the utility model is the person who has created the utility model.

Art. 7.—

(1) The right to the utility model protection shall belong to the inventor or his successor in title.

(2) If two or more persons have jointly created a utility model, the right to utility model protection shall jointly belong to them or their successors in title. If two or more persons have created the utility model independently of each

other, the right to utility model protection shall belong to the inventor or his successor in title who files the application with the National Office of Inventions with the earliest date of priority.

Art. 8.—

(1) Where, on the basis of his employment or by virtue of other legal relations, the inventor is under obligation to create a utility model (employees' utility model), the right to the utility model protection shall belong to the employer or the person entitled by other legal relations.

(2) The inventor of an employees' utility model shall be entitled to remuneration, for which the provisions of the decree concerning remuneration to be paid for employees' inventions shall apply *mutatis mutandis*.

Art. 9. In any other matters for the personal rights of the inventor of the utility model, the right to the utility model protection and the employee's utility model, the provisions of the Law on the Protection of Inventions by Patents (hereinafter referred to as “the Patent Law”)¹ and of the decree on its implementation concerning the personal rights of the inventor, the right to a patent and the employees' inventions shall apply *mutatis mutandis*.

Establishment and Duration of Protection

Art. 10. Utility model protection comes to existence by the grant of utility model protection; the effect of protection shall be retroactive to the date of application.

Art. 11.—

(1) Utility model protection shall have a duration of ten years from the filing date of the application.

(2) During the period of utility model protection annual fees, to be fixed by a special regulation, shall be payable.

Effects, extent and Limitations of Protection

Art. 12. On the basis of utility model protection, the owner of the utility model protection shall have, as provided for by legislation, the exclusive right to exploit the utility model or to grant a license of exploitation to another person. The exclusive right of exploitation shall include manufacture, use, importation for commercial purposes or marketing of the subject matter of the utility model.

Art. 13.—

(1) The extent of utility model protection shall be determined by the claims. Claims may be interpreted only on the basis of the description and drawings.

(2) Utility model protection shall cover a product embodying all elements of the claim or in which one or more elements of the claim are replaced by an equivalent.

(3) The demand for remuneration deriving from utility model protection shall not be affected if in the product one or more elements of the claim are replaced by improved elements made available to the exploiter by the owner of the utility model protection or by the inventor of the utility model.

Art. 14. Rights deriving from a utility model and its protection, with the exception of the personal rights of the inventor, may be transferred, assigned and encumbered.

Art. 15. On the basis of a contract of exploitation (license contract for a utility model protection), the owner of the utility model grants a license for the exploitation of the utility model, in exchange, the exploiter is obliged to pay royalties.

Art. 16.—

(1) If a protected utility model cannot be exploited without infringing another utility model protection, a compulsory license shall be granted for the impeding utility model protection to the extent necessary for exploitation.

(2) If a patented invention cannot be exploited without infringing a utility model protection, a compulsory license shall be granted for the impeding utility model protection to the extent necessary for exploitation.

¹ See Industrial Property Laws and Treaties, HUNGARY – Text 2-006 (Editor’s note).

Art. 17.—

(1) For the succession in title and the contracts of exploitation, the provisions of the Patent Law shall apply *mutatis mutandis*.

(2) For the compulsory license granted for a utility model protection, the exploitation of a utility model for the needs of national defense and the limitations of the utility model protection, the provisions of the Patent Law and of its implementing decree concerning the compulsory license for a patent, the exploitation and the limitations of patent protection shall apply *mutatis mutandis*.

(3) For the joint utility model application and joint utility model protection, the provisions of the Patent Law and of its implementing decree concerning the joint patent application: and joint patent shall apply *mutatis mutandis*.

Part II

Utility Model Infringement and Infringement of Utility Model Protection

Utility Model Infringement

Art. 18. Where the subject of a utility model application or of a utility model has been taken unlawfully from another person, the injured party or his successor in title may claim partial or total assignment of the utility model application or of the utility model protection.

Infringement of Utility Model Protection

Art. 19.—

(1) Any person who unlawfully exploits a utility model under protection commits infringement of utility model protection.

(2) The owner of the utility model protection may have recourse to the same civil remedies against the infringer as the patentee may enforce, by virtue of the Patent Law, against the infringer.

(3) In the event of the infringement of the utility model protection, for the rights of the exploiter authorized by the owner, the provisions of the Patent Law shall apply.

Decision of Non-Infringement

Art. 20.—

(1) Any person who fears that proceedings for infringement of utility model protection will be instituted against him, may, prior to the institution of such proceedings, request a decision ruling that the product manufactured or intended to be manufactured by him, does not infringe a particular utility model protection specified by him.

(2) A final decision of non-infringement bars the institution, on the basis of the utility model protection concerned, of infringement proceedings in respect of the same product.

Part III

Lapse of Utility Model Protection

Cases of the Lapse of Utility Model Protection

Art. 21.—(1) Utility model protection shall lapse

- (a) when the period of protection expires, on the day following the date of expiration;
 - (b) if the annual fees have not been paid, on the day following the due date
 - (c) if the owner of the utility model protection surrenders the protection, on the day following receipt of the surrender, or at an earlier date specified by the person surrendering the protection
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(d) if the utility model protection is declared null and void, with retroactive effect to the filing date of the application.

(2) Utility model protection shall be regarded as lapsed, with retroactive effect to its filing date, when a patent is granted for a patent application

(a) derived from the utility model application

(b) from which the utility model application has been derived.

Restoration of Utility Model Protection

Art. 22. If utility model protection has lapsed by reason of non-payment of annual fees, the National Office of Invention shall, upon request, restore the protection if the failure had been caused by a justifiable reason.

Surrender of Utility Model Protection

Art. 23.—

(1) The owner indicated in the Utility Model Register may surrender utility model protection by written declaration addressed to the National Office of Inventions. If the surrender affects the rights of third parties based on legislation, on decisions of an authority, on a license contract recorded in the Utility Model Register, or if proceedings are recorded in the Utility Model Register, it shall only take effect with the consent of the parties concerned.

(2) It shall also be possible to surrender certain claims of the utility model protection.

Nullity of Utility Model Protection

Art. 24.—

(1) Utility model protection shall be declared null and void if

(a) the subject matter of the utility model does not satisfy the requirements laid down in Article 5(1)(a),

(b) the description does not satisfy the legal requirements (Article 32).

(2) Where conditions of nullity exist only partially, the utility model protection shall be limited accordingly.

Reclaiming of Fees

Art. 25. If utility model protection lapses with retroactive effect to its establishment, only the portion of the remuneration collected in good faith by the owner of utility model protection or the inventor of the utility model can be reclaimed which was not covered by the benefits derived from the exploitation of the utility model.

Part IV

Procedures Before the National Office of Inventions in Utility Model Matters

Competence of the National Office of Inventions

Art. 26. The National Office of Inventions shall be competent to

(a) grant utility model protection,

(b) declare that utility model protection has lapsed, or to restore it,

(c) declare utility model protection null and void,

(d) declare non-infringement,

(e) interpret the description of the utility model,

(f) deal with matters concerning the maintenance and recording of utility model protection.

Application of the General Provisions on Administrative Procedure

Art. 27.—

(1) The National Office of Inventions shall proceed in utility model matters, with the exceptions prescribed in this Law, by applying the general provisions of administrative procedure.

(2) The National Office of Inventions may retract or modify its decisions on utility model matters taken on the merits only on the basis of a request for review and until its transmittal to the court. Its decisions may not be invalidated or changed by a supervisory authority, they shall be without appeal.

(3) Decisions on utility model matters taken by the National Office of Inventions may be changed by the court, in conformity with the provisions of Article 37.

Art. 28.—

(1) For the procedure of the National Office of Inventions in utility model matters the general provisions of the Patent Law and its implementing decree concerning the procedure of the National Office of Inventions in patent matters shall apply *mutatis mutandis*.

(2) A utility model application shall be considered withdrawn when a patent is granted, by final decision, for a patent application

- (a) derived from the utility model application,
- (b) from which the utility model application has been derived.

Utility Model Application

Art. 29.—

(1) The procedure for the grant of utility model protection shall begin with the filing of an application with the National Office of Inventions.

(2) Utility model applications shall contain a request, a description of the utility model and other relevant documents.

(3) Detailed formal requirements to be complied with in applications shall be laid down in special regulation.

(4) Rights can only be based on an application which contains at least the name and address of the applicant, as well as a description of the essential features of the utility model. For the description reference to a priority document may also be substituted.

Derivation From Patent Application

Art. 30.—

(1) Where the applicant has already filed, at an earlier date, a patent application, in his declaration of priority concerning a utility model application for the same subject matter he may claim, in addition to retaining the filing date of the patent application, the right of priority relevant for the patent application.

(2) Priority and filing date of the patent application shall only apply, on the basis of derivation, to the utility model application if the application and declaration of priority are received by the National Office of Inventions

a) in the course of the patent application procedure up to the date when the decision on the grant of patent becomes final or within three months from the date when the decision rejecting the patent application becomes final, or

b) within three months from the date when the decision declaring nullity of the patent for lack of novelty becomes final.

(3) Derivation of a utility model application shall be admissible only within ten years from the filing date of the patent application.

Derivation From Industrial Design Application

Art. 31.—

(1) Where the applicant has already filed, at an earlier date, an industrial design application, in his declaration of priority concerning a utility model application for the same subject matter he may claim, in addition to retaining the filing date of the industrial design application, the right of priority relevant for the industrial design application.

(2) Priority and filing date of the industrial design application shall only apply, on the basis of derivation, to the utility model application if the application and declaration of priority are received by the National Office of Inventions in the course of the procedure for industrial design application up to the date when the decision on the grant of industrial design protection becomes final or within three months from the date when the decision rejecting the industrial design application becomes final.

(3) Derivation of a utility model application shall be admissible only within ten years from the filing date of the industrial design application.

Description

Art. 32.—

(1) The description shall make it possible for a skilled craftsman to carry out the subject matter of the utility model on the basis of the description and drawings.

(2) At the end of the description one or more claims shall define, in accordance with other parts of the description, the extent of the utility model protection applied for.

Unity of Utility Model

Art. 33. In any utility model application, protection may only be sought for a single utility model.

Examination of the Utility Model Application

Art. 34.—

(1) The National Office of Inventions shall undertake an examination of the utility model application in order to ascertain whether it complies with the requirements prescribed in Article 29 (2) to (4).

(2) If the utility model application is so incomplete that no right can be based on it (Article 29 (4)), the application shall be rejected without further procedure.

Art. 35. The National Office of Inventions shall examine the substance of the utility model application with regard to the following points:

- a) whether the subject of the application is a utility model;
- b) whether the subject of the application is susceptible for industrial application;
- c) whether the subject of the application is excluded from utility model protection under Article 5 (2);
- d) whether the application meets the requirement of unity;
- e) whether the utility model is entitled to the claimed priority.

Procedure in Utility Model Matters

Art. 36.—

(1) For the priority, examination, amendment and division of utility model application, publication of data concerning utility model applications, declaration of expiration, restoration nullity of utility model protection, as well as interpretation of the description and declaration of non-infringement, the provisions of the Patent Law and of its implementing decree shall apply *mutatis mutandis*.

(2) For the grant of utility model protection, the provisions of the Patent Law and of its implementing decree shall apply, with the difference that the description and drawings of the utility model shall not be printed. After

announcement of the grant of utility model protection, any person may inspect the utility model application and on payment can obtain copies of it.

Part V

Court Procedure in Utility Model Matters and Litigation

Review of Decisions Taken by the National Office of Inventions

Art. 37.—

(1) On request, the court may review the decisions of the National Office of Inventions taken with regard to:

- (a) granting utility model protection
- (b) declaration utility model protection to have lapsed, or restoration utility model protection,
- (c) declaring utility model protection null and void,
- (d) ruling on non-infringement.

(2) Review of decisions may be requested by any person who took part as a party in the proceedings before the National Office of Inventions, and by the inventor of the employees utility model.

(3) The period within which the request for review may be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted to the National Office of Inventions which shall forward it to the court with the documents of the utility model matter within fifteen days.

(5) Legislation concerning court procedures aiming at reviewing the decisions taken by the National Office of Inventions in patent matters shall apply to court procedures aiming at reviewing the decisions taken by the National Office of Inventions in utility model matters.

Utility Model Litigation

Art. 38.—

(1) Utility model litigation shall comprise:

- (a) court proceedings concerning the grant, modification and revocation of a compulsory license,
- (b) court proceedings concerning the fixing of the amount of damages for exploitation,
- (c) court proceedings concerning the establishment of a right of prior use,
- (d) actions for infringement.

(2) provisions of patent litigation shall apply to utility model litigation.

(3) In any other utility model litigation not mentioned in paragraph (1), the county courts (or the Metropolitan Court) shall proceed in accordance with the rules governing patent litigation.

Part VI

Final Provisions

Amendments of the Patent Law

Art. 39.

(1) For Article 6 (3) c) of the amended Law No. II of 1969 on the Protection of Inventions by Patents (hereinafter referred to as Patent Law) shall be substituted the following provision:

(The invention cannot be granted patent protection if)

“c) the subject matter thereof is identical with that of a patent or of a utility model protection having an earlier date of priority; where the identity is only partial, a patent may be granted solely with appropriate limitations.”

(2) The Patent Law shall be completed by the following Article 40/A:

“Derivation from utility model application

Art. 14A.—

(1) Where the applicant has already filed, at an earlier date, a utility model application, in his declaration of priority concerning a patent application for the same subject matter he may claim, in addition to retaining the filing date of the utility model application, the right of priority relevant for the utility model application.

(2) Priority and filing date of the utility model application shall only apply, on the basis of derivation, to the patent application if the application and declaration of priority are received by the National Office of Inventions in the course of the utility model application procedure within three months from the date when the decision on the grant of utility model protection becomes final.

(3) Derivation of a patent application shall be admissible only within twenty years from the filing date of the utility model application.”

(3) For Article 40 (3) of the Patent Law the following provision shall be substituted:

“(3) If a patent application or utility model application relating to the same subject matter and having an earlier date of priority has also been filed, until the procedure relating to it is terminated, the other procedure shall be suspended.”

Amendment of the Decree-Law on the Protection of Industrial Designs

Art. 40.

Decree-Law No. 28 of 1978 on the Protection of Industrial Designs shall be completed by the following Article 14/A:

“Derivation from utility model application

Article 14/A

(1) Where the applicant has already filed, at an earlier date, a utility model application, in his declaration of priority concerning an industrial design application for the same subject matter he may claim, in addition to retaining the filing date of the utility model application, the right of priority relevant for the utility model application.

(2) Priority and filing date of the utility model application shall only apply, on the basis of derivation, to the industrial design application if the application and declaration of priority are received by the National Office of Inventions in the course of the utility model application procedure up to the date when the decision on the grant of utility model protection becomes final or within three months from the date when the decision rejecting the utility model application becomes final.

(3) Derivation of an industrial design application shall be admissible only within ten years from the filing date of the utility model application.”

Amendments of the Implementing Decree of the Patent Law

(1) For Rule 3(2) of the amended Joint Decree No. 4/1969 (XII.28.) OMFB-IM on the implementation of Law No. II of 1969 on the Protection of Inventions by Patents (hereinafter referred to as “Implementing Decree”) there shall be substituted the following provision:

“(2) A patent or utility model protection having an earlier date of priority (Article 6(3)c) of the Patent Law) shall mean a patent or utility model protection granted in Hungary; complete or partial identity shall be established by collating the claims.”

(2) Rule 19(3) of the Implementing Decree shall be completed by the following subparagraph e):

(Restoration of rights may not be considered)

“e) in the event of non-compliance with the time limit fixed for derivation (Article 40/A (2) and (3) of the Patent Law).”

Entry Into Force

Art. 42.—

(1) This Law shall enter into force on 1 January 1992.

(2) The Minister of Justice shall be authorized to issue, in concert with the President of the National Office of Inventions, detailed rules on the formal requirements of utility model applications.
